



An Roinn Dlí agus Cirt
Department of Justice

Simplifying Criminal Legal Aid Payment in the District Courts



Introduction

Expenditure on Criminal Legal Aid has grown dramatically in recent years. Since 2015, in the District Courts alone, annual costs have almost doubled — rising from €19 million to €37 million by 2024 — despite an overall decrease in the volume of criminal cases before the District Courts. This upward trajectory is driven by a combination of factors: the increase in offences that more frequently attract criminal legal aid, the granting of multiple certificates assigning criminal legal aid for separate offences arising out of the same incident, and a high number of appearances in criminal legal aid cases. Importantly, these patterns are not matched by differences in case outcomes when criminal legal aid cases are compared to cases without criminal legal aid, suggesting inefficiencies and systemic weaknesses in the current model.

The current model for the administration of Criminal Legal Aid is based on legislation dating back to 1962 and subsequent regulations. This model ties payments to legal professionals to the number of appearances, certificates and clients represented on a single hearing date. Stakeholders across the criminal justice system acknowledge that the existing model is administratively cumbersome and places unnecessary strain on Court resources.

Work is ongoing on reforming legislation related to Criminal Legal Aid. The General Scheme of the Criminal Justice (Legal Aid) Bill 2023, was published in July 2023. This Bill proposes to update the law relating to criminal legal aid, transfer administrative responsibility for the Criminal Legal Aid Scheme from the Department of Justice, Home Affairs and Migration to the Legal Aid Board, and strengthen oversight and governance structures for the Scheme

The Department and the Courts Service are currently working on the development of a Unified Case Management System (UCMS). This is a modern, digital platform for managing cases across all jurisdictions, which will streamline processes, improve efficiency, and provide better data which can be used to inform ongoing system improvements.

In the context of this overall reform, the Department conducted analysis of data compiled by the Courts Service on approximately 350,000 District Court cases in the period 2022-2023 and has reviewed the current payment system for criminal legal aid in the District Courts.

The current system, based on sliding payment scales and granting payments for multiple appearances, is excessively complex, results in multiple hearings, delays trials and is administratively burdensome. It also has the unintended consequence of unfairly penalising practitioners who represent multiple accused (regardless of being co-accused in the same trial) on the same day, as the sliding scale applies lower fees for subsequent cases.

Research also shows that the current system presents significant issues related to the granting of payments for multiple certificates for cases heard together for no clear reasons, with the added complexity of decisions authorising these payments under Regulation 7(4) of the Criminal Justice (Legal Aid) Regulations 1965 (S.I. No. 12) potentially being Judicially Reviewed. This is especially due to the perceived ambiguity of the wording of the regulation and lack of clear guidelines as to how a Court establishes the existence of a “*good reason*” when deciding whether to grant separate payments. Furthermore, separate certificates for cases heard together allow the appointment of separate solicitors who may receive full separate payments under Regulation 7 of the Criminal Justice (Legal Aid) (Amendment) Regulations 2011 (S.I. No. 362), when in fact one solicitor only is representing the accused.

The need for a structural reform

Criminal Legal Aid is essential in upholding the constitutional and human right to a legal defence. The scheme is necessarily demand led and, under the legislation, the granting of certificates is a matter for the judiciary. Considering the continuing upward trajectory of the number of criminal legal aid certificates being granted, and the administrative burden that it creates across the justice system, it was agreed to undertake a review of the current fee structure in the District Court to ensure the scheme is structured to maximize efficiency within existing parameters.

The data reviewed by the Department, related to approximately 350,000 cases in the District Court in the period 2022-2023, shows that the weighted average appearances for cases with Criminal Legal Aid is **5.04**, while the weighted average appearances without CLA is **3.24**. While the data is clear, it is equally important to note, that the frequency of adjournments is a complex matter, with many contributing factors. It is acknowledged among those who are granted criminal legal aid are a noticeably vulnerable or disadvantaged group, which inevitably leads to a higher number of adjournments. Therefore, it would not be correct to expect identical averages for cases with and without criminal legal aid.

In addition to the above, data analysed shows that, from first to last appearances, cases with criminal legal aid take significantly longer to complete than those without, which is a direct consequence of the number of appearances. It also shows that cases with criminal legal aid take an *average* of 313 calendar days to complete, compared to 133 days for cases without.

Finally, when looking at the outcomes that represent high volumes going through the system, for cases with criminal legal aid, the main outcome is that it is struck out (in 21.3% of cases), that the offence is taken into consideration (16.2%) and a fine is applied (15% of cases), and for cases without criminal legal aid, the main outcomes are relatively the same, although the proportions differ slightly.

In conclusion, the analysis of data strongly points towards three critical points:

1. Inefficiency: Criminal legal aid cases take significantly longer and involve more appearances, consuming valuable court time and resources.
2. A high number of appearances having little impact on case outcomes.
3. Systemic costs: because of the higher number of appearances, criminal legal aid cases create additional resourcing burdens for the Courts Service, An Garda Síochána, the Office of the Director of Public Prosecutions, the Irish Prison Service and the judiciary, as well as higher direct costs for the Department.

Proposal: Introduction of flat fee

It is therefore proposed to introduce a revised fee structure. This would not be linked to the number of appearances, to the number of certificates granted in cases arising from the same incident, or to the number of accused represented on a given day. At the same time, it is proposed that payment will not be made for multiple certificates in cases heard together or in immediate succession or arising from the same incident.

Under this revised fee structure, solicitors would be paid a fee per defendant, regardless of the number of appearances or the number of clients they represent in a day. This is designed to:

- Simplify the administration of Criminal Legal Aid, resulting in quicker payments to practitioners,
- Increase timely case resolution, allowing the Courts to get through an increased number of cases,

-
- Introduce efficiencies for Courts Service staff organising and managing Court sittings, Garda personnel deployed to present cases in the District Court and prison escorts to and from Court, and
 - Ensure fair and sustainable remuneration for legal practitioners.

The introduction of an alternative to the current sliding-scale approach is therefore proposed as follows:

- For cases in the District Court, regardless of the number of appearances, a fee of €455 is payable to solicitors;
- The same fee applies regardless of the existence of separate certificates, if cases are heard together or in immediate succession, and if the cases arise out of the same incident;
- The full fee of €455 is payable for representation from the beginning to the end of the case;
- If different solicitors from the same or separate firms represent, jointly or separately, the same defendant, only a fee of €455 is payable;
- For cases heard separately (e.g. they arise from different incidents and are heard on different days), a fee of €455 is payable in respect of each case;
- In cases where a solicitor represents co-defendants, the full fee of €455 is payable for each co-defendant;
- In cases where a solicitor represents multiple unconnected defendants on the same day, a full fee of €455 is payable for each defendant;
- In cases where the charges are sent forward to the Circuit Court after being heard in the District Court, an initial fee of €100 only is payable regardless of the number of appearances in the District Court, and usual Circuit or Higher fees subsequently apply;
- In cases where Counsel is also assigned to a case, the fee is increased to €600 and it is split evenly between solicitor and Counsel.

The basis for the calculation of the proposed fee is the assumption that, on average, a case in the District Court without CLA is completed in approximately three appearances, however it is accepted that on average cases with Criminal Legal Aid could take slightly longer. The fee of €455 has been calculated by adding the value of three appearances using the current fee scale, and the value of one additional appearance. The new flat fee

also does not decrease based on the number of cases (connected or otherwise) presented on a given day.

Currently, four appearances for one single accused, for one charge, are calculated as €239.38 (first appearance) + €59.86 (second appearance) + €59.86 (third appearance) + €59.86 (fourth appearance). In addition to the sum of the four appearances - €418.96 - an additional 8% has been added to the proposed fee to reflect fees restored to pre-FEMPI levels. Therefore, the proposed fee is €455.

The Department's intention is to implement this reform by 1 July 2026, following engagement with the Law Society and a wide range of internal and external stakeholders, including the Courts Service, the Financial Shared Services, the Office of the Director of Public Prosecutions, the Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, the Attorney General's Office and the Judiciary.

In line with the Programme for Government's action "Reform the operation of the criminal legal aid system and fully restore criminal legal aid fees", it is intended that full restoration of criminal legal fees will also be implemented on this date.