

# Sinn Féin Submission to the Review of the Administration of Civil Justice

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**15-02-2018**

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## **1 - Multi Party Actions**

A type of litigation that has been discussed in the state for many years, in particular since the Law Reform Commission Paper in 2005) but never been acted on despite these calls, has been the ability to take multi-party action (or class action) cases as a collective against a party accused of having inflicted the same damages, or damages similar in nature, upon an unlimited number of parties.

If this were to be legislated for it would enable those claiming damages to come together and take one case, rather than one individual having to take a test case, and in turn incurring the risks of a loss and substantial legal fees. Parties would be able to split legal costs, resulting in the legal system being more accessible than it is currently for those in these types of situations.

There are very limited forms of Multi-Party Litigation in Ireland, usually related to representative bodies, but the most common model is the Test Case model – where a case is taken by an individual or a number of individuals affected by the same set of circumstances, and if successful, other persons affected by that issue proceed to take actions which follow the precedent of the test case.

The test case situation creates difficulties for the defendants, in terms of how difficult it is to properly establish overall liability without clear knowledge of how many people are potentially affected, but more particularly for the plaintiff, in terms of lack of duplication of resources, and legal costs and so on.

The model proposed by the Law Reform Commission in 2005 is a model we propose and would support.

It would facilitate people affected by the same set of circumstances, should they choose to opt in, to become part of a Multi-Party Action, which would allow the cases to be dealt with together where common or related issues of fact or law arise.

The Benefits of the Model would include:

- The overall outlay on litigating an issue would be reduced
- The overall costs of achieving a resolution would be reduced
- Scarce Court resources would be used more efficiently
- Access to justice would be available to many people who would otherwise be excluded.

A good example of where this may apply is the current Tracker Mortgage Scandal – which is the reason that this is topical, and legislating for multi-party actions with that in mind would be a significant statement by this Government. It would be a clear statement of intent, of seeking to hold the banks to account for their wrongdoing.

Where currently someone would have to take a test case, against the Banks or any other body, and others follow on, each with likely separate legal representation, this would allow those affected to be dealt with together.

To quote the LRC paper on this matter – *“The test case approach encourages, even if it does not validate, the multiplication rather than the division of costs for the generic issue among the members of the group.”*

*‘This is principally because the test case is not a recognised, and therefore controlled, procedure. Each case within the group is regarded as an independent unit requiring individual and separate attention. In this way, the test case fails to acknowledge the overlap among the group on the generic issue and thus allows for a separate billing of costs for individual cases’*

We are far behind comparable jurisdictions in not having an avenue to justice like this. It could have a similar effect and impact as processes such as the Class Action in the United States, or the Group Legal Order in the Britain. It is not difficult to think of the many categories of people who could have and can benefit from the ability to take cases.

There are many people out there, who are the victims of injustices, and who would have an actionable case, but the cost of taking it on themselves makes it effectively impossible. This brings access to justice within their grasp.

The Dáil has passed the Multi Party Action Bill<sup>1</sup>, which I and Deputy Pearse Doherty co-authored, through Second Stage in the Dáil, and it is currently being considered at the Oireachtas Committee on Justice and Equality. We would welcome any action that the group would take in furtherance of this Bill or of Multi Party Actions generally.

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<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017111400046?opendocument#TT00100>

## 2 - Legal Aid

During the recession Civil Legal Aid, was significantly adversely affected by changes, and the system is under very severe pressure. It has had significant impacts on those who have limited means, and their ability to access Justice, and in our view the right of Equal Access to Justice has been diminished by restrictions, cuts and excessive waiting times.

We recommend that the Legal Aid board is properly resourced, and that the Staff exists to ensure that all who are entitled to and require Legal Aid in Civil cases can benefit. The service must be sustainable and efficient in responding to the needs of the Public. Adequate resources should mean that waiting times do not exceed the Legal Aid Board's own stated goal of two to four months

We support the call from FLAC to undertake a review of the compliance of Section 28(9)(a) of the Civil Legal Aid Act 1995 with the European Convention on Human Rights.

We would also propose that Legal Aid Board should have its remit reviewed to ensure that it is in line with the recommendations of the UN Committee on Economic, Social and Cultural Rights.

We propose an end the requirement for victims of domestic violence to make financial contributions. Victims of domestic violence may need to make recurring applications for legal aid which can be very costly, especially in view of the increase in required financial contributions; it is essential that there is no disincentive to victims from taking what are often essential actions from a welfare point of view.

The UN Convention on the Elimination of All Forms of Discrimination against Women Committee specifically recommended that Ireland end the requirement for victims of domestic violence to make financial contributions, as have the Law Society, Women's Aid, and the Commissioner for Human Rights of the Council of Europe.

We support Legal Aid being properly available to assist those in danger of home repossession and eviction, given the context of recent years and the numbers of people in serious mortgage arrears, and it is essential that they receive adequate legal advice & support for such proceedings.

We have advocated that the means test be reviewed, as well as capital limits, and we support the reduction of the minimum contribution required from those availing of free civil legal aid from €130 to €50. Legal aid is a vital service to ensure that those on low incomes are able to access the justice system. It is too difficult to access civil legal aid and the €130 contribution is a significant disincentive to people on very low incomes accessing the legal services they need.

### 3 - Access to Justice for Small Companies, and legal representation

There has been some debate in the Dáil and Seanad<sup>2</sup> in recent times on the issue of the ability of Small Limited Companies to properly represent themselves, particularly in relation to Intellectual Property cases. At the very least consideration should be given to allowing Companies to represent themselves, and not to have to expend money on providing legal representation where it may not be required, depending on the judgement of the company themselves.

I have received correspondence on this matter from persons affected by this. Their view is that Ireland needs to comply with E.U. law and remove this outdated obstacle to justice, citing Articles 2 and 3 of Directive 2004/48/EC on the Enforcement of Intellectual Property Rights<sup>3</sup>.

To quote one of those who contacted me

*“To protect their E.U. intellectual property rights in Ireland, companies must engage disproportionately expensive solicitors and barristers to access Irish courts for the simplest procedures. Prohibitive costs cause valid cases to be abandoned and justice to be denied. This seems to be in breach of Article 47 of the Charter of Fundamental Rights of the European Union and Articles 2 and 3 of Directive 2004/48/EC on the Enforcement of Intellectual Property Rights.”*

Article 47 of the Charter of Fundamental Rights of The European Union (2010C 8302) states;

“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”

I would hope that the review group gives this matter consideration.

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Sinn Féin Spokesperson on Justice & Equality

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<sup>2</sup> Seanad Éireann Commencement Matter 29th June 2016

<sup>3</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32004L0048R%2801%29>