

Legal Aid Board – Annual Conference 2014 “Civil Legal Aid in a Rapidly Changing World”

On Wednesday 18th June 2014, the Legal Aid Board held its sixth annual conference at the Clyde Court Hotel, Ballsbridge, Dublin 4. The conference was well attended, with representation both from the Board and other public bodies, NGOs and private solicitor firms. The focus of the conference was future developments in civil legal aid, the theme being “Civil Legal Aid in a Rapidly Changing World”

The Conference was opened by the Chief Executive, Dr Moling Ryan, who began by reading a message from the Minister for Justice and Equality, Ms Frances Fitzgerald TD, who was unable to attend due to other commitments. The Minister welcomed the Board’s efforts to address a near doubling of demand for services and in particular innovative measures such as triage and the introduction of specialist units for certain matters. She also welcomed the Board’s efforts to mainstream mediation as a preferred approach for resolving family law disputes and in particular the introduction of the Dolphin House Initiative. She looked forward to continue to work with the Board on a range of issues and wished the Board well with its Conference.

In his introduction Dr Ryan spoke about recent developments internationally with the scope of legal aid being cut back in certain jurisdictions particularly in England and Wales. In Australia a National Partnership Agreement on Legal Assistance Services between the federal and state governments has been put in place with the objective of putting in place a national system of legal assistance that is integrated, efficient, and cost-effective, and focussed on providing services for disadvantaged Australians in accordance with access to justice principles of accessibility, appropriateness, equity, efficiency, and effectiveness. Meanwhile in Canada, the Action Committee on Civil and Family Justice has set out a road map for the future of civil legal aid in “Access to Civil and Family Justice - A Roadmap for Change”, with six guiding principles for change at its core.

The first presentation was by Ms Muriel Walls, Chairperson of the Legal Aid Board. Ms Walls began by outlining the current operation of civil legal aid and advice and the possibility of altering the scope of the scheme. She spoke about empowering parties to a dispute to give them the skills and confidence to make good decisions for themselves and their families. This includes giving clients information, homework, and discussing solutions/outcomes at the earliest stage. She also discussed the language of pleadings in Ireland and advocated changing them to plain English, as well as “dropping the Latin and the legal jargon”. She also advocated the sharing of knowledge within the Board (the seventh largest legal practice in the country) and the streamlining of documentation.

The second speaker was Professor Roger Smith, visiting professor of law at London South Bank University and an expert in domestic and international aspects of legal aid, human rights and access to justice.

Prof. Smith spoke on the theme of technology as an enabler of legal service delivery. In other jurisdictions legal advice is being delivered through websites and telephone services. Mention was made of the UK Department of Work and Pensions' sortingoutseparation.org.uk and criticisms that it painted a "too rosy" or "sanitised" picture of marital breakdown. A particular mention was made of the Dutch Legal Aid Board's rechtwijzer.nl website which takes applicants through the process of divorce in an interactive way. There was a role for a legal aid administration in validating, accreditation, or approval and with linking with courts to self help litigants. He made the point that governments find it easier to shut down non-bricks and mortar services, an example being cited of the UK Department of Health's former NHS Direct website which was closed down when funding was pulled.

The next speaker was Ms Noeline Blackwell, Director General of Free Legal Advice Centres (FLAC). Ms Blackwell criticised the inflexible nature of the means test for civil legal aid and suggested that civil legal aid be available to all on the basis of a graduated contribution structure. She also criticised the scope of the scheme in particular the exclusion of tribunals from the scope of legal aid. She also mentioned the cuts in the scope of civil legal aid in England and Wales and the effect this is having. She mentioned the importance of early intervention and supported better public education about the law and access to legal information.

Following this there was a panel discussion chaired by Prof. Donncha O'Connell, Professor of Law at National University of Ireland, Galway, and a member of the Legal Aid Board. Mr Colm Roberts, solicitor, spoke about the correlation between cost and access to justice and the need to look at a holistic approach. He asked about developments in England and Wales and the Netherlands and asked how an EU-wide legal aid system might work? Ms Toni Monaghan, solicitor, mentioned the relationship between FLAC and the Board and that both organisations needed to work together and take a pragmatic approach. Prof Smith said that any link between legal aid and the EU would be toxic in England and Wales while Ms Blackwell stated that as an independent non-governmental organisation FLAC needed to distance itself from the Board and would not be doing its job if it did not challenge the Board and its processes. Dr Carol Coulter, Director of the Child Care Law Reporting Project, spoke about the number of adjournments involved in childcare proceedings and that childcare and other family law cases are, in many District Court venues, held on the same day as criminal and other proceedings. Ms Karen Kiernan of OneFamily mentioned that family law was incomprehensible to many and not client centred and wondered if there was an opportunity to make things more efficient. Ms Blackwell suggested a model where the banks funded a legal aid scheme for debt cases. Prof Smith suggested the focus should be on delivering justice rather than access to justice. Ms Walls referred to the need to have support systems in place.

After lunch Dr Ab Currie, Senior Research Fellow at the Canadian Forum on Civil Justice, gave a presentation on Legal Aid and Access to Justice in Canada, which gave a bird's eye view of the thirteen separate legal aid systems in Canada's provinces and territories and statistical trends in the provision of legal aid. He noted the role of the "expanded duty counsel" service in Canadian jurisdictions. Dr Currie also spoke about the role of the Action Committee on Access to Justice in Civil and Family Matters and the Access to Justice Roadmap which focussed on the resolution of everyday legal problems. He also outlined how this had been followed up in four provinces including the creation of an interactive website in British Columbia, "MyLawBC", a shift to non-adversarial early intervention and education in Alberta, developments in legal aid in Ontario such as Law Line (a telephone advice service), community legal education and Family Law Services Centres in Toronto, as well as developments in Nova Scotia.

The next speaker was Mr John McDaid, Director of Civil Legal Aid in the Legal Aid Board. Mr McDaid spoke on the theme of "Facilitating the resolution of disputes in family law cases – an integrated approach". Mr McDaid spoke about current approaches to the resolution of family disputes and noted that heretofore the default setting for the resolution of family law problems was court. He spoke about options for alternative dispute resolution including mediation. Mr McDaid also mentioned the recommendations of the Law Reform Commission in 1996 that a Family Court Information Centre be established with responsibility for providing information on the family court system including alternatives to litigation. In terms of the Family Mediation Service Mr McDaid spoke about the fact that it was now part of the Legal Aid Board and the various integrated initiatives that the Board has piloted including the Dolphin House Mediation Initiative (with the Courts Service) since 2010 and the newly launched mandatory mediation information initiative in Cork, which is also intended to be rolled out in Mayo and Westmeath. This will involve applicants for a legal aid certificate being required to get information on mediation before being granted a certificate.

The final speaker was Mr Herman Schilperoot of the Dutch Legal Aid Board, who spoke on the topic of "Developments in Legal Aid Provision in the Netherlands". Mr Schilperoot spoke first about the structure for the provision of legal aid in the Netherlands, including the provision of Legal Services Counters. He spoke about the rising cost of legal aid and the need for new alternatives to reduce this cost, including making legal proceedings easier, the value of early intervention, and the need for further focus and emphasis on digital methods. He also mentioned the Rechtwijzer on-line self-help website which allows the user to develop online custody/access and maintenance arrangements and essentially a "DIY divorce". He also mentioned the forthcoming new version that was being developed with the aim of only involving solicitors when needed.

Following this was a second panel discussion chaired by Ms Walls, who referred to the difficulties caused by the adversarial system in relation to dispute resolution.

Mr Frank Caffrey, Director of Specialist Legal Services, asked Dr Currie about the issue of face time with lawyers and to what extent this had developed at provincial level, what plans were there to extend this and what lessons could be learnt by Ireland. Dr Currie replied that there was some success using video for bail hearings in remote areas due to expensive travel costs. It might be possible to couple such developments with medical delivery in outlying areas. Ms Joan Crawford, solicitor, made the point that family breakdown was a problem for society as a whole. Mr Tom Ward from the Courts Service said that the issue was whether clients got justice rather than access to justice. There was a certain cultural resistance from some practitioners to use of the internet. Ms Eileen Bowden, Director of Corporate Services, asked Mr Schilperoot about the legal services counters and drop off after using them. Mr Schilperoot stated that while the Dutch authorities had no figures about lack of use of the system a lot of easy questions can be resolved at that stage.

Dr Ryan concluded the Conference by thanking all of the contributors and the Board's staff who had worked on organising the event.