



Submission from Mental Health Reform to the Review of the Civil Legal Aid Scheme

11th January 2023

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List of Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
DPCN	Disability Participation and Consultation Network
FLAC	Free Legal Advice Centre
IHREC	Irish Human Rights and Equality Commission
MHR	Mental Health Reform
UN	United Nations
UNCERD	United Nations Committee on the Elimination of Racial Discrimination
UNCRPD	United Nations Convention on the Rights of Persons with Disabilities
WRC	Workplace Relations Commission



Key Recommendations

Mental Health Reform recommends that...

- The Department review The National Disability Authority's [guide](#) on meaningful engagement with disabled people in public decision making.
- As part of this consultative process, new and accessible forms of submissions, e.g. videos, oral submissions, focus groups, and roundtables should be included.
- The current exclusion of proceedings before quasi-judicial settings should not continue to apply. The Civil Legal Aid Scheme should be expanded to be made available for cases of discrimination that are taken to the Workplace Relations Commission.
- Discrimination cases should be considered fundamental to the rights of the individual (particularly in light of Ireland's Equal Status Acts and Article 5 of the UNCRPD) and should be provided without a financial eligibility test.
- The Department runs a comprehensive and accessible communications campaign to ensure that people with psychosocial disabilities know their rights under the Equality Acts and the support available to them under the Civil Legal Aid Scheme.

Introduction

Mental Health Reform (MHR) is Ireland's leading national coalition on mental health. Our vision is of an Ireland where everyone can access the support they need in their community, to achieve their best possible mental health. We drive the progressive reform of mental health services and supports, through coordination and policy development, research and innovation, accountability and collective advocacy. Together with our 80 member organisations and thousands of individual supporters, MHR provides a unified voice to the Government, its agencies, the Oireachtas and the general public on mental health issues.

Mental Health Reform is delighted to submit to this public consultation on behalf of our 80 members. MHR would like to thank our members for their continued insight, input and work.¹ Further information on our members can be found on the Mental Health Reform [website](#).

MHR is a funded member of the [Disability Participation and Consultation Network](#) (DPCN). The role of DPCN members is to *"provide the views and opinions of people with disabilities living in Ireland on law, policy and other important issues. Working on specific issues, this could mean, for example, attending workshops and meetings (online, or in person, having discussions with other members, or completing questionnaires)."*²

¹ <https://www.mentalhealthreform.ie/membership/>

² <https://www.gov.ie/en/consultation/a3ef2-launch-of-disability-participation-and-consultation-network/>



Significant work has been undertaken by Mental Health Reform in 2021 on the Draft State Report on the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). MHR undertook two public consultations and an information webinar as part of this process in 2021. Mental Health Reform also made a submission as part of the consultation on the Review of the Equality Acts³ (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015) which can be found [here](#). These previous processes inform this submission.

This submission will address three questions of the [review](#), namely;

- **Issue 2, Question 3:** *"Should the current exclusion of proceedings before quasi-judicial settings continue to apply? Why?/Why not?"*
- **Issue 3, Question 6:** *"Are there certain types of cases that are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test? If so, what types of cases do you believe fall into this category?"*
- **Issue 8, Question 19:** *"How can an individual's awareness and understanding about justiciable problems or legal disputes be raised?"*⁴

A Note on Language

While our national mental health policy, [Sharing the Vision](#), uses the terminology 'mental health difficulties', the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which Ireland ratified in 2018, refers to 'psychosocial disabilities' when referring to people with mental health difficulties or people who self-identify with this term. The UNCRPD clearly states that the protections and rights set out extend to those with psychosocial disabilities. Mental Health Reform (MHR) advocates for the choice of the individual in how they prefer to describe their experience and acknowledge that *"it is an individual choice to self-identify with certain expressions or concepts, but human rights still apply to everyone, everywhere"*.⁵

Accessibility

Article 4(3) of the UNCRPD states that:

*"In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations."*⁶

The National Disability Authority, in collaboration with Disabled Persons' Organisations in Ireland have created a [guide](#) on meaningful engagement with disabled people in public decision making. One of the principles of meaningful engagement with people with disabilities on matters that impact them is that *"There is adequate time for stakeholders to prepare and time to respond with their input"*.⁷ Mental Health Reform would like to highlight the

³ <https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/>

⁴ [gov.ie](#)

⁵ [Mentalhealthreform.ie](#), p. 9

⁶ [Un.org](#)

⁷ https://nda.ie/uploads/publications/NDA-Participation-Matters_Web-PDF_092022.pdf, p. 23



inaccessibility of the initial short duration of time allocated to the review (13th November 2022 – January 6th 2023) and commend the department for extending this consultation until the 3rd of February 2023. Mental Health Reform would ask that the department consider the National Disability Authority guidelines for all future consultations.

Mental Health Reform also recommends that as part of this consultative process, new and accessible forms of submissions, e.g. videos, oral submissions, focus groups, and roundtables should be included.

Recommendations:

- Mental Health Reform recommends that the Department review The National Disability Authority's [guide](#) on meaningful engagement with disabled people in public decision making
- Mental Health Reform recommends that as part of this consultative process, new and accessible forms of submissions, e.g. videos, oral submissions, focus groups, and roundtables should be included

Mental Health and Discrimination

People living with mental health difficulties experience lower levels of workforce participation compared with the overall population (22% compared with 53%). Those who do report workforce participation are more likely to experience either discrimination or harmful effects from discrimination in occupational settings.⁸ In a [See Change](#) public attitudes survey published this year, 70% of respondents felt that a diagnosis of mental health difficulties would have a negative effect on their job and career prospects and 60% said that they were not aware that mental health difficulties were covered under the nine grounds of discrimination.⁹ The See Change findings relating to stigma are consistent with research conducted by the National Disability Authority into the disclosure of disabilities in workplace settings¹⁰, which found that the experience of those with 'invisible disabilities' was complex regarding whether to disclose a disability or not.

Alleged Breaches of Employment Law

In Mental Health Reform's [consultation](#) ahead of Ireland's review under the UNCRPD, participants reported that they felt compelled to endure alleged breaches of employment law, in exchange for remaining in employment. These included:

1. Being paid below minimum wage.
2. Having their role diminished in a form of de facto demotion.
3. Failure on the part of the employer to make reasonable accommodation for the needs of employees living with psychosocial disabilities.

⁸ Banks, J., Grotti, R., Fahey, E. and Watson, D., (2018). Disability and Discrimination in Ireland, p. 5

⁹ <https://seechange.ie/wp-content/uploads/2018/02/Mental-Health-Matters-web.pdf>

¹⁰ Millward Brown Lansdowne, Public Attitudes towards Mental Illness: A Benchmark Study for See Change (unpublished).



4. Being forced out of their position through encouragement to take extended leave, with little effort being made to encourage or facilitate a return to working.

Finally, Mental Health Reform received feedback that those who investigated their legal options to address breaches of employment law or equality legislation, found the process prohibitive. This related to a range of factors, including:

1. The prospect of being liable for costs in the event a claim was not upheld.
2. The length of time a claim would take to reach a tribunal or court setting.
3. The anxiety caused by engagement with such an adversarial process.
4. A feeling that statutes of limitations were too restrictive for those struggling to manage a psychosocial disability. There is a requirement that complaints be lodged within 6 months of an alleged breach being committed. An extension of this was cited as necessary to accommodate the needs of some.¹¹

Question 3 – Workplace Relations Commission

"Should the current exclusion of proceedings before quasi-judicial settings continue to apply? Why?/Why not?"

Access to justice is a fundamental human right, as is outlined in a number of international instruments.¹² In particular, Mental Health Reform would like to highlight Article 13 of the UNCRPD which states that;

*"State Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others"*¹³

The Legal Aid Board is currently prohibited by law (in the absence of a Ministerial Order)¹⁴ from providing representation for many quasi-judicial tribunals, including the Workplace Relations Commission (WRC). This means that legal aid is generally unavailable for discrimination cases under the Equality Acts, regardless of the severity of the discrimination.

The Workplace Relations Commission publishes statistics regularly on its decisions in relation to equality complaints. This information is disaggregated by discriminatory ground. The [2021 report](#) outlines that there were 1,596 complaints made to the Workplace Relations Commission relating to Discrimination/Equality/Equal Status (13% of all complaints that year). This represents an increase of just under 90% when compared with 2020. It is important to note that disability is consistently in the top three grounds of discrimination cited since the establishment of the WRC.¹⁵ The following is a breakdown of disability discrimination cases by Equality Act for 2021;

¹¹ [Mentalhealthreform.ie](https://www.mentalhealthreform.ie)

¹² United Nations, (2021) Access to Justice [\[online\]](#)

¹³ [Un.org](https://www.un.org)

¹⁴ [Civil Legal Aid Act 1995](#)

¹⁵ [Workplacerelations.ie](https://www.workplacerelations.ie)



- *Under the Equal Status Acts 2000-2015:* In 2021, one of the most notable increases was in the area of disability with 362 referrals (+298% on last year).¹⁵
- *Under Employment Equality Acts 1998-2015:* The highest number of complaints received in 2021 were in relation to Disability with 323 referrals (+11% on last year).¹⁵

Discrimination cases can be very complex, involving complicated areas of both national and European law. As is noted in Mental Health Reform's [submission](#) on the review of the Equality Acts, under the current regimes there are exhaustive, emotional and psychological burdens experienced by anyone with disabilities who takes a case under the Equality Acts. Issues around the burden of proof, accessing the relevant information and forms all create barriers for people with disabilities. Without representation the person making the complaint must deal with navigating these complex issues alone, while sitting across from the Employer/Service Provider that they have taken their case against. Often employers and businesses may have the financial means to pay for private legal representation for WRC cases when the person making the complaint may not, creating stark inequality in many of these cases.¹⁶

The restrictive nature of the Civil Legal Aid scheme has been repeatedly criticised by the Irish Human Rights and Equality Commission (IHREC)¹⁷, as well as by international bodies. In 2015, the UN Committee on Economic, Social and Cultural Rights recommended that Ireland should;

"...ensure the provision of free legal aid services in a wide range of areas, including by expanding the remit of the Civil Legal Aid Scheme."¹⁸

In 2019, in the concluding remarks on Ireland's review under the United Nations Committee on the Elimination of Racial Discrimination (UNCERD), the Committee expressed its concern about the absence of legal aid for discrimination cases brought to the WRC.¹⁹ The Committee recommended:

"...that the State party extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to Traveller and other ethnic minority groups, including by designating the Social Welfare Appeals Office and Workplace Relations Commission as prescribed tribunals under Section 27(2)(b) of the Civil Legal Aid Act 1995".¹⁹

Similar recommendations to widen access to free legal aid in cases of discrimination were made during Ireland's review under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2017²⁰, as well as by the European Union (EU) Fundamental Rights Agency.²¹

Evidently, disability discrimination cases are one of the most prevalent case areas taken to the WRC. Given the inequality that can arise in these cases due to a potential inability to afford legal representation, Mental Health Reform supports the call made by Free Legal Advice Centres (FLAC), IHREC, the UNCERD, the CEDAW and the EU Fundamental Rights

¹⁶ FLAC, (2021). [FLAC Guide: The Review of the Equality Acts, Making a Submission to the Review & the Key Issues Under Review.](#)

¹⁷ <https://www.ihrec.ie/app/uploads/2022/01/IHREC-Submission-on-the-Review-of-the-Equality-Acts.pdf>

¹⁸ Committee on Economic, Social and Cultural Rights, [Concluding observations on the third periodic report of Ireland](#) (2015), UN Doc. E/C.12/IRL/CO/3, para 8.

¹⁹ <https://inar.ie/wp-content/uploads/2019/12/CERD-2019-Concluding-remarks.pdf>, p. 9

²⁰ [Ohchr.org](https://www.ohchr.org)

²¹ https://fra.europa.eu/sites/default/files/fra-factsheet_access_to_justice_en_0.pdf



Agency for Civil Legal Aid to be made available for cases of discrimination that are taken to the Workplace Relations Commission.

Recommendation:

The current exclusion of proceedings before quasi-judicial settings should not continue to apply. The Civil Legal Aid Scheme should be expanded to be made available for cases of discrimination that are taken to the Workplace Relations Commission.

Question 6 – Financial Eligibility

"Are there certain types of cases that are so fundamental to the rights of an individual that legal aid should be provided without a financial eligibility test? If so, what types of cases do you believe fall into this category?"

The means test which assesses an individual's financial eligibility for the Civil Legal Aid Scheme deems that a person's annual 'disposable income' must be less than €18,000 with the deductible expenses incorporating tax, social insurance contributions, child-care expenses, dependents, spouse and accommodation.²²

It must be recognised that people with disabilities are already at an increased risk of poverty. This is outlined in the Cost of Disability in Ireland report²³, with those with mental health difficulties ('to a great extent') reporting the highest level of deprivation. The average additional cost of having a mental health difficulty was reported to be €13,251 per year.²⁴ These significant additional costs, at a minimum, should be incorporated into the deductible expenses as part of the means test for the scheme.

Unemployment and poverty are intrinsically linked.²⁵ Irish people with disabilities have one of the lowest employment rates in Europe with just 36% in employment.²⁶ People with mental health difficulties are nine times more likely to be out of the labour force than those of working age without a disability. This is the highest rate for any disability group in Ireland.²⁷

Ireland has a number of national policies and strategies which commit to improving the employment outcomes of people with mental health difficulties.²⁸ However, programmes providing employment supports for people with mental health difficulties in Ireland have been peripheral and excluded from the mainstream suite of active labour market programmes offered by the Department of Social Protection. For example, at the time of writing, there is no support specifically for people with mental health difficulties in the [Reasonable](#)

²² [Legalaidboard.ie](https://www.legalaidboard.ie)

²³ <https://www.gov.ie/en/publication/1d84e-the-cost-of-disability-in-ireland-research-report/>

²⁴ *ibid*, pg. xii

²⁵ [Un.org](https://www.un.org)

²⁶ https://www.esri.ie/system/files/publications/SUSTAT107_1.pdf

²⁷ Watson, D., Kingston, G. and McGinnity, F. (2012). Disability in the Irish Labour Market: Evidence from the QNHS Equality Module, Dublin: Equality Authority/Economic and Social Research Institute, p. 19

²⁸ See for example: Sharing the Vision, [the Pathways to Work Strategy 2021-2025](#), the [Comprehensive Employment Strategy for People with Disabilities](#) and the [National Disability Inclusion Strategy 2017 - 2021](#). These are underpinned by international commitments under the UNCRPD, the World Health Organisation's Report on Disability and the [European Union \(EU\) Disability Strategy](#).



[Accommodation Fund](#) provided by the Department (this deficit was highlighted by Mental Health Reform in a submission in May 2022).²⁹

In light of the numerous challenges faced by people with mental health difficulties in obtaining and retaining work, the lack of state support available for employees experiencing mental health difficulties and Ireland's obligations under the UNCRPD (particularly Article 5 and Article 13), access to legal aid for discrimination cases in mental health should be a high priority for the Civil Legal Aid Scheme. Mental Health Reform would advocate that legal aid should be provided without a financial eligibility test in these cases in order to discourage discrimination in the workplace (as well as in the provision of services) and to ensure that appropriate access to justice is available should a discrimination case be taken to the Workplace Relations Commission. At a very minimum, the additional costs associated with having a mental health difficulty should be classified as deductibles should a financial means test occur.

Recommendation:

Discrimination cases should be considered fundamental to the rights of the individual (particularly in light of Ireland's Equal Status Acts and Article 5 of the UNCRPD) and should be provided without a financial eligibility test.

Question 19 – Awareness Raising

"How can an individual's awareness and understanding about justiciable problems or legal disputes be raised?"

As part of Mental Health Reform's [submission](#) on the Review of the Equality Acts³⁰ (Equal Status Acts 2000-2018 and the Employment Equality Acts 1998-2015), we called for a comprehensive and accessible communications campaign to ensure that people with psychosocial disabilities know their rights under the Equality Acts.

Some recommendations that came about from Mental Health Reform's consultations ahead of that submission are as follows;

- Information should be disseminated as widely as possible, in as many languages and formats as possible, to ensure that the most marginalised and vulnerable to discrimination are aware of their rights.
- The inaccessibility of the WRC's website was highlighted, as well as the fact that the complaints form only makes references to employment issues.
- Forms are not available in braille or in easy-to-read formats, and overall the WRC and process itself were reported as obstacles.

Furthermore, the National Disability Authority recommends that [universal design](#) is implemented in any communication campaigns. Appendix C of their [guide](#) provides useful resources on accessibility.

Mental Health Reform would also recommend consulting with Disabled Persons' Organisations on any awareness raising campaigns about judiciable processes to ensure

²⁹ <https://www.mentalhealthreform.ie/wp-content/uploads/2022/06/MentalHealthReformSubmissionRAF.pdf>

³⁰ <https://www.gov.ie/en/press-release/24864-minister-ogorman-announces-review-of-the-equality-acts/>



they are accessible. Information on Disabled Persons' Organisations in Ireland can be found [here](#).

Recommendation:

MHR calls for a comprehensive and accessible communications campaign to ensure that people with psychosocial disabilities know their rights under the Equality Acts and the support available to them under the Civil Legal Aid Scheme.

Conclusion

Mental Health Reform welcomes the opportunity to reflect on the Review of the Civil Legal Aid Scheme and commend the Department of Justice for undertaking this review. There are many improvements to be made to ensure that people with mental health difficulties who face discrimination have access to justice through legal aid and to ensure that the State is undertaking positive action to eliminate discrimination and inequality.

For more information on any of the above content please contact Suzanna Weedle, Policy and Advocacy Coordinator at sweedle@mentalhealthreform.ie or at 0860245409

The Scheme to Support National Organisations (SSNO) is funded by the Government of Ireland through the Department of Rural and Community Development



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Registered Charity Number: 20078737. CHY Number: 19958. Company Registration Number: 506850.

