



IPRT Submission on the Review of Ireland's Civil Legal Aid Scheme

3rd February 2023

About IPRT

Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. Our vision is one of respect for human rights in the penal system, with prison as a sanction of last resort. We are committed to respecting the rights of everyone in the penal system and to reducing imprisonment. Our work is underpinned by an emphasis on evidence-based policies and a commitment to tackling social injustice. IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

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Introduction

1. IPRT welcomes the opportunity to make a short submission to the Review Group examining Ireland's Civil Legal Aid Scheme. At the outset we would acknowledge the Review Group's overall approach to its work, which emphasises a 'user-centred approach and the importance of access to justice'. IPRT strongly endorses this ethos, and it reflects our central concerns in regards the accessibility of civil legal aid among people in prison as well as broader 'access to justice' concerns arising for this vulnerable cohort of people.
2. While our submission is brief and focuses primarily on these key issues, it is important to say that IPRT as an organisation more generally supports the expansion of the civil legal aid scheme so as to provide the maximum possible coverage for those needing legal advice and/or representation. As an organisation, we are aware that many prisoners experience problems requiring the assistance of civil legal aid (particularly in relation to family / childcare proceedings, which can be challenging for a person where they are detained in prison).
3. It is also important at the outset to note our understanding that prisoners are entitled to civil legal aid on the same basis as members of the community, in addition to their entitlement to assistance under the *Legal Aid – Custody Issues Scheme* (and, of course, criminal legal aid as needed). Given the focus of this review on civil legal aid, this brief submission will not address the *Custody Issues Scheme* in any great detail. The issues raised, however, are likely to cut across both schemes.

Modes of Delivery and Accessibility

4. While IPRT does not provide direct service or casework to people in prison or their families, we regularly receive calls from individuals who want to raise concerns regarding a myriad of issues and are looking for potential avenues of redress. Often these concerns are legal in nature and require the provision of expert legal advice (which IPRT cannot provide). While IPRT staff attempt to signpost people as best we can to the relevant services available (including e.g. FLAC, Citizens Information and the Legal Aid Board), as well as IPRT's own *Know Your Rights: Your Rights as a Prisoner*¹ publication (a booklet which aims to help prisoners understand the rights they have while in prison), we are acutely aware of the limited assistance that is available for people.

¹ IPRT, 'Know Your Rights: Your Rights as a Prisoner' (IPRT 2021) <www.iprt.ie/human-rights-in-prison/know-your-rights-your-rights-as-a-prisoner/> accessed 2 February 2023.

5. In particular there does not exist in Ireland any specific legal service for people affected by imprisonment through which they can access clear, easy-to-understand and basic advice. This contrasts with England and Wales, where the Prisoners' Advice Service (PAS) – holding a Public Law contract with the Legal Aid Agency – offers free legal advice and support to adult prisoners regarding their human and legal rights, conditions of imprisonment and the application of Prison Law and the Prison Rules.²
6. Prisoners often encounter significant barriers in accessing information and assistance from State and other services beyond the prison system³ and the day-to-day challenges for a person in prison trying to obtain free legal advice should not be underestimated. For example, prisoners are entitled to only a six-minute phone call⁴ and there are often significant delays in sending and receiving post (with such delays particularly bad during the pandemic).⁵ Combined with the inherently closed nature of the prison environment, this can make it extremely difficult for prisoners to navigate the often complex processes involved in seeking and obtaining free legal advice.
7. Such difficulties are likely to be compounded for certain cohorts of prisoners including:
 - a. prisoners experiencing mental health difficulties (with the prevalence of mental illness among sentenced prisoners estimated to be 27% (males) and 60% (females))⁶;
 - b. prisoners with a disability (with an estimated nearly one in three prisoners having an intellectual disability);⁷
 - c. prisoners with low educational attainment and/or low literacy levels (with the highest recorded education level attained by more than half of prisoners being the Junior Certificate or less⁸ and more than twice as many prisoners at the lowest literacy level when compared to the general population⁹); and

² See Prisoners' Advice Service website for more information, <www.prisonersadvice.org.uk/> accessed 2 February 2023.

³ South Leinster Citizens Information Service, *Equality of Access to Information and Services Enhances Personal Power* (Citizens Information 2022) <www.everywhereplus.com/wp-content/uploads/2022/11/SLCIS_PRR2022_DIGITAL-COPY-1-20221107.pdf> accessed 3 February 2023.

⁴ IPRT (n 1) 22.

⁵ IPRT, *Prison Law Seminar: The Prison Rules* (IPRT 2021) <www.iprt.ie/upcoming-events/prison-law-seminar-the-prison-rules/> accessed 3 February 2023.

⁶ Kennedy HG et al, 'Mental Illness in Irish Prisoners: Psychiatric Morbidity in Sentenced, Remanded and Newly Committed Prisoners' (NFMHS 2005) <www.drugsandalcohol.ie/6393/1/4338_Kennedy_Mental_illness_in_Irish_prisoners.pdf> accessed 3 February 2023.

⁷ Gulati G. et al, 'Trans-institutionalisation in Ireland: New and Emerging Congregated Settings for People with Disabilities' (2021) *Health & Human Rights Journal* <www.hhrjournal.org/2021/08/trans-institutionalisation-in-ireland-new-and-emerging-congregated-settings-for-people-with-disabilities/> accessed 2 February 2023.

⁸ Central Statistics Office. 'Offenders 2016: Employment, Education and other Outcomes, 2016-2019' (CSO 2020) <<https://www.cso.ie/en/releasesandpublications/FP/p-offo/offenders2016employmenteducationandotheroutcomes2016-2019/>> accessed 3 February 2023.

⁹ Mark Morgan, *The Prison Adult Literacy Survey: Results and Implications* (Irish Prison Service 2003) <http://www.drugsandalcohol.ie/27366/1/adult_literacy_survey.pdf> accessed 3 February 2023.

- d. prisoners for whom English is not their first language.¹⁰
8. Further issues in the delivery of free legal advice and representation to people in prison include the significant financial and human resources involved in taking prison cases, with a previous IPRT report examining prison litigation in Ireland identifying the level of legal aid available as ‘often not sufficient to cover the costs of litigation’.¹¹ In making this point, the report noted the time commitment required in prison cases, due to both the complex legal issues arising but also practical considerations of time spent on ‘correspondence with the prison authorities; legal visits to clients; uncovering of evidence, and so on’.¹²
9. This report noted that while lawyers may try to litigate prison cases, restrictions on legal aid play a ‘significant part’ in decisions around whether they can take such cases. This may in turn make it difficult to attract lawyers to litigate in this area.¹³ The issue of costs can further act as a barrier to prisoners in attempting to litigate civil cases arising from their imprisonment,¹⁴ with research on prison litigation noting that costs can only be recovered if the case is successful (and even then these are not always recovered in full).¹⁵
10. Considering the above challenges, IPRT recommends as follows in regards the delivery and accessibility of civil legal aid:

Recommendation 1: Modes of delivery of civil legal aid should include targeted services for particularly hard-to-reach groups such as prisoners, with such services recognising the particular challenges prisoners may have in accessing legal aid.

Recommendation 2: Accessibility of civil legal aid for prisoners should be improved through specific strategies for educating people in prison around the work of the Legal Aid Board and the operation of the civil legal aid scheme.

¹⁰ IPRT, ‘Sometimes I’m Missing the Words: The rights, needs and experiences of foreign national and minority ethnic groups in the Irish penal system’ (IPRT 2022) <https://iprt.ie/site/assets/files/7076/iprt_the_rights-needs_and_experiences_of_foreign_national_and_minority_ethnic_groups.pdf> accessed 2 February 2023.

¹¹ IPRT, ‘Prison Litigation Network Project - National Report on Ireland’ (IPRT 2016), 46 <www.iprt.ie/site/assets/files/6374/pln_ireland_national_report_combined.pdf> accessed 2 February 2023.

¹² Ibid.

¹³ Ibid.

¹⁴ IPRT, ‘The Rule of Law and Prisons: Barriers to accessing justice’ (IPRT 2012), 2 <www.iprt.ie/site/assets/files/4064/the_rule_of_law_and_prisons_-_barriers_to_accessing_justice.pdf> accessed 2 February 2023.

¹⁵ IPRT (n 11) 46.

Recommendation 3: Consideration should be given to the particular financial and human resources required for prison-related litigation, with a view to expanding the scope of available aid in such cases.

Jurisdictions Covered by the Scheme

11. The Prisons Act 2007 and Prison Rules 2007 provide the relevant procedures to be followed where a prisoner is accused of breaching disciplinary standards within the prison. IPRT's understanding is that – in the initial disciplinary hearing – there is no right for prisoners to be legally represented and accordingly no right to legal aid.¹⁶ In respect of appeals against sanction for a breach of prison discipline, a prisoner can either petition the Minister for Justice¹⁷ or – if the sanction imposed is forfeiture of remission of a portion of the prisoner's sentence – appeal the finding or sanction to an Appeal Tribunal.¹⁸ Where the latter process is taken, the prisoner may 'for the purposes of the hearing, available himself or herself of legal aid, advice or representations or apply for free legal aid'.¹⁹
12. The prison disciplinary process is arguably a 'quasi-tribunal' procedure and the range of sanctions imposed can be serious, including: confinement in a cell for up to three days; prohibitions (for up to 60 days) on receiving visits from family members, sending or receiving letters and using telephone facilities; and postponement (for up to 60 days) of any gratuity payments to which the prisoner is usually entitled.²⁰ Previous IPRT research has further identified concerns around the processes adopted in disciplinary hearings, with prisoners' legal representatives finding it difficult to obtain evidence through which they might challenge decisions as well as getting a response from the prison authorities in regards queries around the process.²¹ Such problems are highlighted in court cases such as *Egan v Governor of Wheatfield Prison & Anor.*²²
13. Having regard to the limited availability of legal advice / representation in respect of disciplinary proceedings, IPRT accordingly recommends as follows:

¹⁶ IPRT (n 11) 46.

¹⁷ Section 14 Prisons Act 2007.

¹⁸ Section 15 Prisons Act 2007.

¹⁹ Section 15(4)(b) Prisons Act 2007.

²⁰ Section 13(1)(d) Prisons Act 2007.

²¹ IPRT (n 11) 46.

²² [2014] IEHC 613. A summary of the case is outlined in IPRT's 2016 report, see IPRT (n 11) 47-49.

Recommendation 4: Given the particular legal challenges arising in prison disciplinary hearings, and the potentially severe impact of disciplinary findings / sanctions on the person concerned, consideration should be given to expanding the availability of legal aid to such disciplinary hearings (at both first instance and on appeal).

Concluding Remarks

14. IPRT welcomes this timely review of the civil legal aid scheme and believes it provides an opportunity to consider expanding how such aid might be made more widely available and effective for those most marginalised in our communities. This undoubtedly includes prisoners who are often among the most vulnerable in our society, as a result of their own specific needs but also the nature of their detention in a closed environment that allows very little access to the outside world. IPRT urges the Review Group to particularly consider the rights and needs of prisoners in its work and we remain available to the Group if further assistance is needed at any point.

15. Finally, it is also worth noting that IPRT will be supporting a new research project on prison litigation in 2023 and we will hopefully be in a position to share the findings of this research with the Review Group in mid-2023. In the meantime, we hope that the Review Group considers our brief recommendations closely.

Summary of Recommendations

Recommendation 1: Modes of delivery of civil legal aid should include targeted services for particularly hard-to-reach groups such as prisoners, with such services recognising the particular challenges prisoners may have in accessing legal aid.

Recommendation 2: Accessibility of civil legal aid for prisoners should be improved through specific strategies for educating people in prison around the work of the Legal Aid Board and the operation of the civil legal aid scheme.

Recommendation 3: Consideration should be given to the particular financial and human resources required for prison-related litigation, with a view to expanding the scope of available aid in such cases.

Recommendation 4: Given the particular legal challenges arising in prison disciplinary hearings, and the potentially severe impact of disciplinary findings / sanctions on the person concerned, consideration should be given to expanding the availability of legal aid to such disciplinary hearings (at both first instance and on appeal).