

# Opening Statement by Community Law & Mediation

Thursday, 21<sup>st</sup> March 2024

## Introduction

Good morning Cathaoirleach and members. We are delighted to be here today alongside our friends in FLAC and I would like to thank the Committee for the opportunity to speak. My name is Mary Heavey, and I am the housing solicitor at Community Law & Mediation, and I am joined by my colleague Jane O'Sullivan, who is the Managing Solicitor, and who specialises in equality and employment law.

Community Law & Mediation (or CLM) is an independent community law centre and charity, working since 1975 with communities impacted by disadvantage and inequality. We provide free legal, mediation and education services and work in partnership with other organisations to provide targeted outreach services. We operate out of two locations, Coolock, in Dublin and in Limerick, but our services are available nationwide.

In our work as an independent law centre, we see a huge unmet legal need for advice and representation to members of the Traveller community, particularly in the area of accommodation. Last year, we established a dedicated free legal advice clinic for members of the Traveller community who are experiencing accommodation problems.

The objective of this legal advice clinic is to promote advice, advocacy and representation of people experiencing social housing issues, homelessness or risk of homelessness within the Traveller community. More broadly, this legal advice clinic aims to effect greater and more meaningful access to justice for Travellers around accommodation issues, and to attempt to reduce impediments to that access.

We also work with and assist Travellers in a broad range of areas where they are disproportionately affected, including access to education and services, and employment.

## Issues presenting at our services

We thought it would be useful to briefly outline some of the issues that have presented at our services lately, particularly as they reflect so much of what was highlighted in the Final Report of the Joint Committee. Many of these issues also feature in the Traveller Accommodation Expert Review published in July 2019, which reviewed the effectiveness

of the Housing (Traveller Accommodation) Act 1988 and other legislation, regarding the provision and delivery of Traveller accommodation.

We will then set out key barriers and opportunities for change in the legal and policy landscape.

The key issues presenting to our outreach legal advice clinic are as follows:

1. **The failure of local authorities to provide access to emergency accommodation:** This has left clients sleeping in cars, in tents or in dangerously overcrowded or grossly unsuitable living conditions;
2. **The failure of local authorities to provide Traveller specific accommodation, and inadequate standards of Traveller specific accommodation:** Many clients have been on housing lists for many years, and in the interim, are living in inadequate and substandard accommodation, sometimes without running water, heating and with poor sanitation; and
3. **The lack of transparency and consistency in decision-making of local authorities:** For example, some local authorities incorrectly apply social housing support eligibility criteria to accessing emergency accommodation. Another consistent theme in our work is the lack of fair procedures in how certain local authorities carry out Garda vetting of social housing applicants.

Discrimination under Section 19 of the Intoxicating Liquor Act and issues related education have also presented at our clinics.

We have provided detailed case studies of these issues in the Note appended to our Opening Statement.<sup>i</sup>

## The legal and policy landscape

### 1. *Access to justice*

The above-outlined issues are of an acute, complex and often very urgent nature, and generally require access to expert legal assistance.

While the right of access to justice is accepted as a constitutional principle and a right under the European Convention on Human Rights, the reality is that the current legal and policy landscape in Ireland makes it very challenging for people to realise these rights. Without effective access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable. This is

particularly true for marginalised groups or at vulnerable times in a person's life – such as in a housing crisis. As noted by the UN Special Rapporteur on adequate housing - “access to justice for the right to housing is inseparable from the right itself” .<sup>1</sup>

### Civil Legal Aid

The severely outdated Civil Legal Aid Scheme (the ‘**Scheme**’) is currently under review by the Department of Justice, and a year on we still await publication of the report. In our submission as part of the review, we highlighted the barriers that prevent marginalised groups, including Travellers, from accessing justice, and we advocated for an expanded system of legal aid.<sup>2</sup>

For example, under the Scheme, it is very difficult to access legal aid in housing and homeless cases. Legal aid is generally unavailable in housing disputes, subject to a limited exception.<sup>ii</sup> In our experience, there is a fundamental lack of clarity as to the availability of civil legal aid in housing law matters such as access to social housing supports or emergency accommodation. This has resulted in a huge unmet legal need in the area of housing, which is felt most acutely by vulnerable and socially excluded communities in Ireland and those most acutely impacted by the ongoing housing crisis.

Travellers are disproportionately impacted by the absence of legal aid in disputes concerning land. They can find themselves involved in complex legal proceedings against well-funded, legally represented opponents, without any legal assistance.<sup>iii</sup> While we welcome the introduction by the Legal Aid Board of the Traveller Legal Support Service, its scope is, unfortunately, limited by the current restrictions of the Scheme.

With a general election approaching, we are particularly concerned that if reform of the Scheme is not prioritised as a matter of urgency it will once again fall through the cracks and public money will continue to fund a wholly inadequate scheme.

### Review of the equality legislation

As you will be aware, membership of the Traveller community is a protected ground under the Employment Equality and Equal Status Acts (the ‘**Acts**’). However, significant

---

<sup>1</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>2</sup> Please see CLM's full submission here, which was endorsed by 19 organisations: [Submission to the Review of the Civil Legal Aid Scheme - Community Law \(communitylawandmediation.ie\)](https://communitylawandmediation.ie)

reform is required to improve the effectiveness of the Acts in combatting discrimination.<sup>3</sup> The Acts are currently being reviewed and we have made a series of recommendations focusing on access to justice and the return of section 19 of the Intoxicating Liquor Act to the remit of the Workplace Relations Commission.<sup>iv</sup> We also recommend that the Equal Status Act be amended to remove the effective exemption from the Equal Status Act for public bodies administering legislation in key areas such as housing, which can, for example, limit the recourse of claimants who have been discriminated against in accessing accommodation from local authorities.<sup>v</sup>

We understand that a bill to reform the Acts - The Equality (Amendment) Bill - will be published during this legislative term.<sup>4</sup>

## **2. Trailer Loan Scheme**

In 2020, funded by the Irish Human Rights and Equality Commission, we published research into the Legal Implications and Lived Experiences of the Caravan Loan Scheme (the '**Report**').<sup>5</sup>

Our Report examined the Traveller accommodation experience through the lens of the trailer loan scheme, and was based on consultations with relevant Traveller organisations and focus groups with primary healthcare providers for the Traveller community.

A number of specific issues are identified in our Report, including:

- i. The loan amounts were not sufficient to cover the cost of a quality caravan that provides for a warm, safe and secure home and are more often 'holiday' or 'starter' trailers, meant for temporary, not long term, use;
- ii. Substandard trailers lead to increased utility costs, with poorly maintained trailers being significantly less energy efficient, and using a substantial amount of resources such as water, fuel and electricity;<sup>vi</sup> and
- iii. Lack of awareness among Travellers of the existence of the scheme, caused by its sporadic and inconsistent implementation across local authorities.

---

<sup>3</sup> There are very few Employment Equality and Equal Status cases taken under the Traveller Community ground, despite the disproportionate discrimination experienced by Travellers. In 2022, there were just 26 employment equality complaints and 150 equal status complaints. [https://www.workplacerelations.ie/en/publications\\_forms/corporate\\_matters/annual\\_reports\\_reviews/annual-report-2022.pdf](https://www.workplacerelations.ie/en/publications_forms/corporate_matters/annual_reports_reviews/annual-report-2022.pdf)

<sup>4</sup> Please see CLM's full submission on the Review of the Equality Acts here: <https://communitylawandmediation.ie/change/submission-on-the-review-of-the-equality-acts/>.

<sup>5</sup> Please see CLM's full report here: [Report on The Legal Implications and Lived Experiences of the Caravan Loan Scheme, 2020 - Community Law \(communitylawandmediation.ie\)](https://communitylawandmediation.ie/report-on-the-legal-implications-and-lived-experiences-of-the-caravan-loan-scheme-2020)

We understand that since the publication of our Report, a preferential and affordable Trailer Loan Scheme was extended across all local authorities, with a view to introducing a national scheme.

## Recommendations

As a general comment, we endorse the recommendations of the Expert Review Group and the Joint Oireachtas Committee, and believe that they should be implemented in full.

We also make the following specific recommendations:

- i. that the report on the review of the Civil Legal Aid Scheme is published as a matter of urgency;
- ii. that the Civil Legal Aid Scheme be expanded to include all areas of law which are currently excluded, including housing-related matters and employment and equality matters; and that the Scheme be restructured in line with the community law centre model to include a public legal education and law reform function;<sup>vii</sup>;
- iii. in parallel with this, that the review of the equality legislation address the barriers that prevent Travellers from challenging discrimination; and that the Equality (Amendment) Bill is published as a matter of urgency;
- iv. that a referendum on housing be held to insert a right to adequate housing into the Irish constitution;<sup>viii</sup>
- v. that the upcoming review of the pilot trailer loan scheme include a robust and effective consultation with the Traveller community, and incorporates the numerous recommendations included in our Report; and
- vi. that public sector duty training, and a cultural awareness workshop<sup>6</sup> be put in place for local authorities and other stakeholders (including judges), to educate officials on their obligations under the Irish Human Rights and Equality Commission Act 2014, and on Traveller ethnicity and culture.<sup>ix</sup>

Finally, I would like to conclude with a quote from one of our clients, Maria (not her real name), who was referred to our Traveller accommodation outreach clinic by a local Traveller group. Maria and her husband had been sleeping in their car for a

---

<sup>6</sup> For example, we undertook Traveller Cultural Awareness Training facilitated by the Traveller Equality & Justice project at University College Cork.

number of months, after encountering significant difficulties in getting assessed as homeless by a local authority. After CLM's legal intervention, they were eventually provided with emergency accommodation, and Maria said as follows:

*'I felt like I was stuck in the middle, until I got the advice that I needed... It felt like a dark and miserable road that was never going to end – and then the sun came out... Throughout the process, I learned to not hold back, and to speak up for my rights... A lot has changed since then: I have a roof over my head, and I can come and go as I please. I feel like I can be my own person.'*

---

## Notes

### **i Case studies of issues presenting to our services:**

#### **Case Study 1: Access to emergency accommodation**

James and Maria were referred into our accommodation outreach clinic for assistance with their housing situation by their advocate from a Traveller advocacy group. At the time, they had been trying to access emergency accommodation for a number of months, and were living in their car during this period.

The local authority was refusing to assess them as homeless and provide them with access to emergency accommodation, and stated that our clients should engage in family mediation and return to the family home. Our clients were unable to return to the family home owing to a severe relationship breakdown. In any case, there is no statutory basis for a local authority to refuse to provide a household with access to emergency accommodation in a situation of urgent need on the basis that the household has not engaged in mediation.

With assistance of counsel, CLM issued warning letters to the local authority confirming that we were prepared to issue judicial review proceedings if the local authority continued to refuse to assess our clients as homeless and provide them with emergency accommodation. Following this correspondence (and evidence from An Garda Síochána speaking to the breakdown in family relationship), the local authority assessed our clients as homeless and provided them with emergency accommodation in a B&B, in line with their statutory obligations.

This case presents a common theme in CLM's works, in highlighting our clients experience of the difficulties in accessing emergency accommodation. It highlights the crucial role CLM's legal intervention played in reminding the local authority of their

statutory obligations to meet our clients' immediate housing need, and in assisting the couple in navigating their acutely complex and precarious housing situation

**Case study 2: Garda vetting of social housing applicants**

CLM represented a client who had been suspended from the housing list by a local authority on the basis of a report prepared by An Garda Síochána pursuant to section 15 of the Housing (Miscellaneous Provisions) Act 1997 (a '**Section 15 Report**'). She had been referred to our service by a local Traveller advocacy group. The household comprised a single mother, and her five children, who had been living in emergency accommodation, most recently in a hotel room, for approximately six years.

There were a number of fair procedure concerns regarding our client's suspension from the list, most fundamentally the refusal of the local authority to provide our client with a copy of the Section 15 Report. This severely hindered our client's ability to submit a robust appeal, and was contrary to her constitutional right to fair procedures and natural justice.

Our client's social housing support application was eventually 'un-deferred' following CLM's appeal of the decision. However, the local authority continued to refuse to provide our client with a copy of the Section 15 Report despite our repeated requests, based on our client's right to fair procedures and a request pursuant to the Freedom of Information Act 2014. CLM escalated a complaint to the Office of the Information Commissioner. We subsequently received confirmation from the FOI Officer in the local authority that the local authority previously had an unwritten policy of refusing to disclose Section 15 Reports. The FOI Officer confirmed that the local authority has since reversed its position on foot of CLM's correspondence and will disclose Section 15 Reports going forward (subject to limited restrictions). On foot of this correspondence, we issued correspondence to the Housing Agency and to the Department of Housing, Local Government and Heritage in relation to the practice of local authorities in disclosing Section 15 Reports.

The case highlights the vital role legal intervention plays in challenging unfair and unlawful practices of local authorities, and the lengths people have to go to vindicate their most basic rights. It also highlights the inconsistency and lack of transparency in first instance decision-making in local authorities. In this regard, we call for robust processes to be put in place to provide and strength support for decision-making across local authorities, including public sector duty training and a cultural awareness workshop.

**Case Study 3: Discrimination under Section 19 of the Intoxicating Liquor Act**

Our Limerick service represented a widow and member of the Traveller Community, who had been discriminated against under section 19 of the Intoxicating Liquor Act. She had booked a meal at a restaurant but, on arrival, was refused entry because she and her family were members of the Traveller Community. This caused them significant distress and embarrassment.

This case, which was ultimately settled, is just one example of the discrimination that members of the Traveller Community experience on a regular basis when accessing goods and services. They encounter further challenges if they wish to raise a claim of discrimination against a licenced premises as, under section 19 of the Intoxicating Liquor Act, they must bring their case to the District Court, requiring them to hire solicitors and proceed through the more adversarial and challenging atmosphere of a court to seek redress.

There are greater costs associated with lodging a case before the District Court, as well as the risk of a costs award made against the unsuccessful application, meaning they might be ordered to pay the legal costs of the other side as well as their own.

This makes the enforcement of important rights difficult and in some cases impossible and places a disproportionate burden on members of the Traveller community who are 38 times more likely than other white-Irish to experience discrimination in accessing goods and services.\*

The Irish Human Rights and Equality Commission and a number of independent law centres, including Community Law & Mediation, have called for the complaints mechanism for a refusal to enter a licensed premises to be brought into line with other discrimination complaints and be heard by the Workplace Relations Commission (WRC), which was designed to facilitate complaints in a less costly or adversarial manner.

\*[Who experiences discrimination? Evidence from the QNHS Equality modules \(esri.ie\)](https://www.esri.ie/)

**<sup>ii</sup> Civil Legal Aid and Housing matters**

Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995 (the ‘1995 Act’), which establishes the Civil Legal Aid Scheme, provides that legal aid shall not be granted in ‘*disputes concerning rights and interests in or over land*’ subject to a limited exemption.

Section 28(9)(c)(iii) of the 1995 Act contains this limited exemption which allows for an exception where the subject matter of the dispute is the applicant’s home (or would be the home but for the dispute), and the Legal Aid Board considers that the applicant suffers from infirmity of mind or body or the applicant may have been subjected to

duress, undue influence or fraud, and the refusal to grant legal aid would cause hardship to the applicant.

**iii Travellers disproportionately affected by lack of legal aid:**

For example, according to the 2021 FLAC Annual Report, 42% of case files which were opened during 2021 were opened on behalf of clients of FLAC's Traveller Legal Service. This statistic highlights the deficiencies in the current legal aid regime in meeting the legal needs of Ireland's marginalised communities and the continuing barriers in accessing justice, which are constant themes of our work.

iv The Employment Equality Acts and the Equal Status Act (the '**Equality Acts**') are fundamental to people's experience of living in a society and working with dignity. Our key priorities for reform of the Equality Acts include:

- A review of the restrictive time limits for lodging discrimination claims – the overly restrictive time limits are particularly challenging for those who may require additional assistance in the areas of literacy, translation, understanding of the legal arguments etc.
- The jurisdiction of the WRC should be increased to provide for meaningful compensation for discrimination and to act as an effective deterrent.
- The effective exemption from the Equal Status Act for public bodies administering legislation in key areas such as housing, healthcare, social welfare etc. requires urgent reform. In fact there should be a full re-evaluation of the exemptions in both Employment Equality Act and Equal Status Act, and a thorough examination of whether they are rational, necessary and proportionate.
- Return section 19 of the Intoxicating Liquor Act to the remit of the WRC to increase accessibility in making a complaint of discrimination: Under section 19 of the Intoxicating Liquor Act, any person who believes that they have been discriminated against at or on the point of entry to a licensed premises on the basis of one of the nine grounds included in the Equal Status Acts 2000-2018 must bring their case to the District Court rather than the Workplace Relations Commission. This requirement places a disproportionate burden on members of the Traveller community who are 38 times more likely than other white-Irish to experience discrimination in accessing goods and services. There are greater costs associated with lodging a case before the District Court, as well as the risk of a costs award made against the unsuccessful application, meaning they might be ordered to pay the legal costs of the other side as well as their own. Members of the Traveller community who wish to raise a claim of discrimination against a licenced premises therefore face additional barriers in relation to costs, time limits and the onus of proving evidence. These additional barriers are

unnecessary deterrents in bringing such a discrimination case. It should be noted that legal aid is available, we understand, for applications under section 19 of the Intoxicating Liquor Act.

- Add Socio-Economic status as a tenth ground in Irish equality legislation (CLM is a member of the Add the Tenth Alliance). It is likely that there will be significant interaction between this new ground and section 19 of the Intoxicating Liquor Act, meaning that these cases will also be excluded from the remit of the WRC, creating a barrier to accessing justice for those experiencing discrimination. In addition, civil legal aid should be readily available for this type of case given the complexities of court proceedings of this nature as well as the consequences for the plaintiff if their claim is unsuccessful.
- The definition of discrimination should also be widened to expressly include intersectional discrimination.

#### <sup>v</sup> **Exemption from Equal Status Act for public bodies**

Section 14 of the Equal Status Act allows for discrimination in cases where taking an action is required under an enactment or an order of a court. The word ‘enactment’ is not defined by the Equal Status Act but case law has shown that it covers Acts of the Oireachtas and statutory instruments. It does not cover any decision where there is some element of discretion as it only relates to discriminatory treatment that is required by law. Effectively, this renders the Equal Status Act a second-tier piece of legislation, which can be superseded by enactments or orders of a court. In real terms, the State is, by and large, exempt from anti-discrimination provisions in the Equal Status Act. This particular provision is highly problematic as it heavily limits the application of the Equal Status Act in cases involving public bodies, therefore limiting the recourse of claimants who have been discriminated against in accessing accommodation from local authorities, healthcare and social welfare. Several discrimination challenges to social protection provisions have failed because the WRC held it did not have jurisdiction over the claim.

We therefore recommend that the effective exemption from the Equal Status Act for public bodies administering legislation in key areas such as housing, healthcare, social welfare etc. be reformed.

#### <sup>vi</sup> **Energy Poverty**

According to research published by the National Traveller MABS, as of 2019, 77% of Travellers experienced energy poverty, spending on average over 26% of their income on energy. This research can be found here: <https://www.ntmabs.org/publications/development/2019/ntmabs-energy-poverty-report.pdf>

A consultation on the revised Energy Poverty Action Plan is now open (with a deadline for submissions of Wednesday 8<sup>th</sup> May 2024), the purpose of which is to set out a range of clear, timebound actions aimed at tackling energy poverty with appropriate governance and evaluation. As part of this consultation process, we will reiterate the recommendations made in previous submissions on the Energy Poverty Action Plan and in our pre-budget submission:

- **Fuel Allowance:** As recommended by National Traveller MABs, we recommend that fuel allowance should be extended to families who are officially sharing a bay (and thereby liable for rent), and to those in other circumstances who are provided with washing/electricity facilities by the local authority.
- **The National Retrofit Program:** Adopt targeted measures to ensure that the Traveller community can avail of energy upgrades and SEAI grants.
- **Ensure that the electricity credit scheme is applied to Traveller families:** Many Traveller families did not receive the €200 electricity credit in April 2022. This credit should be applied immediately to Traveller families living on halting sites, sharing accommodation in group housing schemes, and/or living adjacent to the main home

Our pre-budget Submission 2024 is available here: [Pre-budget Submission 2024 - Community Law \(communitylawandmediation.ie\)](https://communitylawandmediation.ie), and our Response to Energy Poverty Strategy Consultation can be found here: [Submission to the Department of Environment, Climate and Communications on a new Energy Poverty Action Plan - Community Law \(communitylawandmediation.ie\)](https://communitylawandmediation.ie)

vii **Recommendation 1: Reform of Civil Legal Aid Scheme (the ‘Scheme’)**

We are calling for substantial reforms of the Scheme to ensure the most vulnerable and marginalised in our society can vindicate their rights and challenge discrimination in areas that are critical to social inclusion but currently excluded from the Scheme, such as employment, equality, housing and social welfare.

A crucial element of access to justice is the effective availability of the services of a lawyer. For those who do not have the means to access a private legal service, their right to legal aid is an essential component in securing their right of access to justice.

From a housing perspective, we submit that civil legal aid should clearly include issues relating to social housing supports, emergency accommodation and disputes before quasi-judicial bodies, including the Residential Tenancies Board and the Workplace Relations Committee. Moreover, we recommend that civil legal aid in the form of specialist advice and representation in the areas of forced evictions and discrimination experienced by Travellers is provided for in order to ensure equal access to justice in the area of accommodation.

Our broader recommendations in relation to the Scheme include:

1. Changes to the eligibility thresholds to qualify for legal aid and advice, and changes to the allowances against income to reflect the reality of the cost of living.
2. Expansion of the Scheme to areas of law which are currently excluded such as: employment and equality matters, housing-related matters, environmental matters, social welfare appeals and children's rights.
3. Restructuring of the Scheme in line with the community law centre model to include public information and education services – creating an awareness of rights and the law – and a policy and law reform function.

viii **Recommendation 3: Referendum on Housing**

The Government made a commitment in its Programme for Government and in the Housing for All plan, to hold a referendum on Housing. The Housing Commission was due to provide its report on the referendum on housing to the Minister for Housing, Local Government and Heritage by no later than the end of July 2023 – so its report is well overdue.

It is vital that this issue remains a public priority and on the agenda. Urgent action is needed to tackle the State's ongoing housing crises and re-shape the State's housing policy. We submit that the explicit recognition of a standalone right to adequate housing, also advocated for by the Home for Good coalition, in the Irish constitution is a fundamental step towards achieving this.

Our full submission, which was endorsed by 15 organisations, including Pavee Point, can be found here: [Submission to the Housing Commission on a Referendum on Housing in Ireland - Community Law \(communitylawandmediation.ie\)](https://communitylawandmediation.ie/submission-to-the-housing-commission-on-a-referendum-on-housing-in-ireland)

'Adequate housing' has already been considered by the United Nations Committee on Economic, Social and Cultural Rights who has found that a number of conditions must be met in order for housing to be considered adequate, including habitability, accessibility and cultural adequacy.

The insertion of a constitutional right to adequate housing could have widespread implications in shaping Ireland's housing policies, including preventing homelessness, ensuring the minimum standards of and the cultural adequacy of accommodation, and providing meaningful protection to those most vulnerable and marginalised in society.

ix **Recommendation 5: Public sector duty and cultural awareness training**

The public sector duty contained in section 42 of the Irish Human Rights and Equality Commission Act 2014 has, as its purpose, to increase awareness of human rights and equality issues across the public service, and to ensure that a human-rights-based approach is mainstreamed into administrative policy and decision-making. It requires that public bodies

- a) assess the human rights and equality issues relevant to their functions and purposes;
- b) set out their policies, plans and actions to address those issues; and

- c) report on developments and achievements in that regard in their annual reports.

While section 42(11) expressly states that the section does not create any new cause of action, it is nevertheless a valuable mechanism by which anti-Traveller attitudes in the public service can be changed.

The role of the Irish Human Rights and Equality Commission in supporting public bodies in meeting their responsibilities under section 42 might be utilised to educate officials about Traveller ethnicity and culture, and to explain the necessity to protect Travellers against involuntary assimilation.