

## **National Report - Ireland ILAG Conference 2015**

### **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”).

Legal services in civil cases are mainly provided by solicitors in the full-time employment of the Board, working in 32 full time Law Centres (including three specialist offices) 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 and general management 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 Legal Advice Scheme transferred to the Board
- June 2012 - The Legal Aid - 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.
- January 2014 – The Criminal Assets Bureau Legal Aid Scheme transferred to the Board. This is an ad hoc scheme covering legal aid in cases where the State is attempting to seize assets that are believed to be the proceeds of crime.
- It is envisaged that the District Court (Counsel) Scheme will transfer to the Board in 2015.
- Draft legislation to facilitate the transfer of the main Criminal Legal Aid Scheme to the Board is expected to be published in the third quarter of 2015

In addition to the above, in November 2011 the State funded 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 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. There is a separate legal aid scheme that is not administered by the Board which provides for legal representation at Mental Health Tribunals though it is anticipated that a legislative change will bring give the Board responsibility for this Scheme. A recent amendment to the civil legal aid legislation also allows for the provision of legal aid before the Coroner's Court in certain circumstances.

#### ***Exclusions***

As noted above, legal representation is not available before tribunals, with the exception of the Refugee Appeals Tribunal. 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 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 be likely to seek such 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, 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 €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. 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, it is likely that the percentage of eligible population increased considerably though it may now be reducing again as the economy picks up.
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 Provision of Civil Legal Aid Services by the Legal Aid Board**

The Legal Aid Board has about 426 staff(full time equivalent of 373) of which some 110 are solicitors. By 2012 the Board had experienced a reduction of more than 16% compared to the staffing level in 2008 however the staff numbers have increased, as has the work-load, with the integration of the State funded Family Mediation Service. Since 2010 the Board's staffing make-up has been as follows:

## Board Staffing

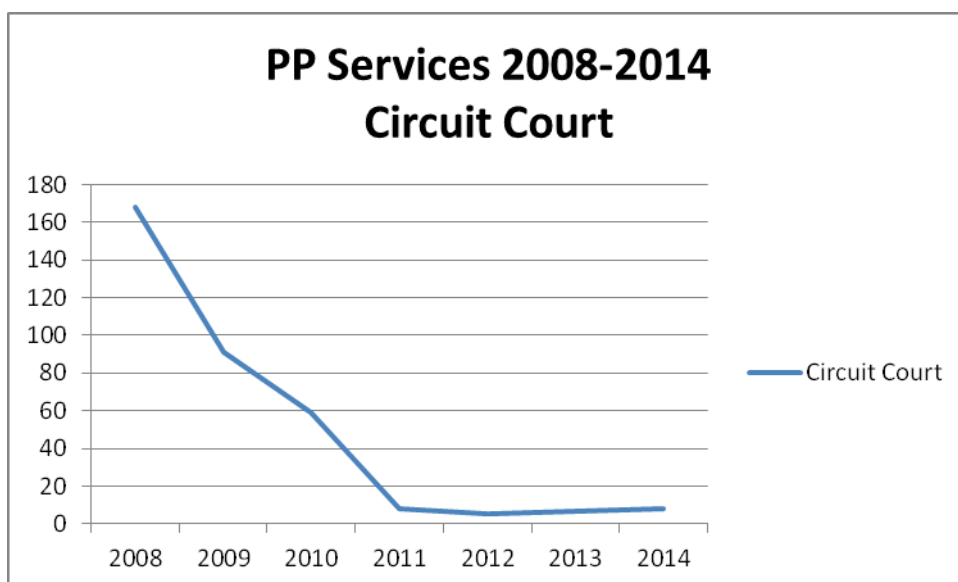
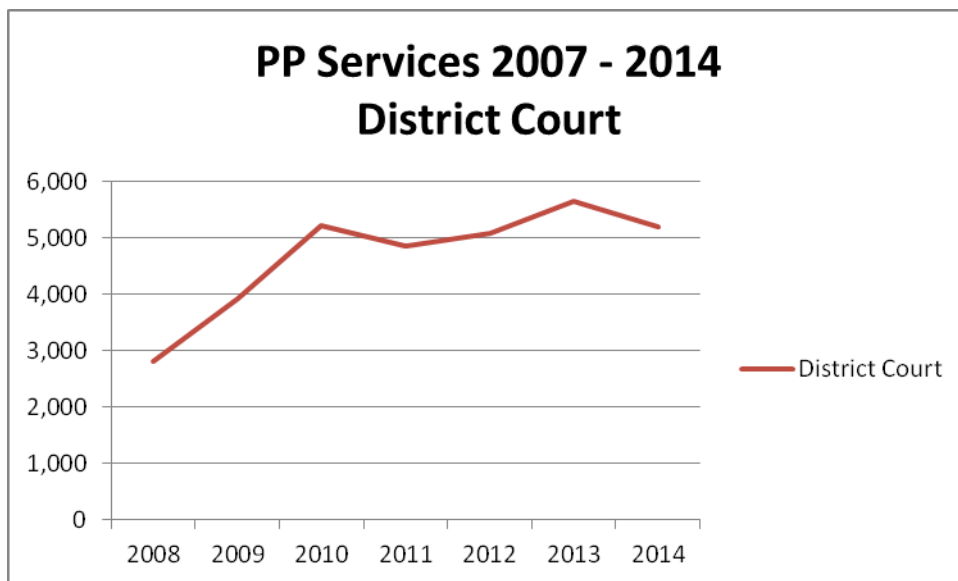
### Breakdown of Staff

Grade	2010 Head count	2011 Head count	2011 FTE	2012 Head count	2012 FTE	2013 Head count	2013 FTE	2014 Head count	2014 FTE
Senior Management	13	13	13	13	13	13	13	13	13
Area Co-Ordinator FMS	n/a	2	2	2	2	2	2	2	2
Solicitor I	12	12	11.7	12	10.7	10	9.7	9	8.7
Solicitor II	35	35	32.8	34	30.1	32	29.8	30	27.9
Solicitor III	76	74	67.5	75	70.1	76	69.1	83	73.4
Mediators FMS	n/a	22	10.5	23	11	24	12.3	24	14.4
Higher Executive Officer & Librarian	13	13	12	13	11.5	12	11.03	13	11.87
Executive Officer & Staff Officers	24	25	22.1	25	22.3	26	24.53	23	20.03
Clerical Officer	175	186	158	183	157.2	183	157.12	178	153.5
Service Officers	3	3	3	2	2	2	2	2	2
Paralegals	60	56	48	51	46.1	47	44.93	49	46.1
<b>Total</b>	<b>411</b>	<b>441</b>	<b>380.6</b>	<b>433</b>	<b>376</b>	<b>427</b>	<b>375.51</b>	<b>426</b>	<b>372.90</b>

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. 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 pilot panel for the use of private solicitors in public law child care cases.

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 on foot of government measures to curb public expenditure. 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 and the decrease in the use of private practitioners in the Circuit Court is shown in the following chart:



Barristers are also utilised and are paid in accordance with terms and conditions which came into effect on 1<sup>st</sup> August 2012. The terms and conditions were set for a period of three years and will be reviewed shortly.

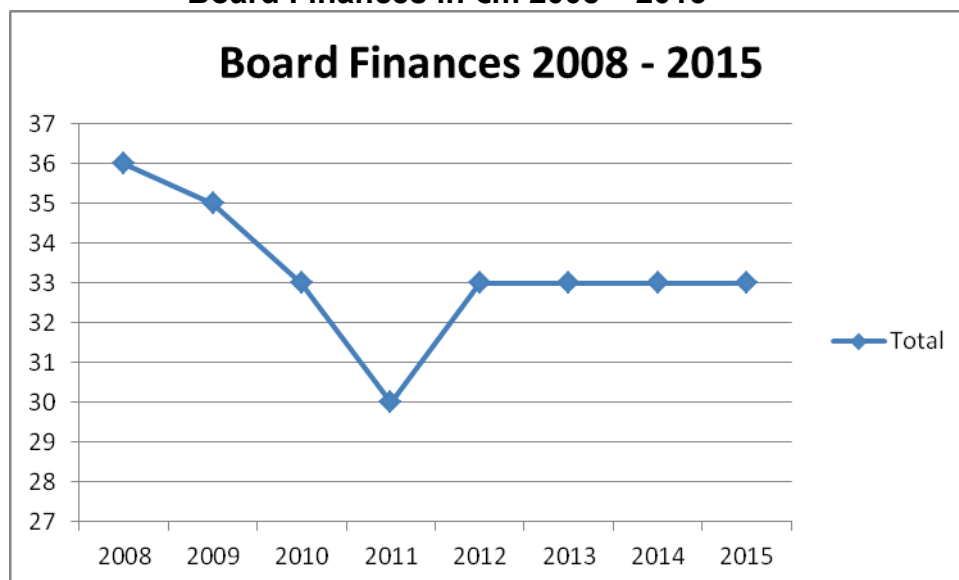
### 3.4 Funding of the Legal Aid Board

Funding for the Legal Aid Board for 2015 comprises primarily (93%) of a single Grant of €32.471m to cover all services (with the exception of criminal legal aid).

This is a slight reduction on the figures for 2012, 2013 and 2014. There are approximately 4.58 million persons living in the Republic of Ireland. The breakdown for recent years is as follows:

	2009	2010	2011	2012	2013	2014	2015
<b>Law centres</b>	€26.31 m	€24.225 m	€24.125 m	€24.125 m	€32.922 m	€32.922 m	€32.471 m
<b>RLS</b>	€8.33m	€8.33m	€6.245	€5.995 m			
<b>FMS</b>				€2.802 m			
<b>Total</b>	<b>€34.640 m</b>	<b>€32.555 m</b>	<b>€30.370 m</b>	<b>€32.922 m</b>	<b>€32.922 m</b>	<b>€32.922 m</b>	<b>€32.471 m</b>

Board Finances in €m 2008 – 2015



The remaining 7% of the Board's income consists of contributions, costs recovered and other relatively minor income sources.

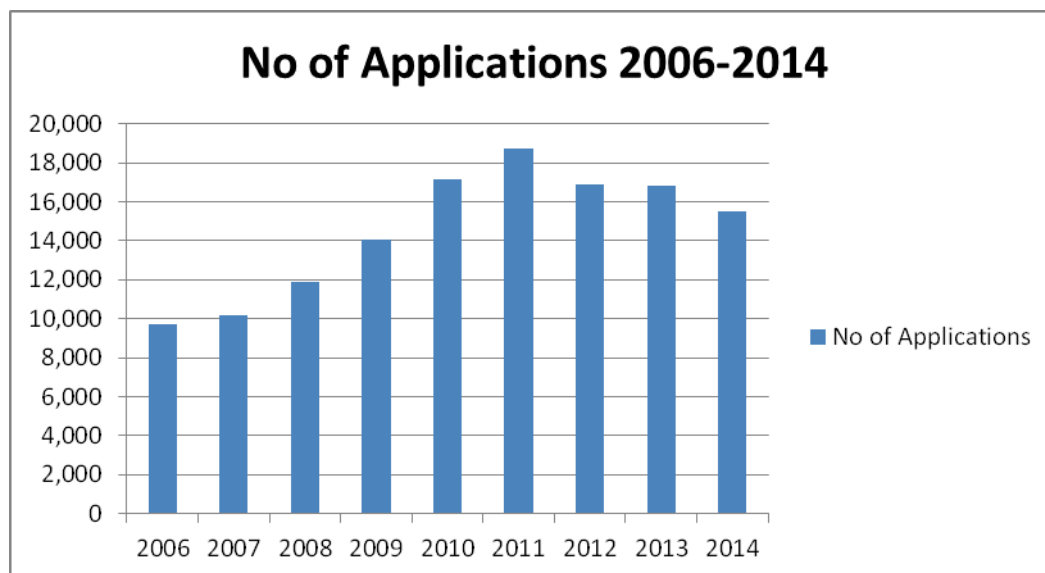
### 3.5 Demand for the Board's services and its capacity to respond

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 has eased somewhat since. The number of applications for legal services in law centres over the past 7 years (not including those for asylum services) is set out in the table below:

<b>Year</b>	<b>No. of Applications</b>
2006	9,689
2007	10,164
2008	11,888
2009	14,073
2010	17,175
2011	18,727
2012	16,870
2013	16,851
2014	15,531

It can be seen that the number of applications at law centres in 2014 was close to 8% less than it was in 2013. The 2014 figure is 60% ahead of that in 2006.

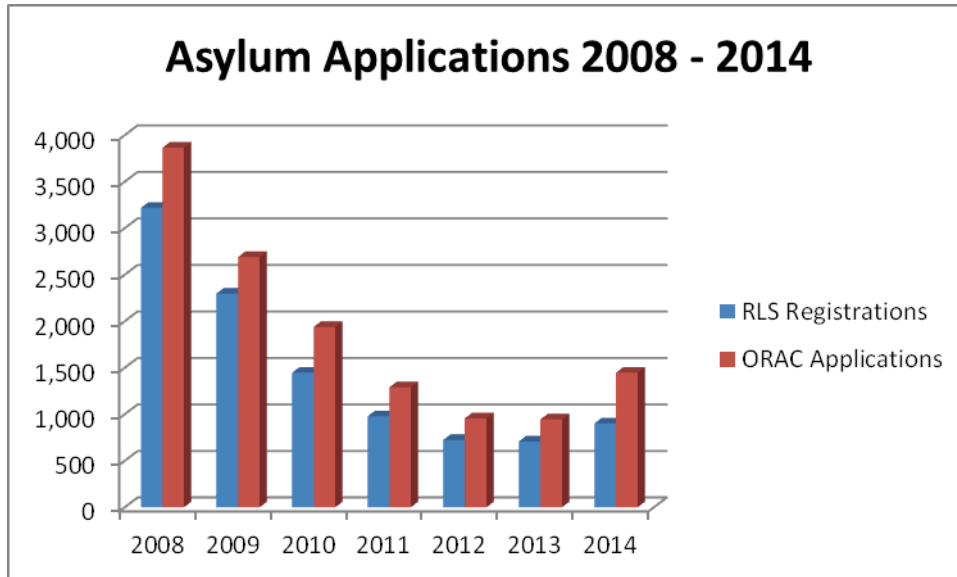


There has been a continued reduction in the number of applications for legal services in asylum cases which was in line with the drop in the number of applications for asylum in the State which had been on the decrease in recent years as can be seen from the table and chart below.

On the asylum side the numbers seeking asylum in the jurisdiction increased in 2014 for the first time in a considerable number of years as did the numbers seeking asylum services from the Board. The first three months of 2015 has

seen a more significant increase in numbers seeking asylum and in numbers applying for asylum related services from the Board:

	2014	2013	2012	2011	2010	2009
<b>LAB Registrations</b>	902	708	725	979	1,448	2,298
<b>ORAC Applications</b>	1,448	946	956	1,290	1,939	2,691



RLS = Refugee Legal Service

ORAC = Office of the Refugee Applications Commissioner

Though the number of new applications has decreased in the last couple of years, the volume of applicants waiting for legal services combined with the reduced number of solicitors available to provide a service continues to test 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 have meant that waiting times for a first (or second) appointment with a solicitor remain a challenge.

### 3.6 Initiatives relating to civil legal aid delivery

Notable initiatives taken in recent years 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:

- In 2012 a 'Triage' type 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 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. It furthermore allows for better signposting to the family mediation service. The pilot does not impact on prioritised matters which continue to get a priority service.

- A start to end case management system was rolled out across the law centre network in August 2012 and has bedded in considerably since. In addition to the benefits in terms of managing cases, the system also provides much more, better and more reliable management information.
- The Board engaged with the Courts Service on an initiative aimed at providing a meaningful on-site mediation option in the Dublin District Family Court in relation to private law cases involving the welfare of children and this has now been in operation for three years.
- The Board is piloting in three 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.

## **4. Criminal Legal Aid**

### **4.1 Coverage of criminal legal aid and responsibility**

Under the Criminal Legal Aid banner there are five separate schemes -

- The main Criminal Legal Aid Scheme
- The Garda (Police) Station Legal Advice Revised Scheme
- The Legal Aid - Custody Issues Scheme
- The Criminal Assets Bureau Legal Aid Scheme
- The District Court (Counsel) Scheme

While the main Criminal Legal Aid Scheme has a statutory footing, the other four listed schemes operate on an ad-hoc basis. The Board is currently responsible for the administration of the Garda (Police) Station Legal Advice Revised Scheme, The Legal Aid - Custody Issues Scheme and the Criminal Assets Bureau Legal Aid Scheme. It is envisaged that the Board will take on the responsibility for the District Court (Counsel) Scheme in 2015 and the legislation required to facilitate the transfer of the main Criminal Legal Aid Scheme is expected to be published in the latter half of 2015.

### **4.2 Main Criminal Legal Aid Scheme**

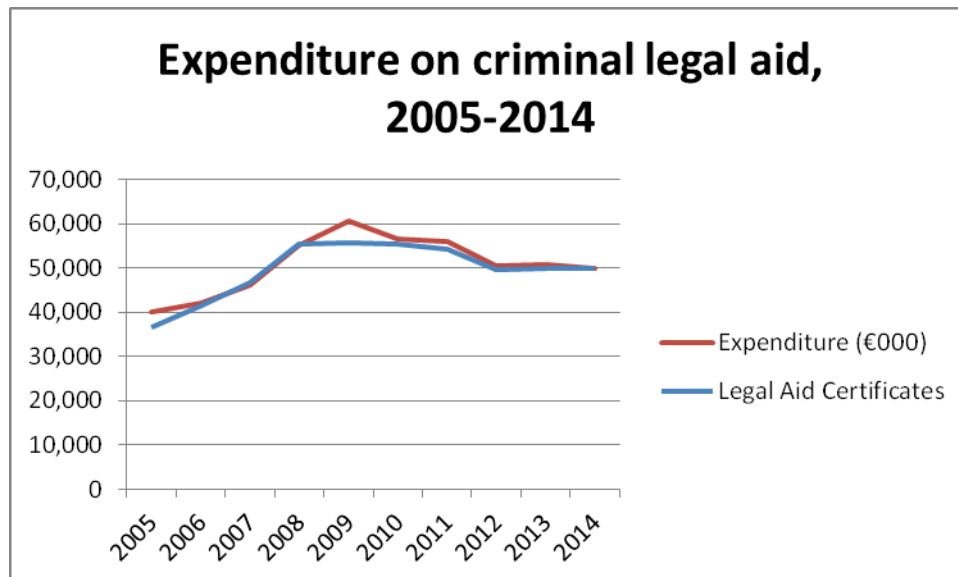
The Criminal Justice Legal Aid Act, 1962 and the subsequent Regulations establish the legal status for the Criminal Legal Aid (CLA) Scheme in Ireland

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 per case basis. The Criminal Legal Aid Scheme is currently administered by the Department of Justice and Equality.

### 4.3 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
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	54,092
2012	50,500	49,639
2013	50,800	49,843
2014	49,900	49,870



### 4.4 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 and an additional cut of 10% in 2011. The likelihood is that as the economy improves there will be pressure to restore the at least some of the payments.

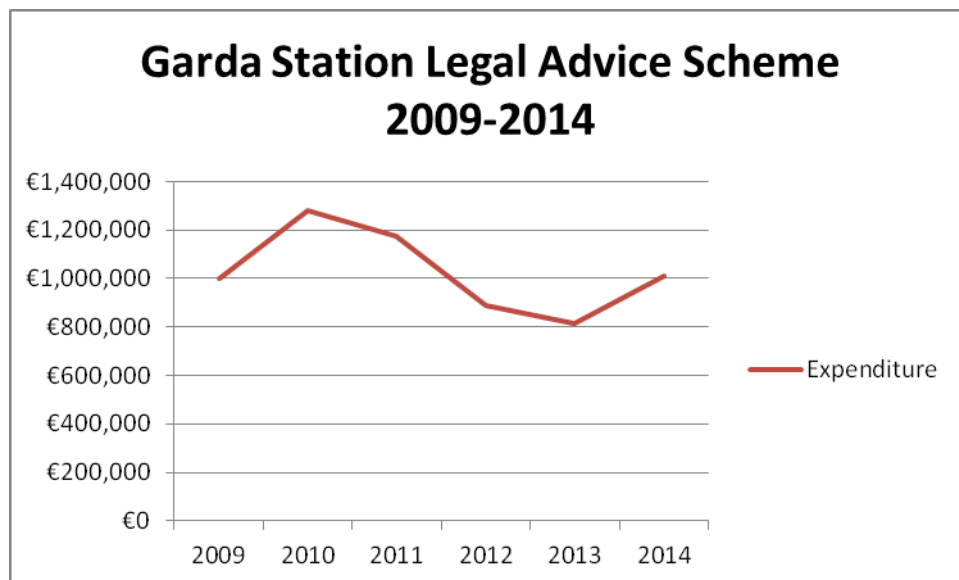
#### 4.5 Garda (Police) Station Legal Advice Revised Scheme

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. 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
2009	€1,001,000
2010	€1,280,000
2011	€1,173,000
2012	€887,451
2013	€811,866
2014	€1,010,219



#### 4.6 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. The Scheme was renamed as the Legal Aid-Custody Issues Scheme in January 2013. 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 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.

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

<b>Year</b>	<b>Expenditure</b>
2009	€1.6m.
2010	€2.9m.
2011	€3.9m.
2012	€3.5m.
2013	€3.4m.
2014	€3.2m.

#### **4.7 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. Responsibility for this Scheme transferred from the Department of Justice and Equality to the Legal Aid Board on 1<sup>st</sup> January, 2014.

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.

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

<b>Year</b>	<b>Expenditure</b>
2009	€334,000
2010	€257,000
2011	€1,100,000
2012	€700,000
2013	€382,000
2014	€327,000

#### **4.8 District Court (Counsel) Scheme**

Responsibility for the District Court (Counsel) Scheme is expected to transfer to the Board in 2015. This Scheme, which is currently administered by the Department of Justice and Equality, is a non-statutory Scheme which empowers a Judge to assign Counsel if the circumstances are deemed to be appropriate (generally only a solicitor is assigned in District Court cases).

Expenditure under the District Court (Counsel) Scheme in recent years is shown in the table and chart below:

<b>Year</b>	<b>Expenditure</b>
2011	€33,000
2012	€43,200
2013	€87,000
2014	€83,200

#### **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 has long been proposed to transfer this scheme to the Legal Aid Board but has not happened to date.

#### **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. Their approach generally is to seek to concentrate on strategic litigation rather than to act as regular service providers (though a number provide regular services in areas outside the Board's remit).

## **7. Mediation**

Responsibility for the provision of State funded family mediation services transferred to the Board in November 2011. The service 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. Mediation is not regulated and while legislation has been promised, a draft Bill has yet to be published.