

Multi-Disciplinary Practices: Submission to the Legal Services Regulatory Authority

FLAC, June 2017

About FLAC

FLAC is an independent human rights organisation which exists to promote equal access to justice for all.

FLAC Policy

Towards achieving its stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

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Recommendations by FLAC

In considering whether and how to introduce multi-disciplinary practices in Ireland, we would recommend that the potential impact on access to justice for low-income and marginalised groups should be assessed in addition to looking at the effects their introduction may have on competition, on the legal services market and on the legal professions. Any assessment must be considered against the backdrop of a civil legal aid system that remains inadequate.

In considering whether and how to introduce multi-disciplinary practices in Ireland, we recommend that the potential impact on the delivery of legal services by bodies such as independent law centres, the Legal Aid Board, the Irish Human Rights and Equality Commission, trade unions and other specialist NGOs should be assessed.

In addition, in light of the Public Sector Duty to promote human rights and equality of opportunity we recommend that any impact assessment of the introduction of multi-disciplinary practices also includes an assessment of human rights and equality implications.

1 Introduction

1.1 FLAC welcomes the opportunity to make a brief submission to the Legal Services Regulatory Authority as part of its public consultation process in relation to multi-disciplinary practices.

1.2 FLAC is an independent human rights organisation that promotes equal access to justice. Considerations of access to justice underpin all of our work, and form the basis for this brief submission.

1.3 Alongside our colleagues in the Independent Law Centres Network¹ we are committed to upholding human rights, equality and access to justice through effective use of the law in Ireland.

1.4 Under the Legal Services Regulation Act 2015, “multi-disciplinary practice” means a partnership formed under the law of the State by written agreement, by two or more individuals, at least one of whom is a legal practitioner, for the purpose of providing legal services and services other than legal services. The potential introduction of multi-disciplinary practices would allow solicitors and barristers to enter into partnership with non-lawyers.

1.5 The Minister for Justice & Equality, when introducing the second stage of the Bill, noted the importance of detailed research and a public consultation process prior to commencing the provisions governing multi-disciplinary practices that are outlined in the legislation.

2 Context and Issues for Consideration

2.1 FLAC notes the content of the research report (“the Initial Report”) to the Minister on 31 March 2017 under section 119(1) of the Act in respect of the establishment, regulation, monitoring, operation and impact of multi-disciplinary practices in the

¹ Ballymun Community Law Centre, Community Law and Mediation, Immigrant Council of Ireland, Irish Refugee Council Independent Law Centre, Transparency Legal Advice Centre and Mercy Law Resource Centre.

State. While we welcome the Initial Report, we note that there is very little focus on access to legal services for marginalised or disadvantaged groups and individuals and the manner in which legal services are provided by independent law centres including FLAC and also by bodies like the Legal Aid Board and the Irish Human Rights and Equality Commission. There is consequently little analysis of the impact of the introduction of multi-disciplinary practices on access to justice.

2.2 The current system of legal services, while far from perfect, has some features which should be considered in relation to any analysis of the impact of the introduction of multi-disciplinary practices. FLAC and other members of the Independent Law Centres Network rely heavily upon the ‘cab rank rule’, the independent referral bar and the practice of ‘no foal no fee’ to gain access to independent specialist expertise in the relevant area of law at no cost to clients in situations where those clients could not afford to pay fees for barristers. This access is crucial for Independent Law Centres. Neither FLAC nor the other law centres can afford to employ all of the expertise needed. We are concerned that introduction of multi-disciplinary practices may erode the ability to access independent expertise in this way.

2.3 It is noteworthy that that independent law centres, the Legal Aid Board and the Irish Human Rights and Equality Commission are already allowed to employ lawyers to provide legal services, and there may well be a case for other bodies like trade unions, and specialist NGOs to be allowed to employ lawyers to provide legal service. The optimum delivery of legal services to marginalised and disadvantaged groups require a diversity of delivery of services.

2.4 An effective, accessible and sustainable system of legal aid is a core component of the State’s human rights obligation of access to justice. Over the past decade, and most recently in 2016², FLAC has produced a number of reports and papers

² Free Legal Advice Centres (2016) *Accessing Justice in Hard Times, The impact of the economic downturn on the scheme of civil legal aid in Ireland*, Dublin: FLAC.

identifying shortcomings in the civil legal aid scheme in Ireland. These issues include: lack of public awareness of the civil legal aid scheme, inadequate staffing levels in and resources allocated to the Legal Aid Board, extended waiting lists, and delays in accessing legal services. Other issues include the restrictive nature of the civil legal aid scheme, financial eligibility criteria that exclude and deter deserving applicants, a lack of diversity in the work undertaken by the Legal Aid Board, and charges for legal aid services that serve as a barrier for people on low incomes. This context must be taken into account in the consideration of any restructuring of the way in which legal services are delivered in Ireland.

2.5 We note that the Authority in performing its functions is required to have regard to inter alia the objectives of protecting and promoting the public interest and protecting and promoting the interests of consumers relating to the provision of legal services. We draw the attention of the Authority to Section 42 of the Irish Human Rights and Equality Commission Act 2014 which requires public bodies to have regard, in carrying out their functions, to the need to eliminate discrimination, promote equality of opportunity and protect human rights. For the purposes of the 2014 Act, “functions” clearly has a very wide meaning and would include any activities undertaken pursuant to a power or duty. The duty extends to a wide range of bodies including the Authority in carrying out an analysis of multi-disciplinary practices.

3 Recommendations

3.1 In considering whether and how to introduce multi-disciplinary practices in Ireland, we would recommend that that the potential impact on access to justice for low-income and marginalised groups be assessed. In addition to looking at the effects their introduction may have on competition, on the legal services market and on the legal professions, Any assessment must be considered against the backdrop of a civil legal aid system that remains inadequate.

3.2 In considering whether and how to introduce multi-disciplinary practices in Ireland, we recommend that the potential impact on the delivery of legal services by bodies such as independent law centres, the Legal Aid Board, the Irish Human Rights and Equality Commission, trade unions and other specialist NGOs should be assessed.

3.3 In addition, in light of the Public Sector Duty to promote human rights and equality of opportunity we recommend that any impact assessment of the introduction of multi-disciplinary practices also includes an assessment of human rights and equality implications.