

National Report - Ireland

ILAG Conference 2013

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.

Legal services in civil cases are mainly provided by solicitors in the full-time employment of the Board, working in 33 full time Law Centres and 12 part time law centres.

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 of the organisation. The Chief Executive is the accountable officer responsible for the provision of civil legal aid. He reports directly to the Board, which meets monthly.

2. Recent changes in the remit of the Board

Up until September 2011 the Legal Aid Board dealt only with civil legal aid cases. Arising from a Government decision in November 2010 that responsibility for criminal legal aid should transfer to the Board the remit of the Board has been broadened as follows:

- October 2011 - The Garda (Police) Station Advice Scheme transferred to the Board
- June 2012 - The Custody Issues Scheme transferred to the Board. This is an ad hoc scheme covering habeas corpus, bail motions and certain judicial review and extradition matters.
- A process is now underway to draft the necessary legislation to facilitate the transfer of the main criminal legal aid scheme to the Board.

In addition to the above the remit of the Board has been further broadened as follows:

- November 2011 - The Family Mediation Service transferred to the Board, having previously been administered by the Department of Social and Family Affairs.

These matters are addressed in more detail below.

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 of asylum applicants before the Refugee Appeals Tribunal, legal aid is not available for the conduct of proceedings before an administrative tribunal. Advice and assistance can, however, be given to persons who are contemplating taking tribunal proceedings. The majority of the cases are in the area of family law.

Exclusions

As noted above, legal representation is not available before tribunals, with the exception of refugee cases. In addition, 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 two tests of eligibility: (a) a financial test and, (b) a test of merits.

(a) Financial test

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. with the consent of the Minister for Finance. Disposable income is the applicant's gross income from all sources less various allowances in respect of dependants, 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. Capital resources are treated separately. An applicant whose disposable capital exceeds €320,000 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 €10. If the value of their assets excluding their home does not exceed €4,000, they pay the minimum legal aid contribution which is €50.

A study conducted in 2008 but based on 2006 data indicated that some 48% of the population was financially eligible for legal services from the Legal Aid Board with 38% qualifying for the minimum income contribution. These statistics have not been updated but, in the light of the down turn in the economy and the increase in the rate of unemployment, it is likely that the percentage of eligible population is now higher.

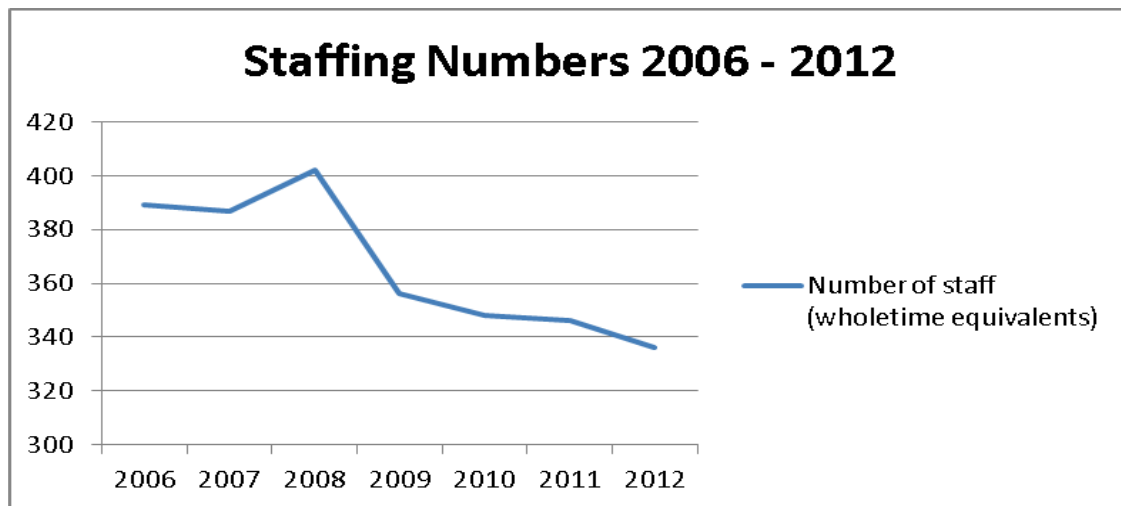
(b) Test of merits

The second basic requirement is that the Board must be satisfied that it is reasonable to take or defend proceedings having regard, for example, to the legal merits of the case and the likely outcome.

The criteria include prospects of success; 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) and the possibility of the person obtaining legal representation outside the scheme.

3.3 Provision of Civil Legal Aid Services by the Legal Aid Board

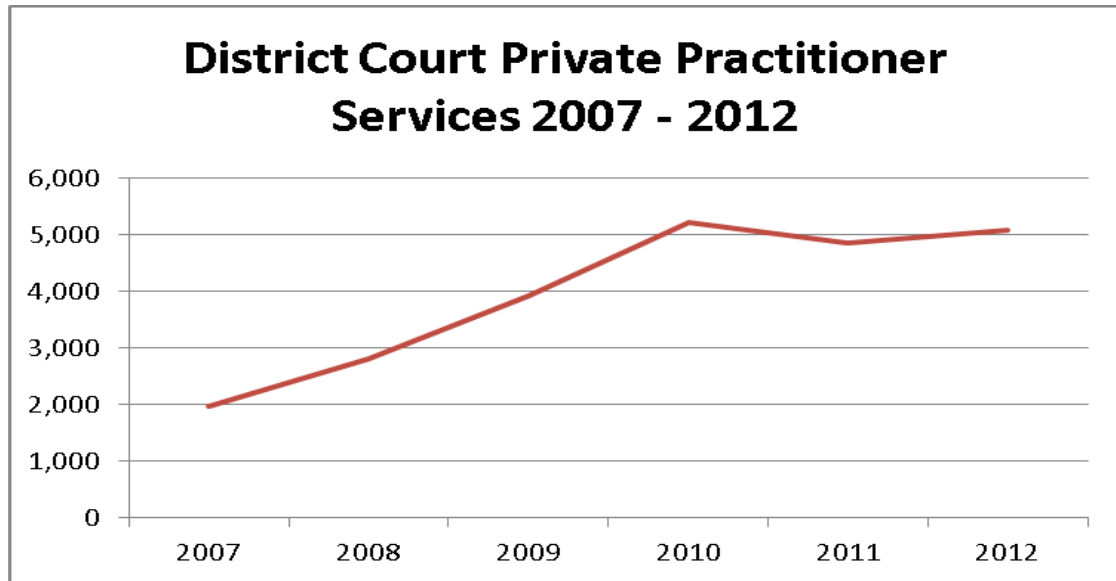
The Legal Aid Board has about 336 staff of which some 110 are solicitors. This represents a reduction of more than 16% compared to the staffing level in 2008. The following chart shows the reduction in staffing levels in recent years.



Legal services are also provided through private solicitors on panels. There are currently three panels and one 'sub panel'. The first panel relates to family law matters at District (local) Court level. Any solicitor can apply to join this panel. The second panel provides for representation by private solicitors in cases before the Refugee Appeals Tribunal. The third is a panel for divorce and separation cases in the Circuit Court, though the use of this panel has been restricted recently due to budgetary constraints. The Board has also established a 'sub panel' of the District Court panel in order to support an initiative aimed at promoting the use of mediation (see paragraph 5.2 below).

The use of private practitioners is designed to improve access to legal aid services in situations where a law centre is not in a position to provide a timely service.

The set fee payable for Circuit Court cases is €3,390 plus VAT which was reduced from €4,000. The set fee payable for District Court cases is between €339 and €508 plus VAT (reduced from €400 to €600 plus VAT). 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 increased use of private practitioners in the District Court over the past 6 years is shown in the following chart:

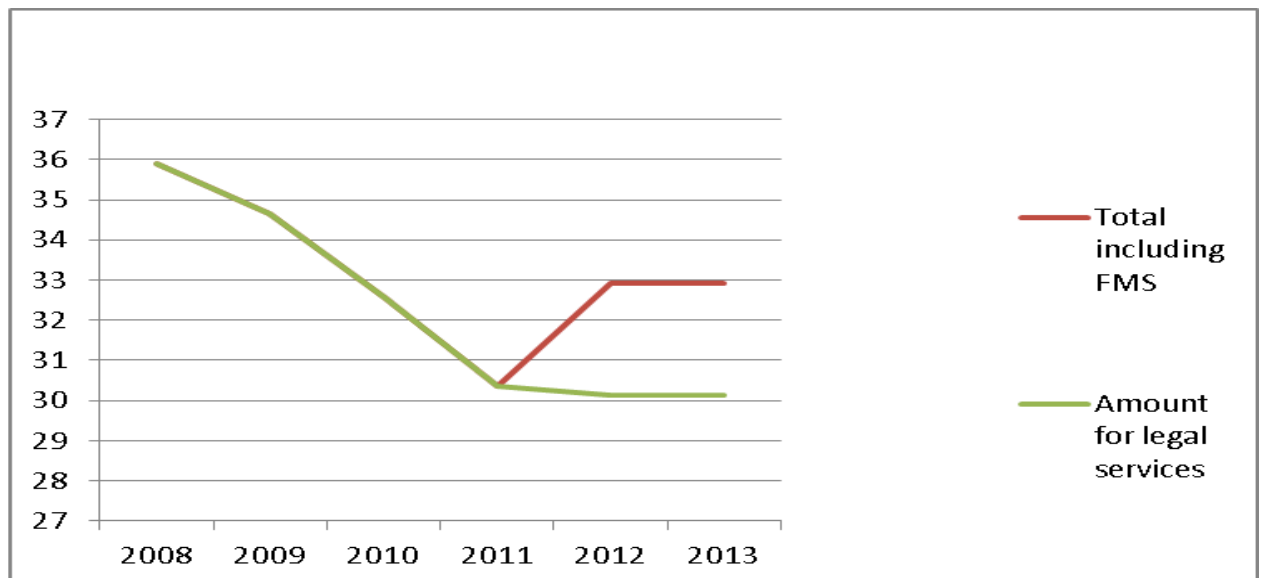


Barristers are also utilised and are paid in accordance with new terms and conditions which came into effect on 1st August last.

3.4 Funding of the Legal Aid Board

The annual civil legal aid budget for 2013, including legal services in asylum cases, is €32.55m. The great bulk (92%) comes by way of Government grant. The remainder consists of contributions, costs recovered and other smaller matters. There are approximately 4.58 million persons living in the Republic of Ireland. The expenditure per capita on civil legal aid in respect of the Board in 2012 was approximately €7 including asylum cases. The following chart shows the change in funding in recent years.

Board Finances in €m 2008 – 2013

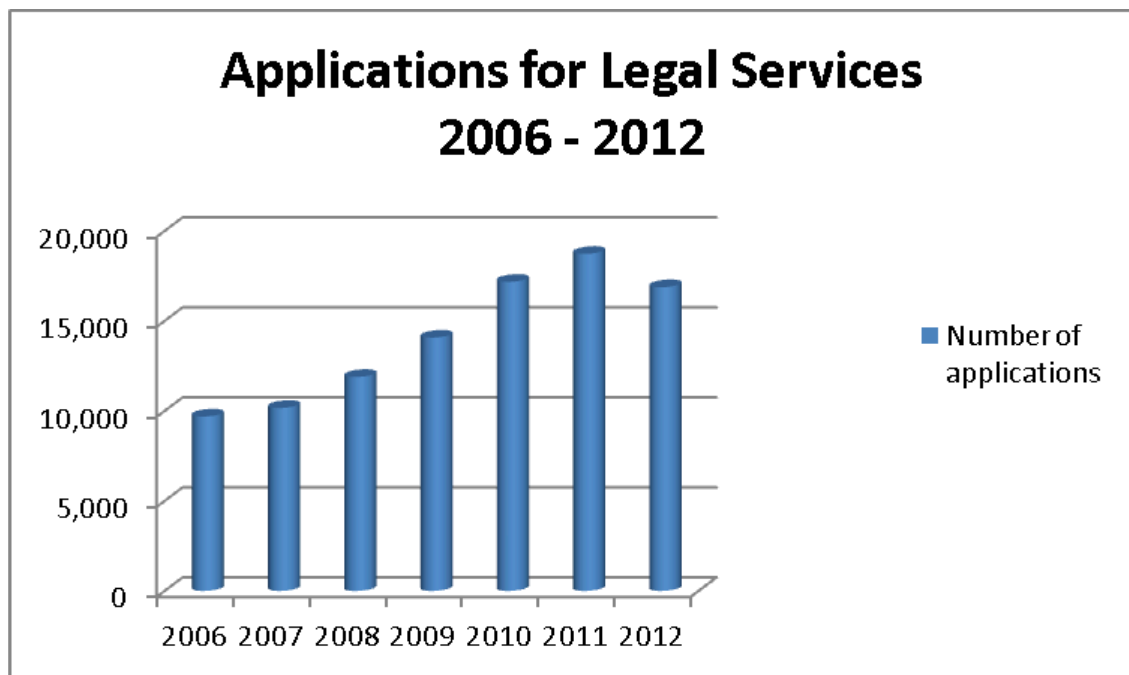


3.5 Demand for the Board’s services and its capacity to respond

As indicated above, one consequence of the recession has been a reduction in the funding and resources available to meet the demands for legal services.

On the general civil side the demand for legal services increased considerably in the years leading up to 2011 but eased somewhat in 2012. The demand for legal services in law centres over the past 6 years is set out below:

Year	Number of Applications
2006	9,689
2007	10,164
2008	11,888
2009	14,073
2010	17,175
2011	18,727
2012	16,870

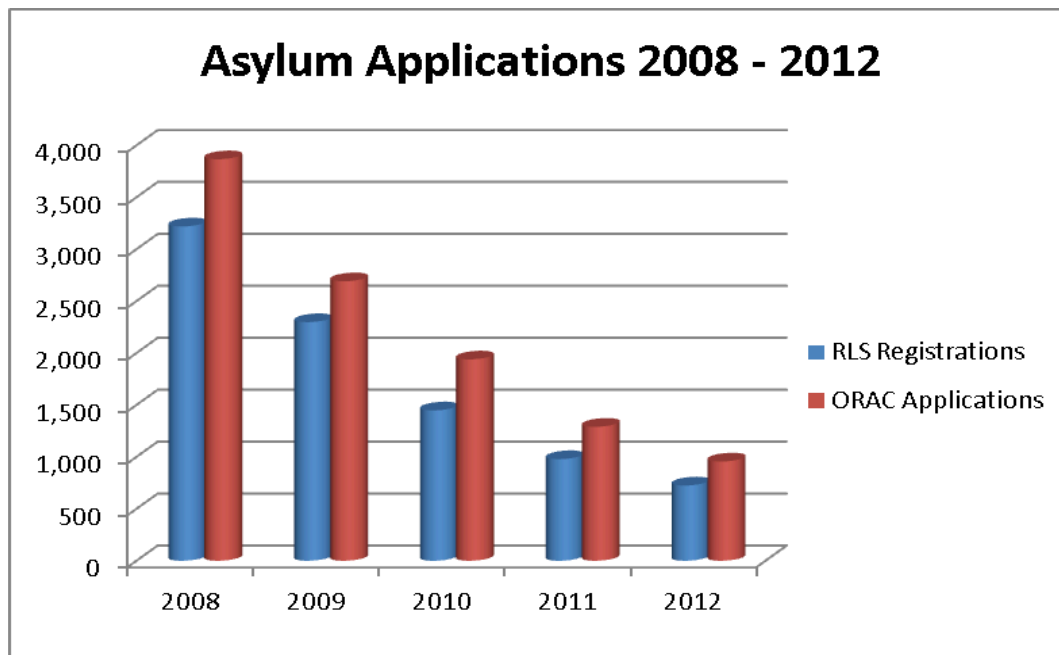


There has been a continued reduction in the number of applications for legal services in asylum cases which was in line with the drop in the number of applications for asylum in the State which had been on the decrease in recent years as can be seen from the table and chart below.

	2012	2011	2010	2009	2008
RLS Registrations	725	979	1,448	2,298	3,219
ORAC Applications	956	1,290	1,939	2,691	3,866

RLS = Refugee Legal Service

ORAC = Office of the Refugee Applications Commissioner



As a response to the reduced demand for legal services in asylum matters the Board has now almost fully integrated its Refugee Legal Service into the overall law centre network.

Even though the number of new applications has decreased the volume of applicants waiting for legal services combined with the reduced number of solicitors available to provide a service has seriously tested the Board's capacity to provide services in a timely manner. As noted above, the Board's primary model of service delivery is through a network of law centres. The reduced resources has meant that waiting times for a first appointment with a solicitor are getting longer.

3.6 Initiatives relating to civil legal aid delivery taken in 2012

Notable initiatives taken to seek to enhance the efficiency and effectiveness of the Board and to seek to respond to the increased demand and reduction in resources included:

- A Triage Process was introduced as a way of responding to the needs of applicants while they are waiting for legal services. The objective of the triage approach is that every applicant gets to see a solicitor within one month of making an application for legal services and gets the benefit of legal advice. The appointment is limited to approximately 45 minutes. The service extends to 'advice only' and no further steps are taken on behalf of the client other than a follow up letter after the consultation. The triage appointment also allows the client to undertake their own preparatory work where further legal services will be required at a later stage. The pilot does not impact on prioritised matters which continue to get a priority service.
- For the past few years the Board has had an on site solicitor presence in the child care courts in Dublin i.e. the courts dealing with applications to have

children taken into the care of the State. The solicitor's presence is to address concerns that parents who are facing such proceedings were having difficulty getting legal representation in a timely manner.

- The Board engaged with the Courts Service and the Family Mediation Service on an initiative aimed at providing a meaningful mediation option in relation to private law cases involving the welfare of children that would otherwise be litigated in the courts. Following the reduction in applications for asylum the dedicated service for asylum cases known as the Refugee Legal Service is now being fully integrated into the law centre service.

4. Criminal Legal Aid

4.1 Coverage of criminal legal aid and responsibility

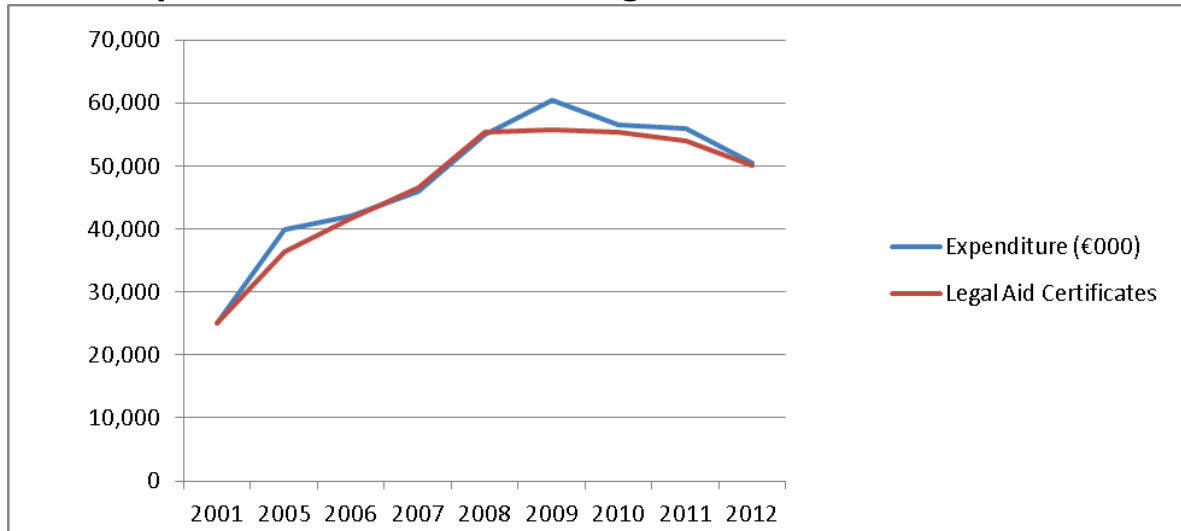
The Criminal Justice Legal Aid Act, 1962 and the subsequent Regulations establish the legal status for the Criminal Legal Aid (CLA) Scheme in Ireland and provide that free legal aid may be granted for the defence of persons of insufficient means in criminal proceedings. The decision as to whether or not persons are granted free legal aid is made by the courts. Services are provided through panels of solicitors and barristers who are paid on a fee basis.

4.2 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 2012 along with the figures for 2001 for an earlier comparison.

Year	Expenditure (€000)	Legal Aid Certificates
2001	25,100	25,084
2005	40,000	36,423
2006	42,000	41,582
2007	46,000	46,620
2008	55,000	55,265
2009	60,500	55,664
2010	56,500	55,412
2011	56,000	54,000
2012	50,500	50,000

Expenditure on Criminal Legal Aid 2001 - 2012



4.3 Controlling expenditure

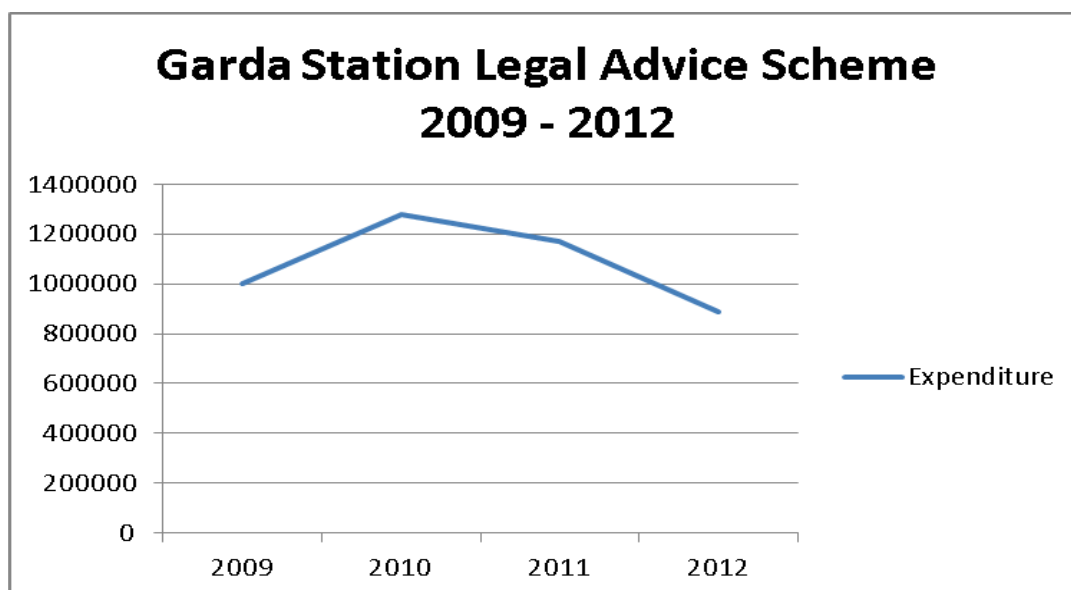
With a view to exercising greater control on expenditure, the Government in 2009 introduced an 8% reduction on all professional fees payable by the State. This was followed by a further 8% reduction in 2010.

4.4 Garda (Police) Station Legal Advice Scheme

Responsibility for the management and administration of the Garda Station Legal Advice Scheme transferred to the Board in October 2011. This scheme was established to enable a person detained in a police station to consult a solicitor.

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

Year	Expenditure
2009	€1,001,000
2010	€1,280,000
2011	€1,173,000
2012	€887,451



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

Responsibility for the management and administration of the Attorney General’s Scheme transferred to the Board in June 2012. 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:

- (a) habeas corpus applications,
- (b) bail motions,
- (c) Judicial Reviews that consist of or include certiorari, mandamus or prohibition, and
- (d) Certain extradition 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 Legal Aid 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 as to whether the relevant case comes within the provisions and scope of the Scheme. Expenditure on this Scheme in 2012 was €3.3m which represented a 9% reduction on the expenditure the previous year.

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

The Department of Justice and Equality operates the Criminal Assets Bureau (CAB) Ad-Hoc Legal Aid Scheme which is applicable to persons who are respondents and/or defendants in any court proceedings brought by, or in the name of, the Criminal Assets Bureau.

The CAB Ad-Hoc Legal Aid Scheme provides that the grant of legal aid, including the level of legal representation and/or witness expenses allowed, is a matter for the court with the appropriate jurisdiction to deal with the specific case. The CAB Legal Aid Scheme cost €334,000 in 2009, up 18% from the previous year's figure of €283,000. It cost €257,000 in 2010.

As with criminal legal aid, the Department proposes to transfer this scheme to the Legal Aid Board resulting in a single organization having responsibility for all state supported legal aid schemes.

5. Mental Health Legal Aid Scheme

The Mental Health Act, 2001, provides for the establishment of a scheme of legal aid free of charge to patients challenging the legality of their detention before a Mental Health Tribunal and in appeals before the Circuit Court. This scheme of legal aid came into operation in November 2006. Services are provided through a panel of solicitors who are paid on a fee basis. Staff of the Legal Aid Board worked closely with the Mental Health Commission to put the Scheme in place and continue to provide assistance to the Commission on an on-going basis in relation to the matter. It is also proposed to transfer this scheme to the Legal Aid Board in the coming months.

6. Community Law Centres

In addition to the services provided by the Board, there are a number of independent community law centres. A community law centre is an independent and community-based service which provides legal aid and advice to individuals and groups. They may provide court and tribunal representation and usually concentrate on areas of law such as housing, debt, employment law, welfare rights, equality issues and family law. There are very few such Centres.

7. Mediation

Responsibility for the State funded Family Mediation Service (FMS) transferred to the Board in November 2011.

The FMS is a free, confidential service in which a professional mediator assists those involved in family breakdown, and in particular separating or divorcing couples, both married and non-married, to negotiate the terms of their separation or divorce. It also assists same sex couples, couples who have never lived together or even had a relationship but have a child together. The mediator assists people to communicate better with one another for the sake of their children and to reach their own agreed and informed decisions concerning some or all of the issues. The FMS also deals with a small number of cases which involve conflict between other members of a family (e.g. parents and children, adopted and step children, grandparents and grandchildren, brothers and sisters involved in disputes over elderly parents, wills etc). The FMS is a national service based in 16 locations. Expenditure on the service in 2012 was €2.8m.

The Board had already been working with the Family Mediation Service and the Courts Service on an initiative aimed at promoting mediation and a pilot scheme had been put in place in the Dublin area at local court level. The main aspect of the pilot is that a mediation service, and potentially a legal aid service, is available in the same building as the Court for private law cases involving the welfare of children. Persons who present to the court seeking remedies in relation to the welfare of a child are encouraged to seek information from the Family Mediation Service in the hope that they will opt to seek a mediated solution to their problem.