

**Voluntary Assistance Scheme**  
of The Bar Council of Ireland

Annual Report 2011



*Images from VAS Conference entitled 'Access to Justice: For some or for All?'*  
15th May 2010



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# The provision of voluntary legal assistance has always been a central tenet in the legal profession. Providing voluntary legal services by legal professionals has always been seen as part of our ethical duties to the wider society.

The right of access to justice is accepted as a Constitutional principle and a right under the European Convention of Human Rights. However, in practice significant difficulties remain for a large sector of the population in accessing the courts or accessing legal advice. The provision of voluntary legal assistance has always been a central tenet in the legal profession. Providing voluntary legal services by legal professionals has always been seen as part of our ethical duties to the wider society.

During better economic times issues surrounding access to justice were never prioritised and there remained a large unmet legal need in Ireland. Despite apparent economic prosperity the Civil Legal Aid scheme, which is designed to provide assistance in certain narrow areas of law, remained woefully under-funded and under-resourced. There has always been a gap between the reality of unmet legal need in the State and the services provided to meet that need. Historically that gap was filled in a number of ad-hoc ways by non governmental organisations and community Law Centres, who continue to work in the community and continue to address these needs. It was against this context that the Voluntary Assistance Scheme was established by the Bar Council in 2004.

The Scheme seeks to provide advice and assistance in areas which are not covered by Civil Legal Aid and to those who would otherwise be unable to obtain access to legal advice or representation. Establishing the Scheme was seen by the Bar Council as a representation of one of the fundamental principles of the legal profession – to provide assistance to those who need it most.

The economic recession has resulted in a massive increase in those that need some form of legal assistance but who do not meet the legal aid criteria but also cannot afford legal advice. The economic downturn has led to an increase in legal need in particular areas, including debt and employment law. The increase in home repossession cases is well documented. In many of these cases, home owners are unable to access legal assistance from either the Legal Aid Board or from private solicitors. The gap between what is provided for by the legal aid system and the reality for many people continues to grow. It is apparent that the State-funded legal aid system goes nowhere to meeting the legal needs of those who cannot afford to pay for legal assistance.

It is noticeable that since 2007 there has been a manifest increase in the number of referrals to the Scheme. This probably arises from a wider knowledge of the Scheme by NGO's and is also a reflection of the increasing need for pro-bono legal services. In a time of economic uncertainty and reduced budgets across the State, it is likely that government provision for legal aid, and civil legal aid in particular, will be further reduced leaving an even smaller sector of the population entitled to avail of it. The consequence of this will be that it will fall to NGO's, voluntary groups, charities and the Voluntary Assistance Scheme to ensure that the rights of access to justice for the wider population are met.



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#### **Operation of the Voluntary Assistance Scheme**

The Voluntary Assistance Scheme operates as a brokerage system, matching requests for legal assistance or advice with willing practitioners. The Scheme works through non-governmental organisations and Charities who approach the Scheme for legal assistance on their own behalf or on behalf of their service users/clients. Learning from the experience of previous Schemes run by the Bar Council, the Voluntary Assistance Scheme does not provide assistance to individuals and all work is mediated through NGO's or charities.

In keeping with its mandate to deal with situations in which there is unmet legal need the Voluntary Assistance Scheme primarily works in areas of law which are not covered by the provision of Civil Legal Aid. In reality this means taking on a wide variety of legal work ranging from simple advices to High Court litigation.

The Scheme provides legal assistance to NGO's themselves as well as clients with whom they work. There is an increasing awareness among the community and voluntary sector of the importance of understanding and using the legal dimension to their work. Groups working in this sector are beginning to see the law more as a tool to be utilised and have been placing more focus on the legal aspects of their work.

When a referral is made to the Voluntary Assistance Scheme, we seek to match the piece of work with a barrister with appropriate

and relevant experience. All Senior and Junior Counsel who are currently practising are available to the Voluntary Assistance Scheme to be approached to take on work. Where possible, the emphasis is placed on allowing junior barristers to take on cases in an attempt to give them further experience and to develop their practice.



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The single largest issue that arises in cases referred to the Scheme relates to debt personal debt, mortgage related debt and debts arising from failed businesses.

#### **Work taken on by the Voluntary Assistance Scheme**

Since 2004 the Voluntary Assistance Scheme has taken on a significant number different pieces of work and there are currently 40 pieces of work in progress. The vast majority of these cases relate to advisory work and non-litigation work. The Voluntary Assistance Scheme works with a large variety of NGOs and voluntary groups and every year seeks to expand the groups with whom we work.

The majority of the legal work taken on by barristers through the Voluntary Assistance Scheme involves advising on a particular issue. While litigation is also taken by the Scheme, it represents a small percentage of the work that we carry out.

Since its inception the Voluntary Assistance Scheme provided barristers to advise on cases involving a wide variety of legal areas including debt, social welfare law, employment law, extradition, European Union Law, child care law and corporate governance. The single largest issue that arises in cases referred to the Scheme relates to debt – personal debt, mortgage related debt and debts arising from failed businesses. The issue that generates the second greatest number of queries is that of Employment Law, reflecting the fact that it is not possible to obtain Civil Legal Aid for assistance relating to employment law.

The Voluntary Assistance Scheme has to date worked with nearly 100 NGO's, charities and voluntary groups throughout Ireland. While information about the existence of the Voluntary Assistance Scheme often spreads through word of mouth, the

administrators of the Scheme also make specific attempts to reach out to civil society groups who carry out work in areas in which the law impacts. The most frequent users of the Voluntary Assistance Scheme are money advisors from the Money Advice and Budgeting Service, the St. Vincent de Paul, advocates from the Citizens Information Service and the advocacy services that exist around the country. Most recently the barristers have carried out work for Crosscare, the New Communities Partnership, the European Anti-Poverty Network and the Irish Penal Reform Trust through the Voluntary Assistance Scheme.

#### *Caroline McCann v. The Judge of Monaghan District Court*

In 2006 Colin Daly of the Northside Community Law Centre commenced proceedings on behalf of Caroline McCann challenging the constitutionality of the Enforcement of Court Orders Acts 1926 and 1940 after an order was made for her arrest and imprisonment following her failure to comply with an instalment order which had been obtained by Monaghan Credit Union against her.

Ms. McCann was represented by Fergal Foley BL and Donal O'Donnell SC (as he was then) who took on the case after being requested to do so by the Voluntary Assistance Scheme. On the 18<sup>th</sup> June 2009 Miss Justice Laffoy found in favour of the Plaintiff and struck down section 6 of the Enforcement of Court Orders Act, 1940 on the basis of their unconstitutionality.

#### *Mary Stokes and John Stokes v. Christian Brothers High School, Clonmel and the Department of Education and Skills*

In November 2010 Ramona Quinn, Solicitor for the Irish



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“The poorer you are, the more the law comes down on top of you, and the more you need assistance to deal with it.”

*Noeline Blackwell, director of the Free Legal Advice Centres, Irish Times, May 15th, 2011*

Traveller Movement approached the Voluntary Assistance Scheme seeking a barrister to act in proceedings under the Equal Status Act, 2000-2008 before the Equality Tribunal. At short notice, Vivian Meacham BL agreed to represent the claimants, Mary Stokes and her son John, at the hearing the following week as previous arrangements for representation had fallen through. The claimant, John Stokes, was a member of the Travelling Community who alleged that the entry conditions maintained by his local secondary school, the Christian Brothers High School, Clonmel were discriminatory. John had been refused admission to the school even though he fulfilled a majority of the conditions to entry. The only condition he did not meet was the ‘sibling rule’ in that he is the eldest child and his father did not attend second level education. The proceedings argued that this rule indirectly affects a greater proportion of Travellers and is therefore discriminatory in nature.

On 7<sup>th</sup> December 2010 the Equality Tribunal upheld the complaint made under the Equal Status Act, 2000-2008 against the school and found that the priority given to sons of former pupils was discriminatory against members of the Travelling Community as it placed members of the Travelling Community at a particular disadvantage compared to members of the non-Travelling Community.

The decision of the Equality Tribunal was appealed to the Circuit Court where John Stokes was represented by Vivian Meacham BL and Cormac O Dulachain SC instructed by the Irish Traveller Movement.

*Sample of cases taken on by the Voluntary Assistance Scheme in 2011*

- ❖ Nathy Dunleavy BL is advising an NGO on the interpretation of Article 122 of the TFEU in the context of the reintroduction of the minimum wage
- ❖ Aoife Gillispie BL has assisted a women’s rights NGO with the drafting of a position paper on the Habitual Residence Condition and the impact it has had on migrant women
- ❖ The Ballymun Law Centre instructed Des Ryan BL to advise a Ballymun based Community Employment Scheme in relation to their responsibilities in dealing with an employment issue that arose with staff in the project.
- ❖ Oliver Butler BL is acting for a couple in Circuit Court proceedings who were referred to the Voluntary Assistance Scheme through the Money Advice and Budgeting Service. The proceedings relate to the enforcement of an arbitration award arising out of a building dispute. Eugene F. Collins, solicitors are also acting for the couple following a request to become involved from the Voluntary Assistance Scheme.

On 15<sup>th</sup> May 2010 the Voluntary Assistance Scheme hosted a conference entitled *Access to Justice: For Some or for All?* in the Kings Inns. The keynote speech at the conference was made by Mrs. Mary Robinson SC, former President of Ireland. The conference was also addressed by Noeline Blackwell of FLAC, Damien Peelo of the Irish Traveller Movement and Fr. Peter McVerry SJ.

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The VAS has also proven itself to be a very useful and important resource for people who need to access justice but who do not have the money to pay for legal services or perhaps the time to wait for the Civil Legal Aid scheme.

#### **Management of the Voluntary Assistance Scheme**

The Voluntary Assistance Scheme is managed under the auspices of the External Relations Committee of the Bar Council, chaired by Sasha Gayer BL. The Scheme is managed on a day-to-day basis by Aoife Carroll BL and Jeanne McDonagh. A sub-committee comprised of Sasha Gayer BL, Michael Cush SC, Turlough O'Donnell SC, Aoife Carroll BL and Jeanne McDonagh are responsible for the overall management and direction of the Voluntary Assistance Scheme.

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#### **Solicitors and the Voluntary Assistance Scheme**

The Voluntary Assistance Scheme works closely with a number of solicitors firms who provide voluntary legal services to NGO's and their clients through the Voluntary Assistance Scheme. In particular, solicitors have provided representation for clients on a voluntary basis in contentious litigation matters, ensuring that those who cannot afford it still have a full team of legal representatives in court cases.

The Voluntary Assistance Scheme also works with community Law Centres throughout Ireland and provide barristers to work on cases for Law Centres on a voluntary basis. In particular the Voluntary Assistance Scheme works closely with the Northside Community Law Centre and the Legal Unit of the Irish Traveller Movement and regularly provides barristers to act in litigation that the Law Centre and the Legal Unit are involved in.

On 8th July 2011 the Law Society and the Voluntary Assistance Scheme, in association with PILA, hosted an education forum for NGO's in the Presidents Hall, Blackhall Place. Solicitors from 7 different firms gave seminars under the topics of Data Protection & Freedom of Information, Home Repossessions & Personal Debt, Employment Law and Corporate Governance. The forum was attended by over 50 representatives from different NGO's and voluntary groups.

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# People in my community feel “that the structures of society including the law were against them”

*Fr Peter McVerry, Irish Times, 15th May 2010*

## **Review of the Voluntary Assistance Scheme**

In 2010 the External Relations Committee of the Bar Council decided to carry out an independent review of the work of the Voluntary Assistance Scheme. The Scheme had been operating for six years and it was considered that it would be an appropriate juncture to carry out an important review of the operation of the Scheme.

Stephen Rourke, an independent consultant, was appointed to carry out the Review and was tasked with the job of determining the impact and effectiveness of the Voluntary Assistance Scheme. He was also asked to consider how the processes of the Voluntary Assistance Scheme might be improved and to review the management and administration of the Scheme. The review also considered the public profile of the Scheme and how that may be improved.

In carrying out the review Mr. Rourke distributed a questionnaire to all voluntary organisations that have used the Voluntary Assistance Scheme, carried out interviews with representatives from a number of those organisations and with barristers who had done work through the Scheme.

The review concluded that *“The Voluntary Assistance Scheme has proven itself to be a very useful and very effective conduit through which barristers can provide voluntary legal service to poorer and more vulnerable people who cannot afford commercial legal services. There can be little doubt that the VAS has facilitated the participation of a large number of barristers in voluntary legal*

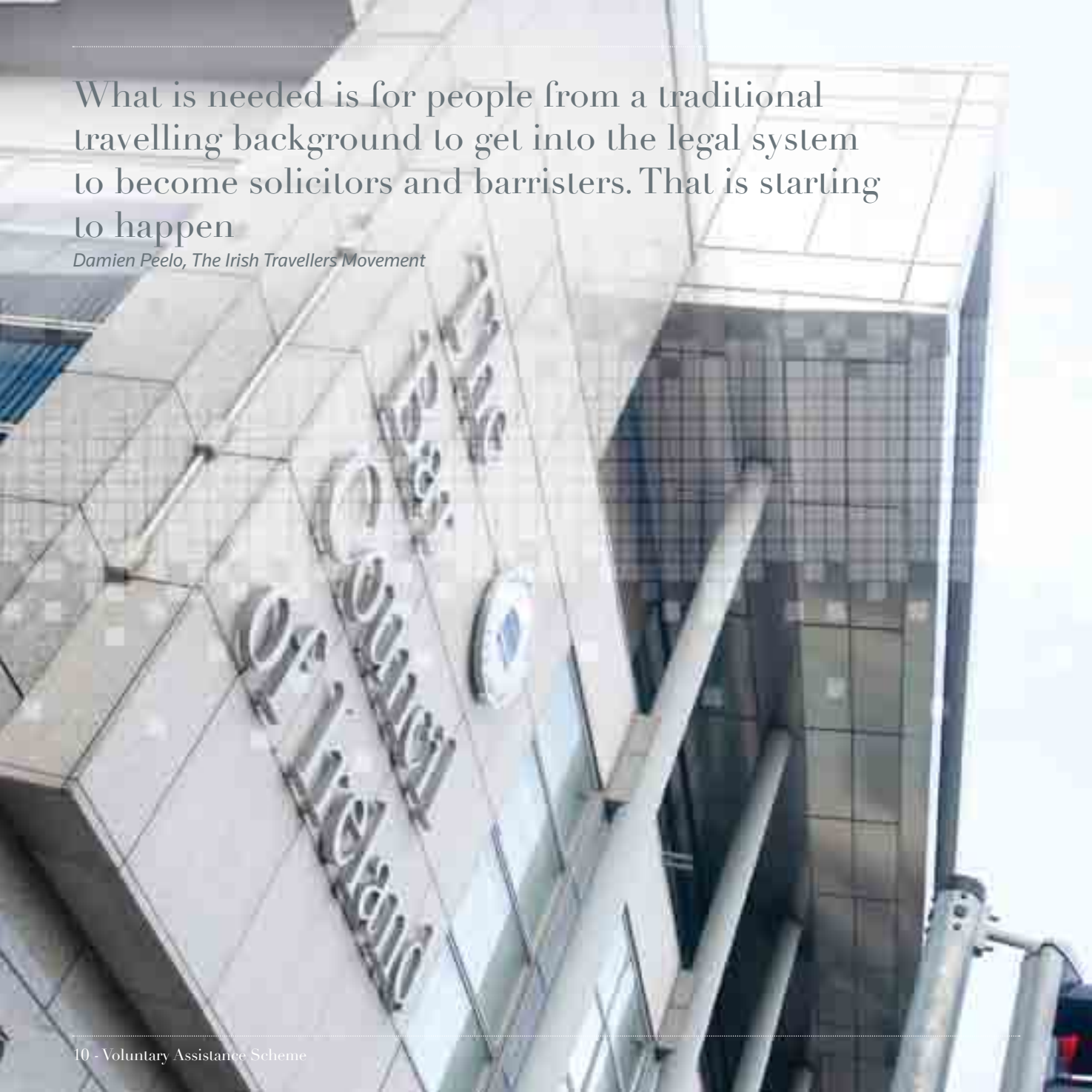
*work – whilst many barristers might have been inclined towards this type of work they often did not have the appropriate contacts within voluntary sector organisations. The VAS has also proven itself to be a very useful and important resource for people who need to access justice but who do not have the money to pay for legal services or perhaps the time to wait for the Civil Legal Aid scheme.”*

The review made various recommendations about the Voluntary Assistance Scheme which we are in the processes of implementing.

The review conducted by Stephen Rourke is available for consideration on the Bar Council’s website.

What is needed is for people from a traditional travelling background to get into the legal system to become solicitors and barristers. That is starting to happen

*Damien Peelo, The Irish Travellers Movement*



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## Appendix

### Solicitors working with the Voluntary Assistance Scheme

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Arthur Cox

Mason Hayes and Curran

Matheson Ormsby Prentice

William Fry

McCann Fitzgerald

Eugene F. Collins

Beauchamps

Ivor Fitzpatrick & Company

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## Appendix

### List of NGO's working with the Voluntary Assistance Scheme

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Northside Community Law Centre	Youth Work Ireland	Advic
New Communities Partnership	National Gay and Lesbian Federation	Women's Aid
Wexford Citizens Information Centre	Carmichael Centre	Swords Youth Council
St. Vincent DePaul	Dublin Simon	Pitter Patter Creche
European Anti Poverty Network	Gay and Lesbian Equality Network	Dublin Simon
Darndale Belcamp Initiative Limited	Mayo Advocacy Service for People with Disabilities	Rape Crises Network Ireland
Irish Penal Reform Trust	Volunteering Ireland	West Cork Citizens Information Service
Longford Women's Link	Migrant Rights Centre	Silloogue ECO (Environmental Community Group)
Family Focus	Seed Savers Association	FLAC
Linx Project Limited	National Community Development Forum	Cluid Housing Association
Adoption Loss/Natural Parents Network of Ireland,	Ballymun Residential Project	Dublin 12 Development Action Group
Anne Sullivan Centre Limited	Volunteering Ireland	Ballymun Youth Resource Centre
Crosscare	Irish Council for Civil Liberties	Seomra Spraoi
The Money Advice and Budgeting Service	FLAC	European Anti-Poverty Network
Irish Human Rights Commission	Galway Advocacy Service	International Organisation for Migration
Assemblies of God Ireland (AGI)	Limerick Advocacy Service	Refugee Information Service
Co. Meath Citizens Information Officer	Ballymun Advocacy Service	NCCWN
Irish Traveller Movement	Focus Ireland	Enable Ireland
Get Ireland Working Team	Ability West	Ballyfermot Travellers Action Project
Citizens Information Service	Mercy Law Resource Centre	Preparing for Life - Northside Partnership
Vincentian Refugee Centre	Waterford Independent Advocacy	Tralee Refugee Support Services
Treoir	Our Lady's Nursery	Irish Guide Dogs for the Blind
Poppintree Youth Service	Ballymun Regional Youth Resource	Cosgallen Community Development Project
Ballyfermot Advocacy	Heart Children Ireland	Emigrant Advice
Sphere 17 RYS	Plough Youth Club	Catherine McAuley Centre
BRI The Acquired Brain Injury Advocacy Association	Coolock Development Council Ltd	Dun Laoghaire Refugee Project
Irish Mountain Rescue Association	Ballymun Local Drugs Task Force	Ireland Action for Bosnia
The Base Youth Centre	Galway Rape Crisis Centre	Disability Legal Resource
Discovery Gospel Choir	Sphere 17 Regional Youth Service	
Limerick Animal Welfare	Threshold	
	OPEN	



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