



**Mercy Law**  
Resource Centre

**Mercy Law Resource Centre  
Submission to the Civil Legal Aid Review Group  
February 2023**

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**Mercy Law Resource Centre Limited is a company limited by guarantee and not having a share capital, registered in Dublin, Ireland. Co.Reg No:471072. It is also a registered charity, Chy No:18698. Directors: Eamonn Casey, Catherine Dooley, Edward Gleeson, Ciara McGrath, Cara Nagle, Deirdre Quigley, Stewart Reddin, Liam Twohig, Gerry Whyte.**



# Mercy Law Resource Centre Submission to the Civil Legal Aid Review Group February 2023

## 1. Introduction

Thank you for this opportunity to submit our views to the Civil Legal Aid Review Group. We welcome the focus reform of the Civil Legal Aid system is now receiving and would like to thank the Review Group for their work on this to date.

Mercy Law Resource Centre (MLRC) was established in 2009 and is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation to people who are homeless or at risk of becoming homeless. It also seeks to advocate change in laws, policies and attitudes which unduly and adversely impact people who are at the margins of our society.

MLRC provides five key services: free legal advice outreach clinics; legal representation in the areas of homeless, housing and related social welfare law; legal support and training to organisations working in the field of homelessness; policy work; and a befriending service.

MLRC's clients are local authority tenants, people who are homeless or at risk of becoming homeless and people in receipt of social housing support. They include people who are trying to move away from homelessness and persons who may be struggling with issues often linked to homelessness including for example, addiction, leaving prison, mental illness and relationship breakdown including domestic violence.

MLRC's ethos recognises the dignity of each person. We seek to ensure that all people are treated with respect and compassion and are enabled to achieve their full potential as human beings. We are committed to the principles of human rights, social justice and equality.

MLRC's vision is of a society where each individual lives in dignity and enjoys equal rights, in particular the right to a home, which is fundamental to each human being. MLRC's vision is also of a society where every individual enjoys equal access to justice and legal recourse in order to vindicate those rights.

In this statement, we will first contextualise the work of MLRC as a community law centre with a focus on housing, and then comment briefly on the following areas:

- Civil Legal Aid access in matters of housing and homelessness
- The lack of Civil Legal Aid for proceedings before the Residential Tenancies Board
- Absence of alternative forums for dispute resolution in relation to social housing
- Delay in accessing Civil Legal Aid
- Completing the Civil Legal Aid form
- Class actions
- Provision of legal information and the community law centre model

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### 2. Access to justice through MLRC and the community law centre model

We make this submission at a time of desperate crisis in homelessness. As of December 2022, there are 11,632 people homeless in Ireland.<sup>1</sup> This is the highest number since the Department started recording these figures. Of those recorded in the official statistics as homeless, 1,594 were families and 3,442 were children.<sup>23</sup> This homelessness crisis is coupled with the shortcomings in the provision of social housing. During the Government's austerity programme following the economic crash, sweeping cuts were made to the public housing capital construction budget – from €1.46bn in 2008 to €167m in 2014.<sup>4</sup> As a result, newly built social housing stock fell from 5,300 units in 2009 to 1,000 in 2012 and then an almost cessation of the building programme with just 476 units built in 2015.<sup>5</sup> Between 2005 and 2017, the number of households on the social housing waiting lists increased from 43,000 to 86,000 – an increase of 100%.<sup>6</sup>

It is within this context that MLRC works with individuals in an effort to uphold and enforce their rights with regards to issues of homelessness and housing. This context of “housing crisis” has directly impacted on the demand for our service. It has also impacted on the demographic accessing our service, with a significant portion of our clients being families and/or from ethnic minority groups. In 2021, we received over 2,000 phone calls, opened 276 new advice client files and dealt with 506 new legal queries.<sup>7</sup> In 2022 new legal queries increased by 10% to 560. Most concerning, the proportion of those queries relating to the most pressing issue of refusals of access to emergency homeless accommodation increased 200% year-on-year. Many of our clients come from ethnic minority and Traveller backgrounds and these minority groups are disproportionately represented in our caseload. From these engagements, we have noted that ethnic minorities face particular barriers to accessing housing and homeless services, and related to this, particular challenges with regards to access to justice.

As stated, MLRC's vision is of a society where each individual lives in dignity and enjoys equal rights, in particular a right to a home, which is fundamental to each human being. MLRC's vision is also of a

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<sup>1</sup> Department of Housing, Local Government and Heritage, ‘Monthly Homelessness Report December 2022’ <https://www.gov.ie/en/publication/22abb-homeless-report-december-2022/>, accessed 31 January 2023.

<sup>2</sup> Ibid.

<sup>3</sup> It must be noted that the official figures only record those in state-funded emergency accommodation and so discounts those in “own-door” temporary accommodation, domestic violence refuges, asylum seekers, people who are sleeping rough, and the very many who are “hidden homeless” who may be staying with family or friends in insecure accommodation.

<sup>4</sup> United Nations Human Rights, Office of the High Commissioner, ‘Mandates of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, 22 March 2019.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Mercy Law Annual Report 2021 [https://mercyllaw.ie/wp-content/uploads/2022/11/Mercy\\_Law\\_Annual\\_Report\\_2021-digital.pdf](https://mercyllaw.ie/wp-content/uploads/2022/11/Mercy_Law_Annual_Report_2021-digital.pdf), accessed 27 January 2023

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society where every individual enjoys equal access to justice and legal recourse in order to vindicate those rights.

MLRC sees access to justice as an enabling right, allowing those who perceive their rights as having been violated to enforce them and seek redress.<sup>8</sup> It is protected under Articles 6 (right to a fair trial) and 13 (right to an effective remedy) of the European Convention on Human Rights and also under Article 47 of the European Union Charter of Fundamental Rights. States are required to take positive steps to ensure an effective right of access to the courts for all.

Constitutional justice incorporates the rule of law as a concept at the core of our legal system. It incorporates the principle that everyone is subject to the law, which should be public, and determined by an independent court system. Within this Constitutional structure is the right of access to courts.

MLRC sees access to justice as encompassing effective access to legal information; timely advice and remedies; accessible legal representation and/or legal aid; mediation services; access to the court system; and access to a fair system of remedies. A crucial part of such access is the effective availability of such services. Access to justice recognises the dignity of the individual. Moreover, it is essential to a functioning and credible democracy and the rule of law.

MLRC views access to justice in relation to housing rights as being of critical importance. To this end, we agree with the statement of the UN Special Rapporteur on adequate housing that “*access to justice for the right to housing is inseparable from the right itself.*”<sup>9</sup> MLRC strongly concurs with the Rapporteur’s further statement with respect of the importance of access to justice in the housing sphere:

*“Violations of the right to housing are as much failures in the administration of justice as they are failures of housing programmes. If those living in inadequate housing and in homelessness have no access to justice, they are deprived of agency to bring violations to light, to address root causes or ensure appropriate responses. They are unable to challenge the policy choices and decisions that created the conditions in which they live.”*<sup>10</sup>

MLRC promotes access to legal information and sees this as a crucial element of access to justice. In this regard, we welcomed the statement of the former Chief Justice Frank Clarke that a first step in access to justice has to be the outreach into the community that allows people to know about potential legal remedies for their problems.<sup>11</sup>

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<sup>8</sup> European Agency for Fundamental Rights, ‘Access to Justice’ <<https://fra.europa.eu/en/theme/access-justice>> accessed 28 November 2022.

<sup>9</sup> Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, *Access to justice for the right to housing*, 15 January 2019.

<sup>10</sup> *Ibid*, p.3.

<sup>11</sup> Speaking at the launch of Mercy Law Resource Centre’s Annual Report 2018 in September 2019 – see report in the Law Society Gazette, 16 September 2019.

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To this end, MLRC operates legal outreach clinics in accessible locations and in conjunction with sector partners. MLRC has at various times operated clinics in partnership with the Citizens Information Centre in the Carmelite Centre; the Crosscare Migrant Project in Dublin 1; Focus Ireland at the Focus Ireland Coffee Shop; and a Traveller-specific clinic hosted by Exchange House, among others. MLRC provides legal advice through these outreach clinics to ensure our advice is accessible and provided in an environment that is comfortable and familiar to our vulnerable clients. This model promotes and enables engagement of marginalised groups in accessing justice.

MLRC also provides clients who are facing housing difficulty with free ongoing legal representation, and in that role, MLRC assesses and advises on the remedies available to them and acts on their behalf in relation to legal proceedings when appropriate. We also link our clients with conflict resolution services including mediation, in order to resolve their difficulties.

The need for MLRC services far exceeds the demand. In 2022 MLRC received an average of 46 new queries and requests for assistance each month, which are reviewed by MLRC solicitors and legal advice and information is provided. In order to ensure the organisation has a focused impact and meets the needs of our target group, MLRC operates a priority referral system, reviewed regularly, which sets out the legal issues we will advise and open new cases on. Such a referral system supports us in pursuing strategic or public interest litigation alongside alternative legal remedies.

Since our establishment in 2009, MLRC has assisted a growing number of individuals who are homeless or at risk of homelessness. This is further evidence of the clear need for the provision of legal information and aid in the area of housing. As noted above, in 2021 we received over 2,000 phone calls, opened 276 new advice client files and dealt with 506 new legal queries and in 2022 new legal queries increased by 10% to 560.

MLRC enhances our impact by regularly advising frontline workers in organisations supporting homeless persons, providing legal advice and advocacy skills to promote resolution of legal issues without the need for legal intervention. MLRC frequently engages with community groups to provide legal information on housing rights and entitlements. MLRC sees dissemination and sharing of legal information as an essential element of access to justice. MLRC also delivers formal training on housing law to community groups and interested professionals. This serves to further disseminate legal knowledge and share legal information for the wider benefit.

MLRC promotes law reform and policy change. Our policy and advocacy work is founded and directly based on our casework and community outreach.<sup>12</sup> It therefore serves to have a wider impact beyond the individual case, and seeks to benefit our target group more broadly.

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<sup>12</sup> For example, Mercy Law Resource Centre, *Minority Groups and Housing Services: Barriers to Access* [https://mercyllaw.ie/wp-content/uploads/2021/03/ML\\_2020\\_Minority-Groups-and-Housing-Services\\_Report\\_D6.pdf](https://mercyllaw.ie/wp-content/uploads/2021/03/ML_2020_Minority-Groups-and-Housing-Services_Report_D6.pdf), March 2021; Mercy Law Resource Centre as part of Home for Good, *Oireachtas Committee Presentation on Right to Housing to the Joint Committee on Housing, Local Government and Heritage*, 5 July 2022; Mercy Law Resource Centre, *Submission and Statement on Access to Justice and Legal Costs to the Joint Committee on Justice and Equality*, 11 December 2019.

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MLRC comprises of a small service based in Dublin 8, with a staff of three full-time solicitors and three administrative staff. MLRC is also supported by a legal and administrative volunteer, and is in receipt of the generous support of barristers who provide services pro bono and/or on a 'no foal, no fee' basis.

MLRC is funded entirely through grants and donations. The funding environment for MLRC, as a community law centre, is precarious and fundraising is an ever present necessity in order to maintain our small service. While our caseload has increased we have been unable to consider expansion of the legal team due to budgetary constraints. MLRC notes the relatively low visibility of community law centres in Ireland, which in turn impacts on funding prospects.

The work of MLRC and other independent community law centres in Ireland is evidence of the positive role that such a method of delivery can have on ensuring access to justice for all as well as progressing public interest litigation for the wider benefit. Speaking at an MLRC event in September 2019, the former Chief Justice recognised the "vital role" that dedicated, community-oriented groups, such as MLRC, were providing that would not be provided in any other way. He recognised the advantages of visibility within the community and the engaged approach of such community law centres as advancing access to justice for the more marginalised.

### 3. Specific issues arising with respect to the operation of the Civil Legal Aid Scheme

MLRC has identified a number of concerns in relation to the current operation of the Civil Legal Aid scheme and access to justice issues more generally through our extensive casework and legal advice and representation service and in our work as a community law centre. Seven areas of concern are set out below, with recommendations included at the conclusion.

#### 3.1. Civil Legal Aid access in matters of housing and homelessness

As MLRC works in the sphere of housing and with clients from low-income backgrounds, it is with frustration that many are unable to avail of Legal Aid. In circumstances where many of our clients would be eligible under the Legal Aid Board's means test, they are deemed ineligible because the Civil Legal Aid Act 1995 specifically excludes Legal Aid being granted in "disputes concerning rights and interests in or over land".<sup>13</sup>

An exemption to this exclusion does apply in circumstances where the dispute is in relation to an applicant's home and the Legal Aid Board considers that the applicant suffers from an "infirmity of mind or body due to old age or to other circumstances"; or may have been subject to undue influence or fraud; or that to refuse to grant Legal Aid would cause hardship to the applicant.<sup>14</sup> MLRC does not have figures as to how many applicants have been successful in having their housing case taken on by the Legal Aid Board as a result of qualifying under the exemption and notes that there is very little awareness of the exemption amongst our clients and professionals supporting them. There is also an

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<sup>13</sup> Civil Legal Aid Act 1995, Section 28(9)(a)(ii).

<sup>14</sup> Civil Legal Aid Act 1995, Section 28(9)(c)(iii).

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exemption in relation to disputes concerning residential property under the Landlord and Tenant Acts (though of course the Board cannot provide representation before the RTB, which is a growing area of need).

While there are some exemptions available to this exclusion there does not appear to be a coherent Legal Aid Board policy on exactly what matters relating to housing it can and cannot take on. This leaves many people from low-income backgrounds unable to afford a private solicitor and in many instances without legal representation with regards to housing matters.

This lack of a coherent Legal Aid Board policy on exactly what matters relating to housing it can take on has led to a common perception that an individual cannot access Legal Aid for a housing matter. This presents a further obstacle to such access, even for the minority who may fall into the exemptions. Indeed, from the Legal Aid Board's Annual Report 2021, from a total of 16,400 cases handled by Law Centres only 188 related to "property".<sup>15</sup> The substance of these cases is not elaborated on in the report.

The vast majority of the Legal Aid Board's caseload is in the area of family law.<sup>16</sup> Through direct engagement by MLRC with the Legal Aid Board, we welcome a cognizance on the part of the Board of the demand for legal advice on housing and homeless matters, and the scope for legal advice with respect of public law matters that arise in housing cases. We also take note however of the significant resource constraints of the Legal Aid Board in relation to their capacity to provide legal aid above and beyond the existing delivery and the current lack of engagement on housing matters.

As a result of being unable to access legal advice and aid, we find that individuals often find themselves in situations where they have a grievance but are unable to identify a legal issue. This can leave them excluded from accessing justice. At other times, it may result in an individual trying to navigate the Court system themselves in legally complex matters.

A common theme in the area of homelessness and housing is the challenge of identifying the relevant legal issue or rights violation. Laws in the area are often found across many different pieces of primary legislation and statutory instruments. Even when the applicable law is identified the interpretation of it is often open to differing interpretations. Without legal advice, it can be very difficult for a lay litigant to even identify that they have recourse to a legal remedy even before the process of litigation has been considered. Further, even if a litigant does eventually identify an issue it may be too late to proceed with an application for judicial review given the short timelines applicable.

A disproportionate number of those facing homelessness are migrants and those from ethnic minority backgrounds.<sup>17</sup> These groups are over-represented in the private rented sector and consequently

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<sup>15</sup> Legal Aid Board, *Annual Report 2021*, p.28 <https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/annual-report-2021.pdf> accessed 20 January 2023.

<sup>16</sup> Almost 80% of the Legal Aid Board's cases in 2021 were in the private family law area, *Ibid*, p.26.

<sup>17</sup> Letizia Gambi, Sarah Sheridan and Daniel Hoey (on behalf of Focus Ireland), 'Causes of family homelessness in the Dublin region during 2016 and 2017' <<https://bit.ly/36fWd8d>> accessed 9 December 2019; Focus Ireland, 'Non-irish homelessness in Dublin', <<https://www.focusireland.ie/non-irish-homelessness-dublin/>> accessed 9 December 2019.



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have less security in their housing. These groups can face language difficulties in all their engagements with public services, including when trying to navigate the legal system.<sup>18</sup> This in part can stem from some of the antiquated language used in the proceedings and Court rules of procedure.

Issues of literacy can affect some categories of such lay litigants. Lay litigants with a disability can face particular challenges. Throughout the legal process there are numerous forms to be completed and documents to be drafted and lodged. Without assistance, such as Civil Legal Aid, some lay litigants with literacy issues and/or a disability could be excluded from the legal process.

Individuals who are seeking access to the Court system in the area of homelessness and housing are typically facing difficult and often chaotic circumstances. Individuals can struggle with mental health as a consequence of this instability. This can make accessing the Courts even more difficult. These issues can be compounded when the other party in a legal dispute has full legal representation, including a solicitor, junior counsel and sometimes even senior counsel.

These issues are in addition to the other practical difficulties that a lay litigant would face in the courtroom, such as how the experience of the courtroom and the etiquette involved can be alienating for a lay litigant. The experience is one that professional lawyers are used to navigating but can seem opaque and intimidating to those unfamiliar.

Through the course of our work, MLRC has been exposed to the experiences of lay litigants in both the District Court with respect of evictions from local authority dwellings and with respect of the dispute resolution processes of the Residential Tenancies Board (as discussed below).

### 3.2 No representation at proceedings before the Residential Tenancies Board

It is the stated aim of the Residential Tenancies Board that the adjudication and tribunal process is less formal than the courts and representation at the Residential Tenancies Board adjudications and tribunals is not provided for under the Civil Legal Aid Act 1995. However, it is often the case that landlords and approved housing bodies will have legal representation at these hearings, particularly at the tribunal stage. This creates an “inequality of arms” and erodes trust and confidence of those engaging with the processes.

MLRC has also found that many of the issues heard at Residential Tenancies Board adjudications and tribunals are legally complex. The applicable legislation is technical and voluminous. It is difficult for lay litigants to both identify the legal issues and to properly and cogently make their case.

MLRC acts primarily on social housing and homeless matters and does not ordinarily act on disputes in relation to private rented accommodation. MLRC does however have direct experience of advising tenants of approved housing bodies who have been served notices of termination within their first six months of a tenancy without any reason stated. To challenge such decisions engages Irish domestic

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<sup>18</sup> In early February Mercy Law Resource Centre will be publishing a report entitled *Making Free Legal and Advocacy Services Accessible – building a hybrid service delivery model for Mercy Law Resource Centre* which will examine themes of accessibility when a client is seeking to access our own service.



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legislation, primarily the Residential Tenancies Act 2014 but also elements of European law. It is difficult for a lay litigant to fully state their case when such technical and broad application of the law is required. Added to that is the strain of the consequences if a decision does not go in your favour: the loss of your home.

MLRC has also acted for tenants who have sought to challenge the determinations of the Residential Tenancies Board on a point of law to the High Court. We have observed lay litigants bringing such applications, which we know are complex and highly technical, and have noted the challenges such litigants face in properly articulating their case in legal terms and arguments.

MLRC has also worked directly with tenants of local authority dwellings who are facing eviction on the basis for example, that they have been determined to have no right to succeed to the tenancy following the death of a family member. It should be noted that such proceedings are now heard in the District Court. Compared to the previous “Section 62 procedure”, the Court plays a significantly greater role in considering the substantive merits of the case and the proportionality of the Council’s decision to evict.<sup>19</sup> It is welcome that these proceedings are now dealt with by the District Court, which provides a more accessible forum for lay litigants to navigate. Notwithstanding, our experience is that these cases must be properly presented and argued, with the benefit of legal advice and representation, for a judge to reach a considered decision in relation to the crucial matter as to whether or not someone will lose their home. It is regrettable that the majority of those in such proceedings are unlikely to be legally represented.

### 3.3 Absence of alternative forum for resolution of social housing disputes

A structural point that should be considered is the absence of an independent forum for the resolution of housing disputes concerning social housing. As part of the UN Special Rapporteur on adequate housing’s report on access to justice for the right to housing, Ireland was given a questionnaire and an opportunity to respond. The Irish government was asked if it was “aware of examples in your country of community-based initiative to provide hearings and remedies for the right to housing outside formal court or tribunal process”. Ireland’s response was that they were not aware of any such initiatives.<sup>20</sup>

MLRC frequently engages with local authorities on housing matters and pursues informal appeals against refusals of housing entitlements through those authorities. MLRC notes that there is wide variation in how such appeals are processed and a general lack of transparency and formalised process to be followed should an applicant wish to appeal a negative decision. Additionally, MLRC notes that clients who are refused a service or an entitlement are frequently not informed that they have any right of appeal, a right that arises by virtue of the right to fair procedures. Our experience is that appeals can be lengthy to determine and there is in some instances a failure to apply independent

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<sup>19</sup> Section 13(8) of the Housing (Miscellaneous Provisions) Act 2014

<sup>20</sup> Office of the United Nations High Commissioner for Human Rights, ‘UN Special Rapporteur on adequate housing: Questionnaire: Access to Justice for the Right to Housing, Ireland’s Response’, November 2018, <<https://www.ohchr.org/Documents/Issues/Housing/Justice/Ireland.pdf>> accessed 9 December 2019.

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mechanisms for such appeals. We note that the new evictions procedure provided for in Part 2 of the Housing (Miscellaneous Provisions) Act 2014, commenced on 13 April 2015 provides for an internal appeals procedure with respect of tenancy warnings.<sup>21</sup>

MLRC would welcome the development of less formal and community-based initiatives designed to protect the right to housing. A more cost-effective mechanism of resolving disputes with local authorities with respect of housing matters may be through a tribunal or appeals office. This may make a remedy more accessible and formalised and reduce the inconsistencies and related unfairness of the current procedures.

### 3.4 Delay in access to Civil Legal Aid

For MLRC's clients the issue of delay is another practical barrier in accessing justice through the Legal Aid Board. As of November 2022, there are waiting times of between 3 weeks and up to 29 weeks for a first consultation appointment with a solicitor.<sup>22</sup> Very frequently, our clients are facing the immediate threat of homelessness and require urgent, responsive and proactive legal intervention. Although the Legal Aid Board does operate a priority service, this is geared towards cases involving domestic violence, child abduction, applications by the State to take children into care and cases that have statutory time limits close to expiry.<sup>23</sup> Often clients facing homelessness require a nimble service that can proactively reach out to local authorities in order to negotiate solutions. This is not achievable if clients are required to wait weeks and months to meet with a solicitor.

Further, given the lack of a coherent Legal Aid Board policy on exactly what matters relating to housing it can and cannot take on, there is a concern that an applicant for Civil Legal Aid could be waiting a significant period of time for a consultation only to find out that their issue is deemed to fall outside the scope of the Civil Legal Aid Act 1995.

A related issue that was highlighted by the Covid-19 pandemic is the different accessibility needs of clients. While some client groups may be comfortable (and even prefer) using phone and IT services when seeking out legal advice, others may be excluded from accessing legal advice as a result of having limited access to phone and IT services. MLRC's own experience during the Covid-19 pandemic was that by developing our own remote services offering we were able to reach more clients outside our core Dublin area. Remotes services benefitted clients who otherwise would have struggled to travel to in-person appointments for reasons of disability, poverty, childcare or otherwise.

However, while MLRC received more direct contact from clients with good literacy, English language fluency, IT skills and access to phone and internet services during the Covid-19 pandemic, we received

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<sup>21</sup> Housing (Miscellaneous Provisions) Act 2014, Part 2.

<sup>22</sup> Legal Aid Board, *Law Centre Waiting Times and Other Statistical Information – November 2022* <https://www.legalaidboard.ie/en/our-services/legal-aid-services/waiting-times/november-2024.pdf>, accessed 20 January 2023.

<sup>23</sup> Legal Aid Board, *Annual Report 2021*, p.10.

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less contact from those who were more vulnerable and likely to face access challenges, such as rough sleepers. While this may partly have been due to the impact of pandemic measures on overall levels of homelessness MLRC has a concern that it was at least partially caused by remote services presenting additional barriers to access for vulnerable groups.

Given the variety of needs that clients may have, it is crucial that clients are given choice regarding their service delivery. In its guide to working with vulnerable clients, the Law Society of England and Wales notes the importance of finding out the communication preferences and services needs of clients.<sup>24</sup> In most cases the person best placed to identify the needs of the client is the client themselves. Clients of the Legal Aid Board should be given such a choice in service delivery to ensure that exclusion from legal advice is limited and that there is minimal delay in accessing legal advice.

### 3.5 Completing the Civil Legal Aid form

A further practical barrier for some clients would be the act of filling in the Legal Aid form itself. Although staff in the Legal Aid Board are often able to offer helpful assistance to individuals, it remains a challenge to complete such forms when English is not the individual's first language or when an individual has limited literacy. This is the case for many of the clients of MLRC.<sup>25</sup> Any review or amendment to the delivery of Civil Legal Aid and the Civil Legal Aid Act 1995 needs to build in a commitment to implementing the Public Sector Human Rights and Equality Duty, as contained in Section 42 of the Irish Human Rights and Equality Commission Act 2014.

An exclusion from Legal Aid and an inability to engage a private solicitor results in some individuals representing themselves in courts and tribunals. MLRC's experiences of this are discussed above.

### 3.6 Class actions

In class actions or multi-party litigation, a group of cases share sufficient characteristics to be dealt with collectively. A group of litigants may be better placed, in their togetherness, to take on a well-resourced defendant. There is scope within such a form to provide for efficient and cost-effective ways of providing access to justice for a potential large group of litigants.

In several instances, MLRC has advised and legally represented a large number of clients who have been impacted by an identical issue. In such situations, bringing individual sets of proceedings may be necessary to remedy the wrong. This approach is resource intensive and limits the broader impact of any judicial remedy. Those proceedings are frequently settled prior to any hearing thus precluding any judicial ruling from benefiting others who have been affected by that identical wrong.

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<sup>24</sup> The Law Society of England and Wales, *Meeting the needs of vulnerable clients*, <https://www.lawsociety.org.uk/topics/client-care/meeting-the-needs-of-vulnerable-clients>, accessed 31 January 2023

<sup>25</sup> As will be highlighted in the forthcoming *Making Free Legal and Advocacy Services Accessible – building a hybrid service delivery model for Mercy Law Resource Centre* report

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As an independent law centre, MLRC's legal interventions would potentially be more efficient and have a broader beneficial impact on our client group if they could be brought through the form of a class action or multi-party litigation. MLRC would recommend that such cases, with the appropriate degree of public interest, are eligible to access Civil Legal Aid.

### 3.7 Legal information and the community law centre model

The principal function of the Legal Aid Board is to provide legal advice and representation to those who qualify for it. It is disappointing that the Board does not have an explicit function of providing legal information to the public. As mentioned above, MLRC sees dissemination and sharing of legal information as an essential element of access to justice and believe that the Legal Aid Board should be empowered to engage in public information campaigns, as applicable. The sharing of information with the community by Law Centres is something that was recommended by the *Report to the Minister for Justice: Committee on Civil Legal Aid and Advice* (the "Pringle Report").<sup>26</sup> Indeed, the Pringle Report highlights lack of knowledge, information and understanding about the legal process as well as a fear of not being taken seriously, as barriers to individuals accessing justice.<sup>27</sup> MLRC firmly believes that everyone is entitled to straightforward access of information on areas of the law that affect them. MLRC supports the recommendations from the Pringle Report that the Legal Aid Board should have a role to play in the provision of legal information to the public.

Breaking down these barriers to accessing justice requires meaningful community engagement along a community law centre model. Such a model incorporates education and law reform advocacy as well as offering access to legal advice and representation.

The current Civil Legal Aid scheme is based on a service model through Law Centres or through the Private Practitioner scheme. This system differs greatly from the recommendations set out in the Pringle Report, which envisioned the Legal Aid Board providing legal services through a variety of models, including community law centres and legal advice centres.<sup>28</sup> Embracing a community law centre model would allow representatives from local communities to have a voice in running the service and allow for certain social groups or communities who may otherwise be hard to reach to be engaged. In this regard, MLRC welcomed the Legal Aid Board's introduction on a permanent footing of the Traveller Legal Unit. MLRC would welcome the introduction of other such targeted legal services, particularly where the service is empowered to provide advice and representation on multiple and synchronous legal problems that the community may face, for which the traditional "single issue" and service model of legal aid is ill-equipped.<sup>29</sup>

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<sup>26</sup> Report to the Minister for Justice: Committee on Civil Legal Aid and Advice, 1977, pp. 92-102 and pp.157-158

<sup>27</sup> Ibid. pp.38-39

<sup>28</sup> Ibid, p.156

<sup>29</sup> For more information on synchronous legal problems and disadvantage see Clemens, Luke, *Clustered injustice and the level green*, 2020 (Legal Action Group)

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### 4. Recommendations

In summary, the current delivery of Civil Legal Aid, specifically in relation to housing and homeless matters, is wholly inadequate. The provision of legal advice and representation on housing and homeless matters currently delivered by the Legal Aid Board is negligible. The Board is not empowered and resourced to disseminate legal information and to have a community presence and outreach service, both of which are key elements of access to justice for vulnerable groups, nor does it have any role in law reform or policy. Furthermore, even if the remit of the Board in relation to housing matters was clarified, we believe that the method of delivery of the advice and representation would not adequately meet the needs of the types of vulnerable clients that engage the services of MLRC. As such, we have the following recommendations:

1. Amendment to the Civil Legal Aid Act 1995 to ensure legal aid is available on housing and homeless matters, on the basis of established need for this service.
2. Restructuring of the delivery of Civil Legal Aid, to bring it in line with the community law centre model.
3. Reform of the social housing disputes resolution process to make it more transparent and accessible; including establishing an appeals office or creating a social housing tribunal for which Civil Legal Aid would be available.
4. Ensuring that homelessness and eviction cases are treated as a priority by the Legal Aid Board to reduce wait times for these highly time-sensitive matters.
5. Expand outreach and awareness efforts to inform more individuals of Civil Legal Aid services, while also increasing accessibility of these services through easy forms, informational videos, and language translation, in line with Section 42 of the Irish Human Rights and Equality Commission Act 2014.
6. Allow access to multi-party litigation in situations where a case has the power to impact a group of similarly situated litigants and the public as a whole, or alternatively, litigate cases to create precedent other litigants can rely on.

### 5. Conclusion

Again, MLRC welcomes this opportunity to share our views with the Civil Legal Aid Review Group and looks forward to engaging with the Group further on the important questions relating to reform of the Civil Legal Aid system.

Thank you for your time and consideration.



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