



## Submission to the Public Consultation on the Review of the Civil Legal Aid Scheme

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Age Action is Ireland's leading advocacy organisation on ageing and older people. Age Action advocates for a society that enables all older people to participate and to live full, independent lives.

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## Introduction

Age Action is the leading advocacy organisation on ageing and older people in Ireland. Age Action advocates for a society that enables all older people to participate and to live full, independent lives, based on the realisation of their rights and equality, recognising the diversity of their experience and situation. Our mission is to achieve fundamental change in the lives of all older people by eliminating age discrimination, promoting positive ageing and securing their right to comprehensive and high-quality services.

Age Action recently conducted polling on attitudes towards ageing and older persons. The findings demonstrated that ageism is a serious societal problem in Ireland. For example, when presented with seven ageist opinions, more than a third of adults (37%) agreed with two or more of them. This confirms the relevance of the WHO's Global Report on Ageism, which identified ageism as pervasive and a grave threat to older persons.<sup>1</sup> It also found that ageism in part emanates from institutions, laws, and policies. As such, in the project of eliminating ageism, we must also reform services such as those provided by the legal aid board to ensure they recognize the situation of older persons and provide them with adequate supports. Age Action adopts a human-rights based and person-centred approach to our advocacy, and recommends that, throughout this review, the Legal Aid Board adopts the same lens in framing its own work. This will involve a commitment to fulfilling its Public Sector Equality and Human Rights Duty under the Irish Human Rights and Equality Act 2014, and a demonstration of how this review complies with that duty.

Age Action has endorsed the thorough submission made by Community Law and Mediation (CLM), including the recommendations it makes particularly relevant to older persons and the more general recommendations which would nevertheless improve the situation of older persons and their access to justice. Building on CLM's analysis, our own submission spotlights the issues most relevant to older persons.

### **Recommendation One: Expand Civil Legal Aid Scheme to All Areas of Civil Law**

Through our Information Service and our regular consultations with older persons via focus groups and surveys, Age Action has become familiar with the areas of law that are often relevant to many of them. These include areas that are not covered by the current civil legal aid scheme, such as equality law and social welfare appeals.

We know that a growing number of older persons report having experienced discrimination, but also that they are increasingly unlikely to take action in response to the discrimination.<sup>2</sup> Such inaction is a serious problem in a society striving for equality, and it is exacerbated if victims of discrimination cannot avail of legal aid. Equality law is a complex field that can be intimidating and confusing to people outside of the legal

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<sup>1</sup> <https://www.who.int/teams/social-determinants-of-health/demographic-change-and-healthy-ageing/combating-ageism/global-report-on-ageism>

<sup>2</sup> <https://data.cso.ie/table/EQQ12>

profession. Even the process of completing the WRC's application forms to lodge a complaint can be onerous, not least for older adults. This process can be overwhelming for many individuals, particularly those unable to afford legal support. This is especially relevant given Age Action's recent finding from polling we commissioned that persons on lower incomes were more likely to report having been discriminated against on the grounds of age, and persons on higher incomes less likely.<sup>3</sup> The fact that people cannot access legal aid in this area is a key barrier to challenging discrimination in our society, particularly when they are challenging actions by parties with much greater access to legal services, such as public bodies or banks.<sup>4</sup> Addressing these kinds of imbalances of power should be one of the primary aims of any legal aid scheme.

More than half of older persons are mostly or wholly reliant on social welfare for their income, chiefly in the form of the state pension. They are also a relatively unique demographic in that many older persons have no means of raising new income. This means when social welfare payments are removed or reduced, it can have drastic implications for an older person's quality of life. It is as important to older persons to have access to the social welfare appeals process as to any other kind of legal proceedings. It is arbitrary that people are entitled to legal aid in some contexts, but not when they are trying to protect their livelihood.

### **Recommendation Two: Reform Means Testing**

Age Action works for a society in which all older persons have an adequate income. Unfortunately, that is not yet a reality for many. As stated above, over half of older persons' are mostly or wholly dependent on social welfare for their income, and more than 60% of all older persons have an income in the bottom half of the income distribution. Moreover, older persons' average incomes decline as they age. In 2021 (latest data) 11.9% of older person households were at risk of poverty (up from 9.8% in 2020). Between 2020 and 2021, older persons went from below average to above average risk of poverty. In 2022, deprivation among people aged 65+ is 10.9% (up from 8.1% in 2020 and 8.4% in 2021). The current high rate of inflation is significantly reducing the spending power of the State Pension, despite the recent €12 increase. In 2023, the maximum rate contributory State Pension will be €23.82/week *lower in spending power* than its nominally lower rate in 2020.

Even older persons who have enough money to maintain themselves day to day may struggle with one-off, extraordinary costs, such as legal fees. We endorse CLM's proposed approach to means testing and would make the specific point that anyone solely dependent on social welfare for their income, including the contributory or non-contributory state pension, should be entitled to free civil legal aid. Also, means testing should be more frequently revised to account for inflation, to which older persons are particularly sensitive.

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<sup>3</sup> [https://www.ageaction.ie/sites/default/files/are\\_we\\_ageist\\_poll\\_findings\\_december\\_2022.pdf](https://www.ageaction.ie/sites/default/files/are_we_ageist_poll_findings_december_2022.pdf)

<sup>4</sup> See, for example, <https://workplacerelations.ie/en/cases/2022/march/adj-00032663.html>

### **Recommendation Three: Extend the Scheme to Matters Related to the Assisted Decision-Making (Capacity) Act**

There are currently 64,000 people with dementia in Ireland. This is expected to rise to over 150,000 by 2045.<sup>39</sup> The Alzheimer Society of Ireland notes the following among a wider range of early signs and symptoms of dementia:

- Memory loss, particularly for recent events.
- Problems with language, difficulty finding the right word.
- Becoming confused in familiar surroundings or situations.
- Difficulty in following conversations or reading.
- Difficulty managing money and everyday tasks.<sup>40</sup>

As the number of dementia sufferers is expected to double or more, the right systems need to be put in place to support those affected, as well as those with other cognitive or neurological conditions. Age Action endorses every recommendation made by CLM in relation to the Assisted Decision-Making (Capacity) Act (ADMA). Many of the calls we receive on our information service are related to such matters as establishing an enduring power of attorney or worries about family members who seem to lack decision-making capacity. It can be a source of immense stress and hardship if individuals and families cannot access supports to navigate this complex area of law. The ADMA and the Decision Support Service under it encourage people to put in place an Enduring Power of Attorney (EPA), though it is outside the reach of many on low and fixed incomes. In the absence of civil legal aid, this creates a situation where they have a less favourable outcome than those with greater financial means. The cost of establishing an EPA can be significant. Irish solicitors who offer prices online suggest a range of €1,200 to €2,500. For people on low, fixed incomes, as many older persons are, this is prohibitive. For example, someone receiving the full rate contributory state pension and the living alone allowance would be living on a weekly income of €287.30. Compare this to the minimum essential standard of living (MESL) for older persons living alone in 2022, which is €291.84.<sup>5</sup> The MESL does not include health or housing costs for older persons, so if this person living on their own already had additional expenditure needs, it would make pursuing an EPA even more unmanageable.

The Supreme Court has previously identified the lack of legal aid in the context of wardship as a “real concern”,<sup>6</sup> and while the system of wardship is being wrapped up, the sentiment remains true for what will replace it. If the civil legal aid scheme is extended to matters related to the ADMA, it is important that legal professionals are familiar with the principles of the ADMA and prepared to handle related cases in a respectful and rights-based manner which recognizes the humanity of the person whose decision-making capacity is or may be limited.

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<sup>5</sup> [https://www.budgeting.ie/download/pdf/mesl\\_2022\\_annual\\_update.pdf](https://www.budgeting.ie/download/pdf/mesl_2022_annual_update.pdf)

<sup>6</sup> AC v. Hickey & Cork University Hospital & Ors [2019] IESC 73, O'Malley J,

## **Recommendation Four: Guard Against Digital Exclusion**

Age Action estimate that two-thirds of older persons (65%) are digitally excluded.<sup>7</sup> This is either because they are not using the internet or because they lack the digital devices and/or necessary skills to navigate the internet safely. All facets of our society and culture are facing radical transformations thanks to technology. This includes in the area of law and access to justice, with some tribunals moving increasingly online. While many benefits are associated with digitalization, older persons cannot be left behind. This means maintaining and resourcing offline legal fora and processes and also ensuring there are supports in place for older plaintiffs/complainants in engaging with online procedures.

## **Recommendation Five: Outreach to Older Persons**

For older persons to be respected, free and equal in a society, they must first be knowledgeable of their rights and entitlements. This has never been clearer than in the light of recent reports that the State employed a secret strategy to deter older persons from taking cases where they had been forced to go into private care due to a lack of public beds. The Legal Aid Board should adopt the additional roles of legal education and community outreach, including efforts which are tailored to specific groups such as older persons. In delivering on its expanded role, the Legal Aid Board should keep in mind the information provided in this document regarding digital exclusion and ensure they are accessible offline. In general, any initiatives to engage with older persons should be fully accessible for those with disabilities or mobility issues.

It is encouraging that growing its research capacity is part of the Legal Aid Board's ongoing strategy, including through interactions with service users. Part of this effort should be targeted at monitoring the uptake of services by older persons and their experiences with the Legal Aid Board.

FLAC has recommended that the Board expands its role to provide advocacy training to lay applicants from NGOs and community organisations to represent persons through less complex cases before quasi-judicial bodies. This training could be provided in collaboration with organisations like Citizens Information and the Workplace Relations Commission. Age Action strongly endorses this recommendation as in our own work we have seen the pronounced need for such a service for older persons.

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<sup>7</sup> [https://www.ageaction.ie/sites/default/files/digital\\_inclusion\\_and\\_an\\_ageing\\_population.pdf](https://www.ageaction.ie/sites/default/files/digital_inclusion_and_an_ageing_population.pdf)