

National Report - Ireland

ILAG Conference 2017



1. About the Legal Aid Board in Ireland

The Legal Aid Board is responsible for the provision of the vast majority of civil legal aid services in the State. It was established by the Minister for

Justice and Equality in 1979, initially on an administrative basis, and since 1996 legal aid has been provided on a statutory basis following the enactment of the Civil Legal Aid Act, 1995 (“the Act”). It is also responsible for the provision of a family mediation service.

Legal services in civil cases are mainly provided by solicitors in the full-time employment of the Board, working in 30 full time Law Centres, 12 part time law centres and two specialist offices. Services are also provided by private solicitors on a fee per case basis. Family mediation services are provided exclusively by mediators operating out of eight full time and nine part-time offices.

Every five years a new statutory board, consisting of a chairperson and 12 board members, is appointed by the Minister to oversee the strategic direction and general management of the organisation. The current Board was appointed in November 2016. The Chief Executive is the accountable officer responsible for the provision of civil legal aid. He reports directly to the Board, which meets monthly. An Oversight / Performance Agreement is in place with the Department of Justice and Equality.

2. Remit of the Board

The Board’s statutory remit remains confined to the provision of civil legal aid and family mediation services. A Government decision in November 2010 that responsibility for criminal legal aid should transfer to the Board requires the enactment of legislation and this legislation remains outstanding. In anticipation of responsibility for the provision of criminal legal aid transferring to the Board, responsibility for a number of smaller non statutory schemes has transferred. Those schemes are:

- The Garda (Police) Station Legal Advice Scheme;
- The Legal Aid - Custody Issues Scheme This scheme covering habeas corpus applications, bail motions and certain judicial review and extradition matters;
- The Criminal Assets Bureau Legal Aid Scheme.

Legislation was enacted in late 2015 to transfer to the Board, responsibility for the provision of legal services in involuntary detention cases on foot of the mental health legislation. The relevant provisions have yet to be commenced.

3. Civil Legal Aid

3.1 Scope of legal aid services

The Act allows for the provision of legal advice and legal aid to persons who satisfy the financial eligibility and merits test laid down in the Act and Regulations.

Legal Advice

Legal advice is available to persons on the application of Irish law to any particular circumstances which have arisen in relation to the person seeking legal services. It also includes any appropriate steps that a person might take having regard to the application of the law of the State to those circumstances (other than the institution or conduct, including defence, of civil proceedings).

Legal Aid

Legal aid (representation in Court) is available to persons in civil proceedings (other than certain excluded matters) in any Irish court of law and also for proceedings before the European Court of Justice.

With the exception of representation before the International Protection Appeals Tribunal of persons seeking international protection, legal aid is not available for the conduct of proceedings before an administrative tribunal as no other Tribunal has been 'prescribed' by the Minister for Justice and Equality in accordance with the relevant legislative provision. Advice and assistance can, however, be given to persons who are contemplating taking tribunal proceedings.

Exclusions

Certain matters have been designated in the Act as being outside the scope of legal services as follows:

- defamation
- disputes concerning rights or interests in or over land other than those exceptions which are allowed by the Act
- civil matters within the jurisdictions of the District Court (Small Claims Procedure) Rules
- licensing
- conveyancing (not connected to a matter for which legal services were provided)
- election petitions
- applications made in a representative, fiduciary or official capacity
- group actions.

3.2 Eligibility

Under the Civil Legal Aid Act, 1995 and Regulations made thereunder, there are effectively three tests of eligibility: (a) a general merits test (b) a financial eligibility test and (c) a test of merits where court proceedings are involved.

1. In order to get legal services the circumstances must be such that a reasonably prudent person of ordinary means would be likely to seek those services and a solicitor or barrister acting reasonably would be likely to advise him or her to obtain such services at his or her own expense;
2. An individual will satisfy the financial test if his/her disposable income is under a figure prescribed from time to time by the Minister for Justice and Equality with the consent of the Minister for Public Expenditure and Reform. Disposable income is the applicant's gross income from all sources less various allowances in respect of dependants, rent / mortgage, tax etc. The current disposable income limit is €18,000 per annum. The limit was set in September 2006 and has not been varied since though a case has very recently been made to the Minister to increase the disposal income threshold and the various allowances relevant to the basis for calculating disposable income. Capital resources are treated separately. An applicant whose disposable capital exceeds €100,000 is ineligible for legal services. If a person's disposable income is less than €11,500 they are charged the minimum contribution for legal advice which is €30. If the value of their assets excluding their home does not exceed €4,000, and their disposable income is below €11,500 they pay the minimum legal aid contribution which is €130.
3. The third basic requirement is that the Board must be satisfied that it is reasonable to take or defend court proceedings having regard to the prospects of success; whether there are reasonable grounds for taking or defending proceedings; the availability of any other method other than court proceedings for dealing satisfactorily with the problem (e.g. mediation or negotiation of a settlement); the possibility of the person obtaining legal representation outside the scheme; and the cost of proceedings vis-à-vis the benefit that might be obtained.

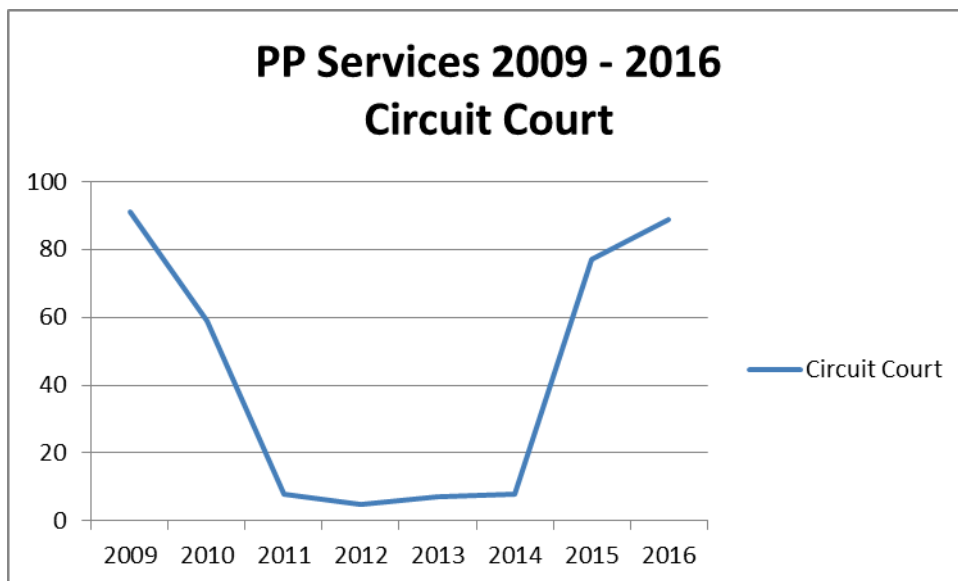
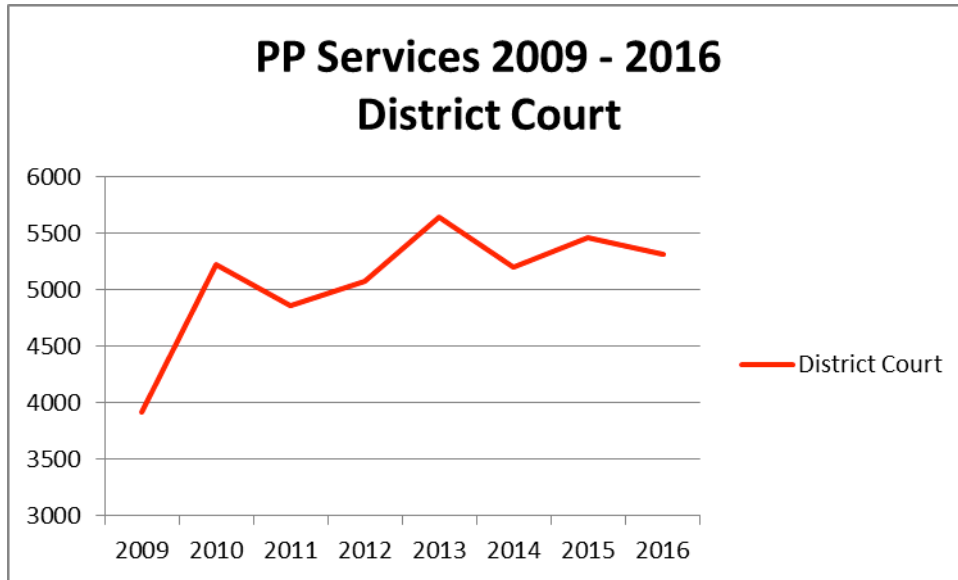
3.3 Using private solicitors

While the primary mode of service delivery is through the use of employed solicitors' in law centres, legal services are also provided through private solicitors on panels. The Board currently has three panels and one 'pilot

panel'. The first panel relates to private family law matters at District (local) Court level. The set fee payable for District Court cases is between €339 and €508 plus VAT Any solicitor can apply to join this panel. The second is a panel for divorce and separation cases in the Circuit Court. The set fee payable for Circuit Court cases is €3,390 plus VAT though 'refresher' payments may also be made. The use of this panel has fluctuated for budgetary reasons. In terms of these 'family law' panels greater emphasis has been placed on using the District Court scheme on account of the significantly lower cost involved in the individual case and also the fact that the claim for payment is generally made relatively promptly after the legal aid certificate issues and there is thus greater control in budgetary terms.

The third panel provides for representation by private solicitors to persons seeking international protection. The terms and conditions and payment arrangements for this panel have recently been significantly revised and the payment arrangements are more nuanced than they are on foot of the aforementioned schemes. A fee of €730 is payable for advice and submissions through to the first instance decision. A further fee is payable in the event of an appeal.

The Board has been operating a pilot panel for the use of private solicitors in public law child care cases. The pilot has been operative in three geographic areas for over two years. Requisite Ministerial approvals have been given to enable the panel to be established on a permanent basis however for budgetary reasons the Board has not sought to extend the service beyond the three locations where it is operative. The base fee is relatively small however payments are made for interim applications and for further hearing days. The manner in which these cases are now being conducted by the judiciary is changing and the cases are becoming more costly.



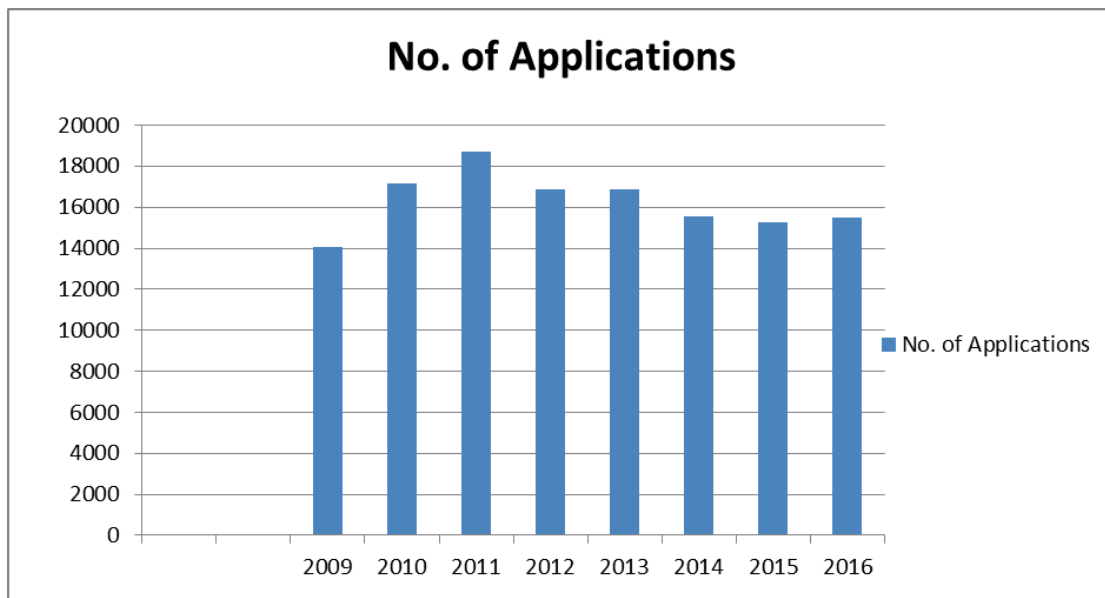
Barristers are also utilised and are paid in accordance with terms and conditions which came into effect on 1st August 2012. The terms and conditions were set for a period of three years initially and are due to be reviewed.

3.4 Demand for the Board's services

The number of applications for legal services in law centres over the past 10 years (not including those for asylum services) is set out in the table below:

Year	No. of Applications
2009	14,073
2010	17,175
2011	18,727
2012	16,870
2013	16,851
2014	15,531
2015	15,256
2016	15,490

It can be seen that the number of applications at law centres in 2016 was approximately 1.5% greater than it was in 2015. The 2016 figure is 52% greater than it was in 2007.



On the international protection side the numbers seeking international protection in the State fell considerably in 2016. The numbers have fluctuated in recent years. There was an increase of 8% in the numbers seeking services from the Board however this is unlikely to be sustained in the light of the falling numbers seeking international protection:

	2011	2012	2013	2014	2015	2016
Applications for Legal Services	979	725	708	902	1,537	1,658
International Protection Applications	1,290	956	946	1,448	3,276	2,212

3.5 Recent issues relating to civil legal aid delivery

1. In 2016 the Government initiated an advice and assistance scheme to assist persons at risk of losing their home on account of mortgage arrears by making available at no cost to the client, both financial and legal advice. The Board is responsible for the legal advice aspect. There are three components of the Board's involvement. The first is the availability of a consultation or on occasion a second consultation with a solicitor. The second is the availability of a duty solicitor at Court when the repossession lists are scheduled. The third is the availability of legal representation for the purpose of seeking to challenge in court a creditor or creditors' refusal to approve a Personal Insolvency Arrangement. The Board was given funding of approximately €2.4m for 2017 to provide the requisite services. It is doing so exclusively through the use of private solicitors and there is no involvement on the part of law centres or the Board's in-house solicitors. Persons in need of these services are not subject to the usual financial eligibility requirements. The gateway to these services is primarily the State funded Money Advice and Budgeting Service.
2. A second issue has given rise to a reappraisal of how legal services are delivery in international protection cases. This is the introduction at the start of this year of the 'single procedure' for the determination of protection matters. This approach is commonplace in most EU jurisdictions. The Board is taking the opportunity of the introduction of the procedure to re-frame its services in order to concentrate on giving early legal advice (historically the greater concentration was at appeal stage).

4. Family mediation

4.1 General family mediation services

The Board became responsible for the provision of the State funded family mediation services in November 2011 following the enactment of the Civil Law (Miscellaneous Provisions) Act 2011. State funded services have been available since 1986. The principal model of delivering family mediation services is through dedicated offices staffed by mediators.

Couples who attended a first mediation session during 2013-2016 at a family mediation office

Year	2013	2014	2015	2016
Total	1,490	1,526	1,547	1,504

4.2 Courts based initiatives

The Board also operates a number of court based initiatives whereby a mediator is on-site at the family courts. The main initiative is in the Dublin District Court where the Board has a number of mediator staff permanently assigned. The following statistics are available.

Dublin	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st Contact information sessions	863	1052	1108
2 nd Contact information sessions	479	551	635
First Joint Mediation sessions	348	407	435
Mediation sessions	581	766	808
Agreements	337	421	351

Cork	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st Contact information sessions	57	92	88
2 nd Contact information sessions	43	70	103
First Joint Mediation sessions	26	52	40
Mediation sessions	71	112	121
Agreements	23	31	41

Naas	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st information sessions	101	123	115
2 nd information sessions	69	71	87
First Joint Mediation sessions	44	56	70
Mediation sessions	76	108	144
Agreements	37	47	45

Tipperary	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st information sessions	79	72	105
2 nd information sessions	53	72	72
First Joint Mediation sessions	47	41	39
Mediation sessions	108	139	82
Agreements	23	25	11

Limerick	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st information sessions	51	60	30
2 nd information sessions	51	55	30
First Joint Mediation sessions	37	38	12
Mediation sessions	74	87	38
Agreements	13	12	3

4.3 'Mandatory information'

The Board has been piloting in three geographic areas, a mandatory requirement that persons seeking legal services in relation to a matter that involves the welfare of a child, attend at a family mediation office for the purpose of getting information about mediation before a legal aid certificate is applied for on their behalf to take court proceedings. It should be stressed that there is no requirement for the person to attend the family mediation office prior to getting legal advice. The following statistics are available in respect of the three locations.

Cork - July 2014 to December 2016

	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st information sessions	228	198	134
2 nd information sessions	79	76	59
First Joint Mediation sessions	53	42	18
Mediation sessions	120	137	37
Agreements	41	33	3

Athlone = November 2014 to December 2016

	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st information sessions	114	128	16
2 nd information sessions	28	36	3
First Joint Mediation sessions	23	27	1
Mediation sessions	66	66	1
Agreements	14	13	0

Castlebar - November 2014 to December 2016

	<u>2016</u>	<u>2015</u>	<u>2014</u>
1 st information sessions	127	80	6
2 nd information sessions	48	24	2
First Joint Mediation sessions	32	12	0
Mediation sessions	63	31	4
Agreements	11	3	0

4.4 Co-location

In mid 2016 the Board co-located a Law Centre and a Family Mediation Office. The objective of this was to improve the synergies between the two services for the benefit of the client. It is still relatively early in terms of having meaningful management information that can inform the further development.

Two other co-locations are in the pipeline and others may be contemplated as leases expire and property opportunities arise.

4.5 Mediation legislation

A Mediation Bill has recently been published. The Bill would allow the Minister to establish by way of Regulation a requirement that a person attend a mediation information session as a pre-requisite to instituting court proceedings.

5. Criminal Legal Aid

5.1 Legislative developments

A draft Bill to reform aspects of criminal legal aid and to transfer responsibility for its administration to the Board is apparently imminent.

5.2 Expenditure on Criminal Legal Aid

The table below shows both the number of legal aid certificates issued and the annual costs for CLA for the years 2005 to 2014.

Year	Expenditure (€000)	Legal Aid Certificates
2009	60,500	55,664
2010	56,500	55,412
2011	56,000	54,092
2012	50,500	49,639
2013	50,800	49,843
2014	49,900	49,870
2015	51,000	54,000
2016	53,000	55,600

5.3 Garda (Police) Station Legal Advice Revised Scheme

This scheme was established to enable a person detained in a police station to consult a solicitor. It is a matter for the Legal Aid Board to decide on whether legal aid will be granted to the applicant. The Scheme was revised and expanded during 2014 as a result of the decision of the Director of Public Prosecutions to facilitate, for the first time, the attendance of solicitors at detainee interviews in police stations. This is likely to lead to increased expenditure and demand under the Scheme in the coming years.

The expenditure on the Garda Station Legal Advice Scheme in recent years is shown in the table and the chart below:

Year	Expenditure (VAT inclusive)*
2011	€1.173m
2012	€0.887m
2013	€0.812m
2014	€1.010m
2015	€1.444m
2016	€1.711m

5.4 Legal Aid – Custody Issues Scheme (formerly Attorney General’s Scheme)

Under this Scheme, in certain circumstances where a party cannot afford to pay fees, the legal costs of such a person may be defrayed from funds administered by the Department of Justice and Equality on the recommendation of a court. The Scheme applies to the following forms of litigation:

- (i) Habeas Corpus (Article 40.4.2) applications
- (ii) Supreme Court Bail Motions.
- (iii) Such Judicial Reviews as consist of or include Certiorari, Mandamus or Prohibition and concerning criminal matters or matters where the liberty of the applicant is at issue.
- (iv) Applications under Section 50 of the Extradition Act 1965, Extradition Applications and European Arrest Warrant Applications (including Bail Applications directly related to these cases).
- (v) High Court Bail Motions related to criminal matters.

A person seeking a recommendation from the Court that the Scheme be applied to their situation must make an application to the court (personally or through his / her lawyer) at the commencement of the proceedings. The Court must satisfy itself as to the financial means of the applicant and that the case warrants the assignment of a solicitor and / or counsel. The Board is required to consider the application for access to the scheme taking into account the recommendation received from the Court in conjunction with a determination whether the relevant case comes within the provisions and scope of the Scheme.

The expenditure on the Legal Aid-Custody Issues Scheme in recent years is shown in the table and chart below:

Year	High Court Bail Motions expenditure	Non-bail side expenditure	Total Expenditure*
2012	€1,205,500	€2,300,000	€3,505,000
2013	€1,266,000	€2,100,000	€3,366,000
2014	€1,113,000	€2,118,000	€3,230,000
2015	€1,027,000	€1,722,000	€2,749,000
2016	€743,000	€2,238,000	€2,981,000

5.5 Criminal Assets Bureau (CAB) Ad-Hoc Legal Aid Scheme

The Criminal Assets Bureau (CAB) Ad-Hoc Legal Aid Scheme provides for legal aid in cases where the State is attempting to seize assets which are believed to be the proceeds of crime, principally in respect of persons who are respondents and/or defendants in any court proceedings brought by, or in the name of, the Criminal Assets Bureau, or where the CAB is the Respondent and/or the Defendant.

Expenditure on the CAB Ad-hoc Legal Aid Scheme in recent years is shown in the table below:

Year	Total expenditure
2011	1,100,000
2012	700,000
2013	382,000
2014	327,000
2015	178,000
2016	98,500

6. Staffing

The Legal Aid Board has about 485 staff (full time equivalent of 424) of which a full time equivalent of about 122 are solicitors. There has been some increase in staffing numbers in the last couple of years primarily in response to changes to the manner of dealing with international protection cases and

also on account of the Board's involvement in the aforementioned government initiative to support mortgage holders at risk of losing their homes on account of payment problems. Since 2012 the Board's staffing make-up has been as follows:

Board Staffing

Grade	2012 FTE	2013 Head count	2013 FTE	2014 Head count	2014 FTE	2015 Head count	2015 FTE	2016 Head count	2016 FTE
CEO								1	1
Senior Management	13	13	13	13	13	13	13	n/a	n/a
PO								6	6
Regional Manager LAB	n/a	n/a	n/a	n/a	n/a	2	2	2	2
Regional Manager FMS	2	2	2	2	2	2	2	3	3
AP	n/a	n/a	n/a	n/a	n/a	7	7	7	6.9
Solicitor I	10.7	10	9.7	9	8.7	7	6.8	6	5.8
Solicitor II	30.1	32	29.8	30	27.9	32	30.8	33	32
Solicitor III	70.1	76	69.1	83	73.4	87	77.1	93	84.3
Mediators FMS	11	24	12.3	24	14.4	37	20.6	34	21.3
Higher Executive Officer & Librarian & LSO	11.5	12	11.03	13	11.87	16	11.1	14	12.7
Executive Officer & Staff Officers	22.3	26	24.53	23	20.03	20	14.4	23	20.5
Clerical Officer	157.2	183	157.12	178	153.5	201	172	206	174.7
Service Officers	2	2	2	2	2	2	2	2	2
Paralegals	46.1	47	44.93	49	46.1	53	48.7	55	51.8
Total	376	427	375.51	426	372.90	479	409.5	485	424

7. Funding

The Board receives a single grant on an annual basis. The grant in recent years has been as follows:

	2012	2013	2014	2015	2016	2017
Total	€32.922m	€32.922m	€32.922m	€32.471m	€36.188m	€38.988m

The grant received generally constitutes approximately 93% of the Board's income. In 2016 client contributions amounted to just over €1.5m while costs recovered were less than €½m.