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Ireland

**Housing Rights
& Homelessness:
lessons from
a pro bono
partnership**

A&L Goodbody
Mercy Law Resource Centre
PILA (Public Interest Law Alliance)

**Challenging
homelessness.
Changing lives.**

Contents

Introduction	2
History of the Legal Clinics	3
Evolution of the Partnership	4
Casework	6
Contextual Analysis	7
Examples of Legal Issues	9
- Mercy Law Resource Centre	
Case Studies – A&L Goodbody	11
Conclusion	14



Housing Rights & Homelessness: lessons from a pro bono partnership

This report details an innovative housing law clinic operated from the Focus Ireland service in Temple Bar. The housing law clinic is a partnership between Focus Ireland, A&L Goodbody, and Mercy Law Resource Centre which was supported and facilitated by the Public Interest Law Alliance. It consists of legal advice given at weekly clinics and follow up legal representation.

Introduction

The current housing crisis is one of Ireland's most pressing social issues.

There has been a rapid and unprecedented rise in homelessness over the past five years.

Ireland has witnessed the emergence of family homelessness, with an average of 93 families presenting as newly homeless each month in Dublin in 2018. There were 10,262 individuals experiencing homelessness in February 2019, including 3,784 children. There are others experiencing hidden homelessness, residing in unsuitable accommodation or staying with friends and family as well as those who are at risk of homelessness.

The majority of families and individuals experiencing or at risk of homelessness are entitled to social housing, but the lack of supply has resulted in waiting lists of a decade or longer for many.

The scale of our housing and homelessness crisis means that local authority staff are under pressure in allocating scarce resources. The circumstances of some homeless households can be quite complex and legislation is often unclear. There is no express right to housing in our laws or Constitution. While most of the households are eligible for social housing, proving this can be a complex process, as can accessing social housing supports to live in the private rented sector. While many families and individuals manage to navigate these systems with minimal support, others find the barriers too much - accessing safe emergency accommodation presents a huge challenge, let alone finding stable, secure housing. Some of these barriers involve an interpretation of the

law which individuals have a right to challenge but civil legal aid is not available when the case involves housing.

Focus Ireland provides professional advocacy support to individuals and families at risk of and experiencing homelessness. Staff engage with State agencies and local authorities on behalf of customers, advocating for necessary supports and challenging decisions. While we are often able to assist customers to resolve their housing issues, or provide the support they need if this is not possible, some cases require legal advice and intervention. Innovative voluntary and pro bono services have filled the gap created by the current legal aid system. This report details one such service; a partnership between Focus Ireland, A&L Goodbody, and Mercy Law Resource Centre (MLRC) which was supported and facilitated by the Public Interest Law Alliance (PILA).

The partnership consists of legal advice given at weekly Housing Law Clinics and follow-on legal representation.

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History of the Legal Clinics

In 2010, Mercy Law Resource Centre set up a free legal advice clinic in partnership with Focus Ireland.

The clinic was hosted in the organisation's premises on Eustace Street in Temple Bar, just opposite the Focus Ireland Coffee Shop. This clinic ran each Wednesday until the new pro bono partnership with A&L Goodbody commenced in January 2018.

MLRC was set up in 2009. It is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation for people who are homeless or at risk of becoming homeless. It also seeks to advocate changes in laws, policies and attitudes which unduly and adversely impact people who are at the margins of our society.

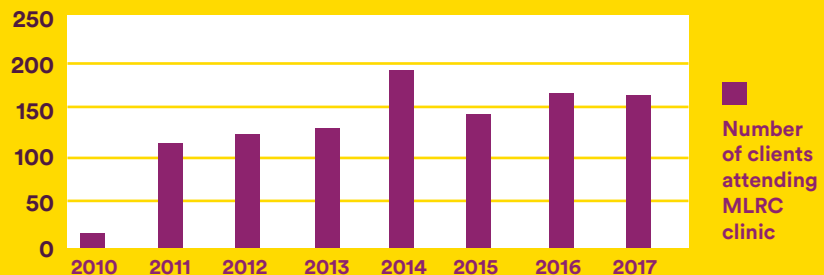
MLRC established the clinic at Focus Ireland in order to be an accessible legal advice service, provided in a location that may be familiar and reachable for homeless individuals and families. The clinic was established to serve a huge unmet legal need for individuals with housing difficulties, given the absence of legal aid provision and the barriers to accessing housing entitlements.

The clinic ran for eight years before the pro bono engagement started. Over those years, new clients were referred into the clinic by Focus Ireland key workers and from contacts directly to the office of MLRC. Each week a solicitor from MLRC met with four to five clients and advised on a range of matters from urgent homelessness issues to issues arising with conditions in social housing.

Over the course of the eight years, MLRC solicitors met with and provided legal advice to approximately 1,054 new clients. MLRC provided further legal representation to many clients who first engaged with the service through the clinic.

At the Focus Ireland clinic, MLRC advised clients on a wide range of issues. From 2015 onwards, its solicitors frequently met with families who were homeless and facing serious difficulties accessing appropriate emergency accommodation. Some examples of the cases MLRC have worked on through the clinic are detailed in this report.

Clients attending Mercy Law Resource Centre legal advice clinic at Focus Ireland, 2010 to 2017



Evolution of the Partnership

As the housing crisis escalated, and the need for legal services increased, Mercy Law Resource Centre approached the Public Interest Law Alliance (PILA) to discuss the scope of a pro bono partnership that would enhance the capacity of the law centre and increase its reach in order to address the growing unmet legal need.

PILA is a project of FLAC (Free Legal Advice Centres) which develops public interest law in Ireland by bringing pro bono legal support to social justice non-governmental organisations (NGOs). In doing so, PILA not only works with NGOs to increase their capacity to use the law, but also with the legal profession to develop a culture of structured pro bono practice. This has led to a greater willingness to take on pro bono legal work, particularly amongst large commercial law firms who are increasingly open to considering areas of law outside their expertise.

In discussing the capacity need within MLRC, it became clear that there was potential to design a 'Signature Project'. The Signature Project is an emerging and innovative model whereby a law firm seeking to strengthen and diversify its pro bono practice takes on individual casework through a strategic partnership with an NGO. MLRC and PILA worked together in developing a proposal that would see corporate lawyers trained up in housing law, attending the weekly Focus Ireland clinic and taking on any relevant follow up – including litigation if required.

PILA then considered the best fit for a project of this nature, and brought the idea to A&L

Goodbody. PILA facilitated a number of meetings between A&L Goodbody and MLRC to examine the issues arising in the clinics, relevant law and procedure, and the practicalities of partnering on the project. It was important to determine what would be expected of the lawyers and how readily they could be trained to provide advice and representation in a new area of law. Taking into account the critical unmet legal need of those who are homeless, A&L Goodbody quickly agreed to begin work on the project.

In December 2017 sixty seven solicitors, trainees and paralegals undertook legal training in housing law provided by MLRC. This covered the legal framework pertaining to social housing and homeless provision, details of common legal issues arising at the clinics and examination of case studies to ensure an understanding of the practical application of the relevant housing law. An MLRC training manual was also provided as an ongoing resource to solicitors involved in the clinics. The training programme was an important element and ensured that the legal advisors from A&L Goodbody were well equipped to respond to the legal issues facing people experiencing homelessness. Solicitors also met with Focus Ireland staff who gave them an insight into the

experience of people who may be attending the clinic and how to support customers who may be going through very chaotic periods of their life.

After the training, and before attending the clinic on their own, a number of A&L Goodbody solicitors shadowed solicitors from MLRC. Again, this was a necessary part of the planning phase. It provided a solid base from which the A&L Goodbody solicitors could start seeing clients through the clinic.

The clinic operates once a week from the Focus Ireland office on Eustace Street. Focus Ireland support workers and staff refer customers to the clinics. They complete a referral form which includes contact information for the customer, as well as some preliminary notes on the case and advocacy work completed to date. Referrals are processed by a Focus Ireland project leader, who schedules clinic appointments and sends the relevant referral forms to A&L Goodbody and MLRC. The A&L Goodbody Pro Bono Associate contacts the customers to ensure that the referral is suitable for the clinic and to confirm the appointment time. She then briefs the team of solicitors attending the clinic that week.

Each referral sheet includes contact details for the referring Focus Ireland staff member. It became apparent during the pilot phase of the project that engagement between the customer, solicitor and support worker was vital. It is often necessary to undertake advocacy work while any legal case is progressing, and Focus Ireland staff are well placed to do this. They can also support the customer to collate information requested by the solicitor.

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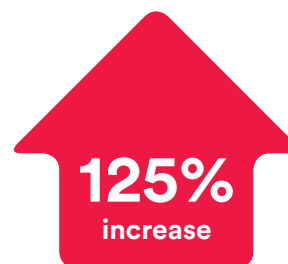
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Casework

With increased capacity it was possible to dramatically increase the number of consultations taking place at Focus Ireland.

Three hundred appointments were scheduled by Focus Ireland, an increase of 125% in the legal services available. Two A&L Goodbody solicitors attend the clinic every Wednesday and can see up to eight clients in a given afternoon.

Following the weekly clinic A&L Goodbody also provides end-to-end legal representation for clients who require additional legal assistance to resolve their housing issue. The individual or family become a client of A&L Goodbody and are advised in relation to their housing issue. In twelve months 93 clients were supported in this way. Unlike other models of pro bono assistance which are limited to legal advice and information, A&L Goodbody provides end-to-end case work to support an individual out of homelessness. This can, for example, involve A&L Goodbody challenging refusals of emergency accommodation, ensuring the application of fair procedures and standards of good administration by approved bodies and local authorities, and representing clients before the Residential Tenancies Board.



300

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Contextual Analysis

The solicitors engaged in the project have supported customers with a wide variety of legal queries relating to housing and homelessness.

It is important to situate this work in the wider context of the crisis. The year 2018 saw the largest ever increase in family homelessness. A significant number of challenges contributed to this increase. These included a reduction in social housing allocations to homeless households in some local authorities and the continuing tightening of the private rented market.

The advice and information services which Focus Ireland run in Dublin and around the country have witnessed the emergence of trends as the housing and homelessness crisis has worsened. During 2015/2016, a significant number of households seeking support were doing so because they were struggling with their rent and their tenancies were at risk as a result. Changes to rent supplement rates and the introduction of Housing Assistance Payment made some impact, though these social housing supports have not kept pace with rental increases. During 2017/2018, the majority of households in need of support were at risk of homelessness because they had received a valid Notice of Termination as their landlord was leaving the market. This likely reflects a more buoyant property market and 'accidental landlords' leaving the rental sector.

The issues emerging during the legal clinics are distinct from advice and information queries, as staff are directed to only refer customers with a legal query. Many of the issues which arise during advice and information sessions are the effect of policies which are best challenged via advocacy, rather than legal action. For example,

households facing homelessness because their landlord has terminated their tenancy in order to sell do not necessarily have legal recourse. The action of their landlord is legally permitted. Focus Ireland works on tackling these structural policy issues through our advocacy work. However, there remain a significant number of individuals and households who require legal advice and representation to resolve their housing concerns.

For this report, we have reviewed casework data relating to 86 cases and have included a number of case studies in the section below. 36 of the cases related to families or individuals experiencing homelessness. A further 10 related to households in the private rented sector while 7 related to households residing in local authority housing.

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86

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Below are the issues raised by customers accessing the clinic

Refusal of housing application	2
Landlord refusing HAP	1
Housing allocation	1
Transfer	10
Housing application deletion	2
RAS related	1
Inadequate accommodation	7
Succession	3
Accessing social housing	24
HAP related	6
Accessing emergency accommodation	6
Accessing priority status	5
Notice of Termination	5
Custody and housing	1

18 of the 86 cases analysed from 2018 are now closed. The majority are ongoing, evidence of the complexity of the legal issues involved. All but 2 of these 18 cases saw positive resolution.

The majority of households accessing the legal clinic were seeking support in engaging with their local authority and challenging decisions pertaining to their housing entitlements. While such decisions can have serious impacts for individuals and families, legal aid is not available in relation to housing and homelessness cases. In addition, the lack of a justiciable right to housing limits the legal avenues open to customers.

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Focus Ireland and MLRC are campaigning for legal protection of the right to housing in Ireland. In addition to individual advocacy and legal support, the Housing Law Clinics provide an important insight into the legal trends emerging from the housing and homelessness crisis. Both Focus Ireland and MLRC are engaged in higher level advocacy work which aims to tackle the structural and administrative issues contributing to the crisis. Every two months staff from the four organisations gather to discuss the trends emerging in their work. This knowledge feeds into submissions made to Government departments and agencies.

Examples of Legal Issues - Mercy Law Resource Centre

Families provided with inadequate and inappropriate emergency accommodation

At the clinic, Mercy Law Resource Centre met with several families who had been placed or had had to source for themselves highly inappropriate emergency accommodation, ordinarily in B&Bs and hotels. MLRC acted for one such family, who were placed in unsuitable emergency accommodation that presented a risk to our client's unborn child.

Focus Ireland referred the family to the MLRC legal clinic in late November 2016 and MLRC initially advocated on their behalf, arguing the family was homeless within the terms of s 2 of the Housing Act 1988. It took some weeks to resolve this issue with the local authority and, in the absence of any response from the local authority, MLRC instructed counsel with a view to bringing High Court litigation. However just before Christmas, the local authority accepted that the family were indeed homeless and put them on the self-accommodation option. This meant that the family had to source their own emergency accommodation and were only able to secure a booking in a B&B, located some distance from the children's school.

Serious difficulties quickly arose with the suitability of the B&B accommodation as it did not meet the needs of the client who was pregnant. The client, a diabetic, was admitted to a maternity hospital in January 2017 with high blood sugar levels that presented a risk to her and her unborn child. The hospital wrote to the local authority directly, highlighting the particular needs of this pregnant mother, confirming the unsuitability of B&B accommodation and the need for stable

accommodation where the mother could cook for herself and her family and therefore manage her blood sugar levels effectively.

MLRC also wrote to the local authority stating that B&B accommodation was documented to be unsuitable and presented a risk to the health of the mother and her unborn child. MLRC referred to the negative effect on the family in terms of their family life, their diet, their well-being, and the financial impact. MLRC relied on several medical reports that had been provided and a report from the hospital social worker. MLRC argued that the local authority was obliged to comply with its duties under relevant housing legislation and that such provisions must be interpreted in a manner compatible with the Constitution and with the European Convention of Human Rights.

MLRC contended that the local authority, in providing emergency accommodation that did not meet the family's needs, breached and/or disproportionately interfered with the constitutional and fundamental rights of the family members, including the unborn child, particularly with respect to their right to privacy and family life and their personal rights.

Fortunately, MLRC received a positive response from the local authority shortly afterwards. The family was immediately moved to alternative temporary accommodation operated by an Approved Housing Association. The accommodation was family-friendly, with cooking and laundry facilities together with space for the children to do their homework and play. The location was also significantly better for accessing the children's schools. The client was hugely relieved to move into this accommodation which she felt met the needs of her family.

Vulnerable client refused access to the social housing list

MLRC met a client, a victim of domestic violence, at the Focus Ireland clinic, who had been refused access to the social housing list and was in a very distressing situation. The client was a non-Irish national and had been refused access to the housing list as she had not made a joint application with her husband, who was the perpetrator. At the time of meeting her, the client was pregnant and had left the family home to seek safety in a refuge.

After initial correspondence with the local authority failed to resolve the issues, MLRC challenged the local authority's refusal by way of High Court litigation. The litigation directly challenged the lawfulness and the lawful application of Circular 2012/41, which is a policy document issued by the Department of Housing, Planning and Local Government, restricting the access to social housing for non-Irish nationals. Fortunately, the case settled prior to hearing, in the client's favour.

Refusal of emergency accommodation to vulnerable family

MLRC took a number of High Court actions on behalf of families who were refused access to emergency homeless accommodation by local authorities. Several of these families accessed the MLRC service through the Focus Ireland clinic.

One case in particular involved a mother who travelled from Malaysia to Ireland in 2016. The daughter was an Irish citizen and the mother travelled to Ireland to secure suitable second level education for her daughter, which she considered not available for her within Malaysia. The mother ran out of monies in 2017 and resorted to sleeping in their rental car for over two weeks until they came to the attention of An Garda Síochána who put the family in touch with a women's refuge in Bray.

In February 2017, the mother applied to be put on the housing list but was refused as the local authority believed she had monies to fund her own emergency accommodation and on the basis that the family could access alternative accommodation in Malaysia. MLRC engaged in lengthy correspondence with the local authority but this did not resolve the issue. High Court litigation subsequently issued, to challenge the decision of the local authority to refuse the family emergency accommodation.

In those proceedings, MLRC argued on behalf of the family that the local authority's decision to refuse emergency accommodation was irrational and unreasonable and based on irrelevant considerations, the decision was based on errors of fact, and that the local authority failed to vindicate the mother and daughter's rights under Articles 40.1, 40.3 and 42A of the Constitution and Articles 3, 8 and 14 of the ECHR. Nonetheless, the Court held that the Respondent's decision was not at "variance with fundamental reason and common sense" and that the local authority's conclusion that the applicants could access emergency homeless accommodation in Malaysia was not unlawful.

The decision showed the high level of deference afforded to the local authority in their decision-making with respect of the homeless assessment. The decision of the Court in this case, and in other similar cases, highlighted the clear gap in legal protection for families who are homeless as there is not right to emergency accommodation in Irish law.

While the Court upheld the decision of the local authority in this case, the client was ultimately provided with emergency accommodation.

Case Studies – A&L Goodbody

Eoghan O’Keefe



I have attended at the clinic a number of times but one case in particular stands out. I met with a young couple with four children under the age of 7. By the time the couple presented at the clinic they had been homeless for over a year.

The family frequently moved between various accommodation options and the unpredictable nature of their living arrangements placed a lot of stress on the family. Their need for long-term accommodation was compounded by their second youngest daughter’s medical requirements. She had been diagnosed with Autism Spectrum Disorder and the family had been advised by their doctor that the fact the family was constantly moving between accommodations was having a detrimental impact on her overall development.

The family were entitled to avail of a home tuition programme from the Department of Education which would assist in managing their daughter’s condition. However they were subsequently told that she would be unable to avail of the tuition unless she had a permanent home address in which to receive it.

They had applied numerous times to their local authority for any form of long term or rolling accommodation but had been unsuccessful due to the difficulty in accommodating a family of six. When possible they had availed of the self-accommodation scheme or emergency

accommodation. However in many cases the accommodation available was not suitable for their young children and they were forced to split the family between various friends and relatives in order to ensure accommodation for a night. When we met them they had not been offered any suitable accommodation for a period of 6 weeks. During this time the family were forced to separate and stay in a number of different homes. We advocated on the family’s behalf to their local authority on a number of occasions, explaining the family’s urgent need for accommodation. However we received only a limited response.

We then reached out to a barrister and drafted a letter to the local authority again outlining the family’s circumstances and noting that if suitable accommodation were not provided soon, we would be bringing a judicial review application and a seeking a High Court Order to address the situation.

Shortly after sending that letter, the family were informed that they had been nominated for a placement in a family hub. Fortunately they were successful in their interview and were granted a large apartment on an 18 month contract. Our clients were really grateful for our help throughout the process and were delighted with the result.

I would highly recommend getting involved in the housing law clinic programme to any solicitor. From a practical perspective, it’s a great way to develop key skills needed as a solicitor. It also grants an opportunity to apply those skills to a really worthwhile endeavour. Very often the clients we deal with through the Clinic are in a very vulnerable position and can be extremely frustrated by the responses they have received elsewhere. The housing law clinic affords them the opportunity to be listened to and, through our representation, to ensure that their voices are properly heard within the social housing process.

Jack Kennedy



I joined A&L Goodbody in 2018 and was quick to get involved with the housing law clinic. One client in particular stands out above the other people I met through the clinic. Our client was residing in a one bedroom apartment with her father and stepmother. Her father had been living in the apartment since 2009. The apartment is owned by a local authority but an Approved Housing Body (AHB) manages the property and had been acting as landlord. Our client had moved into the property in 2015 on a temporary six month licence. After the expiration of six months our client continued to reside at the property. She had been added to the rent book and began paying rent to the AHB. In May 2018 her father notified the AHB of his intention to emigrate and that his daughter would continue to reside at the property in accordance with the local authority's succession policy. However, given a recent change in that policy our client was no longer eligible to take over the tenancy.

The AHB sought to evict our client and take back the property. The challenge for us was to try and establish a tenancy for our client. Given the exceptions under the Land and Conveyancing Act 2009 for AHB's it was difficult to see how we would do so. We engaged in advocacy efforts with the AHB. We outlined our client's circumstances and sought to negotiate a transfer of the lease or alternatively that our client be offered a new tenancy with the AHB.

We ultimately ended up in adjudication before the Residential Tenancy Board (RTB) seeking a determination of the matter. The RTB found against our client but we did manage to secure our client an extra six months in the property than she initially would have had. The AHB also returned all rent monies paid by our client. This additional time provided our client with the

breathing space necessary to secure alternative accommodation which she did during this period.

As a solicitor you often forget how difficult it can be for someone without any legal training to find an answer to a legal problem. Being able to attend the clinic and help someone who may not be able to afford to pay for advice is exceptionally rewarding. The clinic has also given me an insight into the sheer scale of this housing crisis and the need for more people to get involved to try and tackle an issue which only seems to be worsening.

Grace O'Malley



Through the clinic I have met with a number of families who were homeless or in imminent fear of becoming so. Reflecting on the work I have been involved with one family in particular stands out. The family was made homeless due to targeted anti-social behavior. The family was constantly harassed and this culminated in their housing being burnt out and rendered uninhabitable. Our client is a single father with sole custody of a teenage daughter. Our client is also illiterate so his teenage daughter was heavily involved and assisted with the paperwork and correspondence with the local authority.

This case involved a huge amount of advocacy work on our part and we were in constant communication with the local authority. The family had not accessed emergency accommodation and 'couch-surfed' with friends and family. As the family was not roofless their case was not being treated with the urgency it required. After many letters and calls back and forth to the local authority, we successfully secured a transfer of the client's tenancy to another suitable tenancy in the same area near the daughter's school.

The housing crisis can seem like such an insurmountable problem, but this clinic gives solicitors an opportunity to help those affected by it in an incremental but effective way. Many of the clients I have come across face literacy issues and language barriers in dealing with housing authorities – this is where we can step in and use our legal skills to trudge through the paperwork and pick out the key issues and advocate persistently on behalf of our clients. A large part of our role is to really listen to clients and to let them know we're on their side, as many of the authorities seem to deal with homeless people and those at risk of homelessness in a dehumanising manner. I would really encourage solicitors to help out, when we already have the skills and knowledge and the supports at our disposal. It is a small effort that goes a long way in restoring dignity and stability to the lives of people and families who find themselves homeless.

Audrey Whyte



I am struck by the complexity of the legal issues presenting at the clinic. One case I have worked on highlights this quite well. I met with a foreign national couple with three children. All three children have complex medical needs. The current accommodation was wholly inadequate; however it was necessary to take a more medium and long term approach to support the family's housing needs.

The family required a tenancy agreement for a previously illegally sub-let local authority property. We successfully engaged with the landlord and local authority and the family were granted a new lease for the current property. However, we were aware that the family required a long term solution to their housing needs. This involved us working with medical professionals to obtain occupational

and consultant reports to evidence the medical needs of the children. We also obtained an environmental health report which supported our argument that the property failed to meet the needs of the children. These advocacy efforts have resulted in the family having their status on the medical priority housing list updated from a 3 bed to a 4 bed house.

Access to social housing is fraught with difficulties but I believe that individual case work can help in a small way to improve the system by advocating on behalf of those faced with the harrowing situation of being homeless or at risk of homelessness. Working in the clinic has been an extremely worthwhile experience both professionally and personally and I would encourage others to get involved. Our client offers the following insight:

“My family is indeed very grateful to the law firm of A&L Goodbody for your very dedicated service, especially Audrey assisted by ... Jamie. Particularly of note is the fact that at all times during your representation in the long drawn out process to address our housing need, there was this inexplicable belief in us that you had our best interests at heart, even when the only options on the table didn't seem most palatable in our situation. In your peculiar humane but professional manner you ensured all issues presenting were properly addressed to achieve the best possible outcome for us in the end. Suffice it to say that the difference you've made is remarkable”

Conclusion

The Housing Law clinic has provided a very valuable resource for clients of Focus Ireland and other homeless individuals and families to access legal advice in an accessible and flexible manner. The original iteration of the clinic, established by Mercy Law Resource Centre, has provided a sound basis for development of the pro bono project. The impact of the clinic, proven over the course of eight years, is now being built on and expanded through the partnership with A&L Goodbody. The pro bono partnership and support of A&L Goodbody has enhanced MLRC's capacity to engage with other clinics and reach a greater number of vulnerable individuals and families who are facing homelessness.

This service has been made possible due to the unique collaboration between the organisations. As highlighted by the solicitors in the above case studies, many of the cases presented to the clinic are legally complex and require persistent advocacy to resolve. Without access to such services, it is hard to imagine that individuals or families would be in a position to resolve such issues themselves, given the chaos that homelessness causes. The importance of the legal advice and representation provided by A&L Goodbody and MLRC cannot be overstated. While it is hoped that such pro bono supports will not always be needed, until such time as we have fair, transparent and accessible public housing and legal aid systems they will remain necessary.

Notes

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