NDA Response to the Invitation to make a Written Submission to the Joint Committee on Justice

August 2021

The National Disability Authority welcomes the invitation to make a written submission to the Oireachtas Joint Committee on Justice on the elective topic of ‘Courts and Courthouses’.

The National Disability Authority (NDA) is the independent statutory body with a duty to provide information and advice to the Government on policy and practice relevant to the lives of persons with disabilities, and to promote Universal Design.

The comments and advice below address issues highlighted in the Invitation Letter, but also other areas that are relevant to the work of the Joint Committee and fall within the NDA’s competencies and expertise.

The following submission sets out areas of priority for the Joint Committee on Justice as identified by the NDA. First and foremost is the context for disability policy and practice in Ireland: the UN Convention on the Rights of Persons with Disabilities (UNCRPD) and the National Disability Inclusion Strategy (NDIS). Article 13 of the UNCRPD explicitly obliges States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants in all legal proceedings. Several of the actions in the NDIS flow from the State’s obligations under Article 13, and relate to procedural accommodations, accessibility of buildings, services and ICT, and training and development of staff.

The NDA also emphasise the need for Courts Services staff and the judiciary to remain informed and trained on emerging legislation and policies, for example the Irish Sign Language Act and the Assisted Decision-Making (Capacity) Act 2015. Both pieces of legislation will herald change in both the methods and content of the work undertaken in courts around the country, and concerted efforts must be made to ensure the cohesive and effective operationalisation of these new laws.

Finally, the NDA wishes to stress the importance of continued developments in the collection, disaggregation and dissemination of data, which will not only allow for the development of informed and accurate work-plans for the Committee, but also for improvements in policy- and decision-making.

## UN Convention on the Rights of Persons with Disabilities

Ireland ratified the UN Convention on the Rights of Persons with Disabilities (UNCRPD) in March 2018. The overarching vision of the UNCRPD, which entered into force on 19 April 2018, is to ensure that persons with disabilities can participate in, and contribute to, society on an equal basis with others.

Many of the Convention’s Articles are relevant to the remit of the Joint Committee on Justice, and in particular Article 13. This Article obliges States Parties to ensure effective access to justice for persons with disabilities on an equal basis with others. This includes providing procedural and age-appropriate accommodations, in order to facilitate their effective participation in all legal proceedings, including at investigative and other preliminary stages. It also obliges States Parties to promote appropriate training for those working in the field of administration of justice, including police and prison staff.

Other relevant Articles include Article 5 on equality and non-discrimination, Article 7 on children with disabilities, Article 9 on accessibility, and Article 12 on equal recognition before the law.

Article 4(3) obliges States Parties to closely consult with and actively involve persons with disabilities in the development and implementation of legislation and policies to implement the Convention, and in other decision-making processes concerning issues relating to persons with disabilities. The NDA advises that the Joint Committee considers how it might engage with and capture the voice and lived experience of persons with disabilities in its work, including through their representative organisations or Disabled Persons Organisations (DPOs). One option could be to conduct periodic surveys regarding courts procedures and facilities, similar to the annual National Patient Experience Survey that is carried out by HIQA and which provides a clear picture of the safety and quality of Irish hospitals, as seen through the eyes of patients.

The NDA advises that the Joint Committee continue to ensure that its work is contextualised by the UNCRPD, and includes a focus on ensuring the rights of persons with disabilities can be reflected and realised across the justice system.

## National Disability Inclusion Strategy

The National Disability Inclusion Strategy 2017 – 2022 (NDIS) seeks to ensure that a whole-of-government approach is taken to disability issues. Several actions within the NDIS are relevant to the work of the Joint Committee and the elective topic of ‘Courts and Courthouses’. Four are outlined below and the NDA advises that the Committee familiarise itself with these actions in order to monitor their progress and identify challenges to their implementation alongside the Departments and agencies named as responsible bodies. The involvement of the Committee may provide a further impetus to responsible bodies to work in a proactive, collaborative fashion to increase the urgency around the implementation of the actions. It should also be noted that discussions will soon commence around a successor Strategy (as the current NDIS is due to end in 2022) and the Committee may wish to contribute to such discussions, in order to highlight priorities it believes should be included in the next Strategy.

### 2.1 Action 18B: Integrate a focus on the needs of people with disabilities in initiatives to enhance access to justice

This action was added to the NDIS following a mid-term review, which took place in late 2019. The responsible bodies named against this action are the Department of Justice and all relevant agencies. Currently, all responsible bodies are carrying out work that will achieve this action, for example, An Garda Síochána have reviewed their custody risk assessment forms so that they may take into account particular disabilities of persons taken into custody. The Department of Justice has commenced work on improving protections afforded to vulnerable victims- including persons with disabilities- in sexual offence cases.

The NDA advises that the Joint Committee encourage all agencies to work collaboratively with the Department of Justice to ensure the comprehensive and effective achievement of this action.

### 2.2 Action 20: Disability Awareness training

The National Disability Inclusion Strategy contains a commitment on the part of all public bodies to “provide disability awareness training for all staff”. Disability awareness training frequently comes up in the UN Committee’s Concluding Observations on a State Party’s implementation of the UN Convention. The NDA has a disability awareness training e-learning module, which is available to all public sector bodies.[[1]](#footnote-1)

As a public body, the Courts Service should put in place a comprehensive training module on disability awareness for all staff. The NDA advises that the Committee seeks regular updates of progress in the roll-out of disability awareness training of staff, including an evaluation of outcomes of that training.

### 2.3 Action 25: Accessible Public Buildings

The National Disability Inclusion Strategy contains an action to ‘bring all public sector buildings into compliance with the revised (2010) Part M accessibility standards by 2022.’ The responsible bodies named against this action are the Office of Public Works and all departments and public bodies.

This action is relevant to courthouses, apart from those which are heritage sites, and relates to the requirement in Section 25 of the Disability Act that public bodies bring their public buildings, apart from heritage sites, into compliance with Part M 2010 by 1st January 2022. It defines public buildings as ‘a building, or that part of a building, to which members of the public generally have access and which is occupied, managed or controlled by a public body’. The NDA is aware that accessibility is an issue for a number of courthouses, although we recognise that good examples are being set in new buildings.

Under a separate action in the NDIS, the NDA and OPW jointly carried out an Operational Review of the Effectiveness of Section 25 of the Disability Act, which was published in 2019.[[2]](#footnote-2) The review was informed by consultation with persons with disabilities and older people, with a range of public bodies and with OPW staff. The review outlined a lack of awareness or low awareness across the public sector in respect of Section 25. It contains recommendations to facilitate public bodies to meet their obligations to bring their public buildings into compliance with Part M 2010 by 2022.

Key recommendations in the review include the need for public bodies to:

* identify their public buildings, as defined in the Disability Act 2005 on their building registers, as first step in monitoring their compliance with Section 25
* prioritise public buildings for improvements under Section 25 by taking a targeted approach to carrying out access audits and improvement works, based on a building’s use and existing levels of accessibility
* apply the design philosophy of Universal Design, rather than the minimum requirements of Part M, where practical and appropriate, when carrying out works to meet their obligations under Section 25 of the Disability Act

At the OPW Accommodation Officers’ Conference in May 2021, the OPW requested public bodies to send them a priority list of their public buildings requiring works for compliance with Section 25.

Many courthouses are protected structures and will not come within the scope of Section 25 of the Disability Act. There are separate accessibility requirements for heritage sites under Section 29 of the Disability Act, outlined below under the heading ‘Courthouses which are Heritage Sites under Section 29 of the Disability Act’.

The NDA suggests that the Committee could request regular updates on progress in this respect from the OPW. We remain committed to supporting the OPW in its work to improve the accessibility of public buildings, and advise that ongoing monitoring and reporting of progress is key to same.

### 2.4 Action 105: Code of Practice on Accessible Public Buildings

Action 105 of the NDIS states that the National Disability Authority will develop a code of practice for accessible public areas of public sector buildings. This action is related to Section 25 of the Disability Act, which allows for the Minister to request the NDA to draw up a Code of Practice to assist public bodies in making buildings accessible. The Code will give guidance to public bodies relating to the accessibility of public buildings, including design, management and maintenance and how to approach their obligation to bring public buildings into compliance with Part M of the building regulations.

Public bodies- including those with responsibility for courthouses- will have to comply with the Code, as far as possible, in particular at the time of new construction, material alteration or extension of a public building or where it would be cost effective for the purpose of giving access to a greater number of people.

In line with a request from the minister, the NDA has commenced development of this Code of Practice under Section 25 of the Act, and will have a role to monitor its implementation by all public buildings, when complete. We will be happy to share findings and recommendations with the Committee as this work progresses.

## Other obligations for accessible courthouse and court services under the Disability Act 2005

### 3.1 Courthouses which are Heritage Sites under Section 29 of the Disability Act

Many courthouses are protected structures, which come under the definition of heritage sites, within the scope of Section 29 of the Disability Act 2005.

Section 29 places a statutory obligation on the head of a public body to ensure that, as far as practicable, the whole or a part of a heritage site in its ownership, management or control and to which the public has access, is accessible to people with disabilities and can be visited by them with ease and dignity. This obligation does not apply if it has a significant adverse effect on the conservation status of a species or habitat or the integrity of a heritage site or if it would compromise the characteristics of the heritage site. No adaptations or modifications of any heritage site can be taken that are contrary to law.

The Code of Practice on Accessible Heritage Sites is an approved Code of Practice for the purposes of the Disability Act.[[3]](#footnote-3) Public bodies that comply with this Code are considered to be in compliance with Section 29 of the Act. The Code contains 10 overall goals for which public bodies should aim, as follows:

1. Planning for Accessibility
2. Pre-visit Information
3. Approach and Entry
4. Wayfinding
5. External Landscape
6. Circulation within buildings
7. Interpretative Information available on site
8. Programmes, meetings and events
9. Facilities
10. Emergency Egress

The NDA is currently reviewing the Code of Practice on Accessible Heritage Sites, in light of experience of its application. Following this review, the NDA will develop a monitoring mechanism to assess compliance of public bodies with the Code of Practice. Similar to the Code of Practice on Accessible Public Buildings, this Code of Practice is applicable to a number of courthouses around the country, and the NDA encourages the Committee to remain informed of its implementation.

### 3.2 Integrated Services under Section 26 of the Disability Act

In addition to the requirements above for accessible public buildings and heritage sites, the Disability Act also requires that where a service is provided by a public body, the head of the body shall, where practicable and appropriate, ensure that the provision of access to the service by persons with and persons without disabilities is integrated.

The Code of Practice on Accessibility of Public Services and Information Provided by Public Bodies states that in practical terms, this means that people with disabilities can avail of a service provided by a public body at the same point of access or location, at the same time as everyone else, where practicable and appropriate.[[4]](#footnote-4) The definition of a ‘service’ in the Disability Act includes ‘any service provided by a court or other tribunal’. The NDA has responsibility for monitoring this Code of Practice but monitoring has not yet commenced for the Justice sector. However, the NDA plans to establish and monitor key indicators in relation to accessibility and compliance with the Code, and carry out consultation and real-time monitoring with end users of various public sectors to complement the data collected through the indicators. We look forward to updating the Committee on our findings in relation to the Justice sector in the coming years.

## Special Measures

Section 14 of the Criminal Evidence Act 1992 puts in place special measures that should be afforded to victims giving evidence in court. This is reaffirmed by the Criminal Justice (Victims of Crime) Act 2017, which recognises the right of victims of crime to understand and to be understood in the context of criminal proceedings.

Section 14 provides for the use of an intermediary, to facilitate communication with the individual giving evidence. However, this measure has only been invoked three times, and in an ad hoc manner.

In its independent advice paper, published in August 2020, and through its membership of the O’Malley Sub-Group on intermediaries, the NDA stresses the need for a standardised and regulated system of intermediaries to be established. This system should be made available to all persons with communications difficulties, many of whom have disabilities (for example an intellectual disability or autism), interacting with the criminal justice system, including persons accused of a crime, witnesses and victims.[[5]](#footnote-5) All persons have the right to due process, and should therefore be afforded the means to properly understand, and be understood in, legal proceedings. An intermediary facilitates communication between the individual and the justice official, be they a member of An Garda Síochána, a solicitor or a judge.

The NDA is pleased to contribute to the ongoing efforts, led by the Department of Justice, to establish a pilot scheme of trained and accredited intermediaries. We encourage the Committee to fully support and endorse this pilot scheme, and to seek regular updates on its roll-out.

The NDA supports the Criminal Procedure Bill 2021, which would provide for pre-trial hearings to take place in criminal cases. This would provide an ideal opportunity for legal professionals and the judiciary to discuss any additional supports needed by individuals involved in the proceedings, including the use of an intermediary, an ISL interpreter or the provision of information in an accessible format.

The NDA welcomes the ongoing building projects in courthouses around the country, which provide for dedicated facilities for victims, including vulnerable persons and persons with disabilities. We welcome that many of these facilities allow for the use of video link for vulnerable persons to provide evidence without having to enter the courtroom. The close collaboration between the Courts Service and Victim Support at Court is a positive development, and we encourage further resourcing of this important service.

## Irish Sign Language

As set out in the European Convention on Human Rights and the Victims of Crime Act 2017, individuals are entitled to interpretation in order to give evidence and/or follow legal proceedings. This is re-affirmed by the Irish Sign Language Act 2017, which states that:

1. A person may use Irish Sign Language in, or in any pleading in, any court.

2. Every court has, in any proceedings before it, the duty to do all that is reasonable to ensure that any person competent in Irish Sign Language and who cannot hear or understand English or Irish appearing in or giving evidence before it may be heard in that language, if that is his or her choice, and that in being so heard the person will not be placed at any disadvantage.

3. For the purposes of ensuring that no person is placed at a disadvantage as aforesaid, the court may cause such facilities to be made available, as it considers appropriate, for the simultaneous or consecutive interpretation of proceedings into Irish Sign Language.

The NDA has been given responsibility to report to Government on the operation of the Irish Sign Language Act, and an initial report has recently been submitted to the Minister prior to it being laid before the Houses of the Oireachtas. The report found that for the most part, criminal courts provide ISL interpretation as needed, however improvements to the knowledge of the judiciary in directing the appointment of accredited interpreters would support more robust provision. Outside of criminal courts, civil courts showed a lack of preparation for commencement of the ISL Act, with improvements needed in relation to published processes for ISL users to raise the need for ISL interpretation, and the establishment of an ISL complaints mechanism. Aside from particular issues that need to be addressed by the Courts Service, the NDA advises that ongoing education and awareness-raising amongst members of the judiciary regarding their obligations under the legislation are required, and we encourage the Committee to reiterate this need to the Courts Service and to the Judicial Council.

## Accessibility of Communications

The EU Web Accessibility Directive was transposed into Irish law on 25 September 2020. European Union (Accessibility of Websites and Mobile Applications of Public Sector Bodies) Regulations 2020 requires public sector bodies to take necessary measures to make their websites and mobile applications more accessible by making them perceivable, operable, understandable and robust. The NDA is the official monitoring body for this Directive and is due to submit its first report in this regard to the Department of Communications, Climate Change and Environment by 23 December 2021. The Courts Service, along with all departments and other public sector bodies, will be obliged to ensure its websites and mobile applications meets the accessibility requirements outlined in the Directive.

Launched in 2017 and revised in 2019, the NDA’s Customer Communications Toolkit for the Public Service - A Universal Design Approach contains guidance to inform the design and procurement of customer communications across the public service.[[6]](#footnote-6) The Toolkit is based on a Universal Design approach and provides advice on designing written, spoken and signed communication, as well as digital communication. It also contains selected statements, examples, tips, checklists and links to learn more. The accessibility of all information communicated by the Courts Service to the public should be informed by the Toolkit.

The NDA advises the Committee to seek regular updates from the Courts Service in respect of measures it is putting in place to ensure its communications are accessible.

## Continued training and development for Courts Service officials and Judiciary

The NDA welcomes the establishment of the Judicial Studies Committee within the Judicial Council, which seeks to provide structure to the ongoing education and training of judges. It is critical to the realisation of people’s rights that the judiciary is at the fore of effectively interpreting newly commenced legislation.

This will be very relevant in the coming year, with the commencement and operationalisation of the Assisted Decision-Making (Capacity) Act 2015. This legislation represents a shift in society from a medical model of disability, where ‘best interest’ decisions are made on behalf of individuals and towards a social model of disability, whereby people are empowered and supported to make their own decisions. It includes abolishing the wardship system that has been in place for 150 years, and it obliges courts to review every wardship case, in order to return estates to the individuals in question (2,285 individuals, as of November 2020). Under the legislation, courts (the High Court in most instances, but the District Court may also have a role, depending on which court dealt with the wardship application) will have 36 months to review all wardship cases.

The legislation also names new stakeholders the judiciary and Courts Service will have to interact with, for example Court Friends, General Visitors, Special Visitors and a range of new decision-making supporters. Advocates will also have new functions under the Act.

The NDA advises that the Courts Services (which is in the process of drafting Court Rules interpreting the legislation) and the Judicial Studies Committee work closely with the Decision Support Service in order to form a comprehensive understanding of their roles and functions under the 2015 Act. Once commenced, both the Courts Service and the judiciary will be kept busy with wardship reviews and cases concerning declarations of capacity, and it is important that all stakeholders carry out their new roles correctly and efficiently. It will be important for the Committee to remain informed, through regular updates, as to how the Courts Service and the judiciary are carrying out their new functions. This legislation and its implications- especially those relating to wards of court- will amount to a huge change for all stakeholders, and open communication and early detection of any issues or confusion will lead to better implementation.

The NDA was responsible for developing 11 statutory Code of Practice, which offer practical guidance on the effective implementation of the Assisted Decision-Making (Capacity) Act. Several of these Codes will be of interest to the Committee, including the general Code of Practice for Supporting Decision-Making and Assessing Capacity, and the Code of Practice for Legal Professionals. The NDA advises that a review of progress could be carried out after a period of time (perhaps 3 years, which would coincide with the deadline given in the legislation for all ward of court cases to be reviewed) to assess whether they are serving their purpose. These Codes have since been transferred to the Decision Support Service, however, the NDA would be happy to offer support and input to such a review.

The NDA has developed Guidance for Justice Professionals in communicating with people with autism. This guidance provides background information about autism spectrum disorders and aims to assist those working in the civil and criminal justice system who may come into contact with someone who has autism in order to best communicate with and support them. This includes public service officials such as An Garda Síochána, the Courts Service, the judiciary and the Prison Service and the Probation Service, and members of the legal profession such as solicitors and barristers. This guidance has been welcomed by relevant stakeholders.

## Continued developments in data collection and dissemination

Finally, the NDA has a particular role to strengthen and promote the collection of data and statistics relevant to people with disabilities, and to ensure public data can be disaggregated using disability as a variable.

The NDA would like to take this opportunity to highlight the importance of departments, agencies and bodies collecting and disseminating relevant data. This information can then inform and guide future decision-making. There is very little existing data on persons with disabilities in court settings and in the wider criminal justice system; however, we do know that persons with disabilities continue to be over-represented in the latter. In order improve data gathering and analysis and in turn effect change for persons with disabilities, departments and agencies- including the Courts Service- need to broaden their data collection to include information on disability (in addition to information collected on other grounds for discrimination). Availability of such information could further inform the work of the Committee. The NDA is available to advise on the collection of data related to disability.

Once again, the NDA welcomes the invitation to make a submission to the Joint Oireachtas Committee on Justice, and is happy to engage further with the Committee on any of the points outlined above.

1. Note that this module is due to be updated shortly: <http://nda.ie/Resources/eLearning/> [↑](#footnote-ref-1)
2. http://nda.ie/Publications/Environment-Housing/Environment-Publications/An-Operational-Review-of-the-Effectiveness-of-Section-25-of-the-Disability-Act-2005.html [↑](#footnote-ref-2)
3. http://nda.ie/Publications/Environment-Housing/Environment-Publications/Code-of-Practice-on-Accessible-Heritage-Sites.html [↑](#footnote-ref-3)
4. http://nda.ie/good-practice/codes-of-practice/code-of-practice-on-accessibility-of-public-services-and-information-provided-by-public-bodies-/ [↑](#footnote-ref-4)
5. http://nda.ie/publications/justice-and-safeguarding/access-to-justice/nda-independent-advice-paper-on-the-use-of-intermediaries-in-the-irish-justice-system.html [↑](#footnote-ref-5)
6. http://universaldesign.ie/products-services/customer-communications-toolkit-for-the-public-service-a-universal-design-approach/ [↑](#footnote-ref-6)