

BRIDGING THE GAP BETWEEN LEGAL RIGHTS AND HOMELESSNESS – THE WORK OF THE MERCY LAW RESOURCE CENTRE

Brian Barry*

PhD Candidate, Trinity College Dublin and Trainee Solicitor with Mason Hayes & Curran.

Email: barrybr@tcd.ie

Abstract:

This article is an exposition of the work of the Mercy Law Resource Centre, a Dublin law centre that focuses on the provision of legal services to people affected by homelessness. The author discusses the legal frameworks relating to homelessness and the factors that contribute to its complexity and intractability as a social problem. He sets out a practical account of the way in which the work of MLRC makes a tangible contribution to solving the problem of homelessness both for individuals and for the community at large.

Keywords:

Homelessness, CED, community legal services, law centres, litigation, policy development.

* The author was recently seconded to Mercy Law Resource Centre to work as a trainee solicitor for three months, as part of Mason, Hayes & Curran Solicitors' Corporate Social Responsibility Programme.

Introduction

This article will describe the importance of a specialised legal advice and representation service, within a system of community support services, designed to assist people who experience or are at risk of homelessness. The article will particularly focus on the role of the Mercy Law Resource Centre (MLRC), a law service which engages in this role. The MLRC will be described as a working example of CED Lawyering.¹ The Centre, through the medium of law, influences social change and helps to redress a discrete problem in Irish society.

MLRC was established by the Sisters of Mercy in 2009 to provide a free advocacy service for people who experience or are at risk of homelessness. The Sisters of Mercy initially identified this group of society as facing particular hurdles in accessing legal services, rights and entitlements. Social housing and social welfare law were recognised as being poorly catered for by the State and private legal sector.

MLRC serves this role through providing an accessible service tailored to suit the needs of households² who require legal assistance with housing and social welfare legal issues in the Dublin area. MLRC also provides specialist legal guidance to other organisations in the field to assist the collective effort to support households affected by homelessness. A further objective of MLRC is to campaign on behalf of its client group to influence government policy and to generate awareness generally of the very considerable impact that homelessness, or the threat of such has on so many families' freedom, security and way of life. The Dublin area has by far the highest prevalence of homelessness in the country. A special report as part of the last Census in 2011 indicated that 60% of 3,808 homeless persons enumerated were in the Dublin region on Census Night. Dublin also has the highest concentration of homelessness services. For these reasons MLRC focuses its work on the central Dublin region in an effort to maximise its limited resources to cater for as many people as possible.

I. The Need for a Legal Service in a Network of Community Services

There is a wide and increasingly high-profile range of services currently addressing the issue of homelessness in Ireland. These services are provided by a network of bodies comprising both the public and voluntary sectors. The services include preventative strategies,³ local authority co-ordination strategies,⁴ and supportive services providing accommodation and other social services.⁵ Many organisations perform a dual role by providing emergency, short-term accommodation and related support services to people experiencing homelessness alongside the separate role of developing policy and initiating political and public campaigns on the issue of homelessness.

1 For a general overview on the role of lawyers in Community Economic Development, consider Maria Antonietta Nestor, 'The Research of CED Lawyering in Ireland: An Overview,' (2011) Vol 1(1) *Ir. Rev. CED Law & Pol.* 6.

2 A household can comprise an individual or a family unit, comprising a couple without children or with up to 15 children.

3 See the Department of Environment, Heritage and Local Government's current strategy document: "The Way Home: A Strategy to Address Adult Homelessness in Ireland 2008 – 2013."

4 See for instance the work of the Dublin Region Homeless Executive.

5 See, for example, the Local Authority Assessment and Placement Service who manage the provision of Local Authority Social Housing and Emergency Accommodation to people experiencing homelessness, and also the work of major nationwide organisations such as St. Vincent de Paul, the Simon Community, Focus Ireland, and The Salvation Army. There are over 300 associations across Ireland who are members of the Irish Council for Social Housing who complement state-provided social housing.

For those who are homeless or are facing the prospect of homelessness, the laws of the State and, in particular, the actions of State bodies operating through this area of law have an acute impact on the day-to-day lives of this client group. How these laws affect households can have life-altering consequences: for instance, the decision to be placed on a housing list, or to be afforded medical priority for social housing support, or a decision to evict a household. Frequently, households within this client group are extremely disempowered by human and financial stress. A sizable proportion of the client group which instructs MLRC struggle to varying degrees with issues such as mental illness, addiction, criminal history, relationship breakdown and profound economic hardship.⁶ The complex, intimidating and often fragmented nature of legal procedures surrounding social housing and social welfare issues can exacerbate a household's already very stressful circumstances. These procedures include applications for various social housing support structures and eviction procedures. One of the central aims of MLRC (and, indeed, Community Law Centres more generally) is to make the State's services and procedures more accessible and understandable, and to provide assistance at each step to ensure that clients are aware of their rights and entitlements and that they have the full legal support to pursue them, particularly where State services may err in applying the law.

The assistance that MLRC provides in resolving the legal dimensions of households' problems is an essential element in the network of support structures for this group in society. Although other associations may have substantial expertise in other elements of the issue of homelessness and may be able to provide limited legal advice, the need for dedicated legal assistance is particularly vital in this area of law. This is due to a range of factors:

- ▶ The complexity of the law
- ▶ The general lack of representation due to the limited means and resources of the client base
- ▶ Difficulties with access to information

i. The Complexity of the Law

Although the essence of the problem of homelessness is simple - where a household does not have a place to call home - the legal framework is complex. The rights and entitlements of households conflict with the limited resources available. At the latest count, there were 98,318 households deemed by local government to be eligible and in need of a permanent home.⁷ Of these 2,348 households are deemed homeless. It is worth noting that these statistics do not include those who may have a housing need but have not applied for social housing support or those who have applied but have not yet been assessed.

6 The Citizens Information Board says that "Common background characteristics of people who become homeless have been identified as physical or sexual abuse in childhood or adolescence; a background of institutional care; offending behaviour and/or experience of prison; lack of social support network; debts; (especially rent and mortgage arrears); causing nuisance to neighbours (anti-social behaviour); drug or alcohol misuse; school exclusion and lack of qualifications; mental health problems and poor physical health." See "Homelessness," available from the Citizens Information Centre, available from http://www.citizensinformation.ie/en/housing/losing_your_home/homelessness.html/ Accessed 4 November 2012.

7 See Housing Needs Assessment 2011, Housing Agency, available from <http://www.envron.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,27864,en.pdf> accessed 4 November 2012 at 1.

Category of Need	No. Households	%
Homeless	2,348	2.4
Traveller	1,824	1.9
Existing accommodation unfit	1,708	1.7
Existing accommodation overcrowded	4,594	4.7
Involuntary sharing	8,534	8.7
Young Persons leaving institutional care	538	0.5
Medical or compassion reasons	9,548	9.7
Older persons	2,266	2.3
People with a disability	1,315	1.3
Not able to meet the cost of accommodation	65,643	66.8
Total	93,318	100

Social housing in need in Ireland. Source: The Housing Agency, September 2011.

MLRC's main service to households is the provision of legal assistance to those who either seek social housing support, or to those who are housed but are in danger of being made homeless through eviction proceedings or are in unsuitable accommodation and seek a transfer. The legislative framework for these issues is provided through the Housing (Miscellaneous Provisions Act) 2009 and the Social Housing Assessment Regulations 2011. The provisions contained in these two pieces of legislation are central to households' applications or appeals for accommodation and whether they are successful or not in same. The law is complex, and at times, ambiguous.⁸ MLRC acts as an advisor on how the law will apply to a particular household's situation.

ii. Lack of Representation

For obvious reasons, social housing law is not an area of law that private practitioners specialise in for commercial gain. MLRC assists those who would not ordinarily be able to afford legal advice or representation.

Although state-provided legal assistance is available from the Legal Aid Board, frequently there are long delays in accessing its services.⁹ An essential element of access to justice is timeliness. Frequently, MLRC's clients require urgent assistance in resolving their matter. MLRC has successfully catered for demand to process legal issues in a timely manner within its set geographic parameters.

There is a collaborative supportive network for various law centres in the form of the Public Interest Law Alliance. This network recognises the importance of collaboration amongst the different agencies as a means of improving the effectiveness, scope and efficiency of their combined services. These services endeavor to fill the considerable void left by the under-resourced, state-provided legal aid.

iii. Difficulties Accessing Information

Frequently, individuals and organisations ask MLRC for simple information on the provision of certain public services or on basic legal issues. Many clients are unaware of how to obtain this information. In the realm of housing law and social welfare law, information may be sought on issues such as how to apply for social housing support, how to challenge a decision of a local authority in respect of an application, how to make a complaint against a landlord, what one's legal rights are in respect of a pending eviction, and how to apply for social welfare entitlements or to challenge the decision of the Department of Social Protection. MLRC also provides information on other matters such as family access and guardianship entitlements and certain criminal matters etc. However, MLRC does not provide legal representation on these matters and will refer individuals on to other available services and legal professionals.

II. How Clients engage MLRC

As mentioned above, the nature of MLRC's practice and client engagement is not akin to normal practice for commercial gain. MLRC, like other Community Law Centres markets its services in a different manner to ordinary law firms, with a view to targeting and prioritising its services to those who need it most. This is done in the ways described below.

8 See below for discussion on *Lisa Kinsella v Dun Laoghaire Rathdown County Council*

9 Fiona Gartland, 'Delays of up to 10 months to see Legal Aid Board solicitor' *Irish Times*, (Dublin, 25 February 2012).

i. Clinics

MLRC's services are designed to make legal services as accessible as possible to households in the central Dublin area in need of such. To service this client group, MLRC hosts legal clinics in Dublin's busiest emergency accommodation services and other homelessness service providers. The clinics are designed to serve both persons experiencing homelessness and living in emergency accommodation and also, through the drop-in services, to serve members of the public who may be experiencing homelessness or are under the threat of homelessness.¹⁰

In this way, the clinics are targeted at a specific demographic, providing one-to-one legal advice to those who need it most. This allows MLRC to provide as accessible and as useful a service as its resources allow. Clinics are advertised in-house at the emergency accommodation providers.

ii. Collaborating with other Organisations

MLRC works alongside other charities and organisations which specialise in providing services to those experiencing homelessness. Social workers and other staff at Focus Ireland, Crosscare (Haven House) Threshold, Simon Community, Community Access Network and various Citizens Information Services Centres (amongst others) seek advice for their clients and refer them to MLRC where specialist legal advice or representation is needed. This referral system provides a crucial link between individuals requiring legal assistance and MLRC. While individuals may have certain issues or problems, it may not be immediately apparent to them that these issues may source from complex legal matters which could be resolved with a legal professional's assistance.

MLRC also hosts training events with other homelessness organisations to help them to provide basic legal support to its users.

iii. Telephone and Office Meetings

MLRC are available to answer legal queries by telephone and to arrange meetings at its offices at Cork Street, Dublin 8.

10 At present, clinics are provided to the Residents of:

- De Paul Hostel, Backlane, Christchurch, Dublin 8 from 1 to 2 p.m. on Tuesdays
- Crosscare, Haven House, Morning Star Avenue, Dublin 7 from 4 to 5 p.m. every other Tuesday
- Dublin Simon, Harcourt St., Dublin 2 from 4 to 5 p.m. every other Tuesday

Walk-in clinic is provided at:

- Focus Ireland Coffee Shop, Advice & Information Service, 15 Eustace Street, Temple Bar, Dublin 2 on Wednesdays from 4 to 5.30 p.m.
- Liberties CIC, 90 Meath Street, Dublin 8 on Wednesdays from 11 to 12.30p.m.

Please visit www.mercylaw.ie for the most up to date clinic times.

III. How the Work of MLRC Helps to Solve the Problem of Homelessness

i. Changes in Law and other Impacts of Litigation

MLRC has represented clients at the Private Residential Tenancies Board, the Equality Tribunal and at the High Court. Generally, litigation concerns a challenge to a decision of a public body.

In the recent past MLRC has helped to reverse the initial decisions of local authorities and other public bodies through litigation, and in some instances, has brought about changes or clarifications in the law, resulting in improved access to appropriate housing and social welfare entitlements for clients.

The following are examples of the outcomes of litigation, which either clarified points of law, or provided positive results for claimants:

- i) A client with a serious, debilitating illness and a young, dependent daughter sought a transfer of social housing accommodation to move to an area where family members would be able to care for her and her daughter. Her application for social housing support was not considered because she was already housed in another local authority. MLRC represented her in a hearing before the High Court which ultimately led to a judgment¹¹ by Hogan J in the High Court requiring the local authority to consider her need for social housing support. This judgment clarified an ambiguity in the Social Housing Assessment Regulations 2011 pertaining to the assessment of eligibility and need for social housing support. The Court held that the local authority was not in a position to refuse to assess individuals where this was not expressly provided by legislation.
- ii) A separated father with joint custody, access and guardianship rights in respect of his two teenage daughters was refused eligibility for 2 bedroom accommodation by a Local Authority as it was their policy to only allocate separated fathers bedsit accommodation. Proceedings were instituted before the Equality Tribunal alleging discrimination on the grounds of gender, civil status and marital status. The matter was fully resolved before hearing and the Tribunal investigation did not then proceed.
- iii) A Romanian client who had been resident in Ireland since 2002 could not gain access to a Local Authority housing list due to the retrospective application of a rule regarding work permits and eligibility. As a result of this, the client and his family did not qualify for Rent Supplement and were facing eviction. MLRC contacted the local authority and, with the prospect of judicial review proceedings, the client was placed on the housing list with priority backdated to the date of his application.

As can be seen from the above, the legal representation undertaken by MLRC has been a crucial component in ultimately resolving the clients' issues.

11 *Lisa Kinsella v Dun Laoghaire Rathdown County Council*, [2012] IEHC 344.

ii. Information Dissemination

MLRC provides accessible, relevant information literature to clients who have queries on issues that frequently arise. Earlier this year, MLRC collaborated with other Law Centres¹² to publish an extensive explanatory booklet on social housing law: "Social Housing Rights Explained." This booklet is promulgated by the law centres and leading homelessness organisations around Ireland. It provides simple guidelines to the often complex array of laws and procedures in social housing law.

iii. Befriending Service

MLRC recruits volunteers who make themselves available to befriend clients in order to accompany them and provide them with emotional and practical support as they go through the difficult process of trying to assert their rights.

The role may entail such activities as helping the individual to fill in forms, accompanying her/him to court, helping her/him to turn up to appointments etc. Training is provided to all volunteers who also have the support of regular group meetings where peer support is provided.

This service provides an important link between clients and the professional legal service which MLRC solicitors provide. MLRC recognises that although professional legal service is of assistance to our client group in many instances, the range of problems which our clients face need to be addressed holistically. Both practical and emotional support can be of great benefit to clients. Befrienders provide this necessary support to assist clients to address these issues and to link in with the necessary services to resolve them.

IV. Policy Development

MLRC combines its policy development work with other homelessness organisations throughout Ireland. MLRC's aim is to "use the law to advocate effectively on behalf of our client group in order to change those laws, policies and attitudes which unduly and adversely impact on them and deprive them of the means to improve their lives." To that end, MLRC has made submissions and produced papers on a range of discrete legal issues which affect its client group and has been involved in providing legal expertise to collaborative projects campaigning for changes in the law. Certain campaigns on the issues of homelessness and social welfare comprise a number of different strands; social, economic, political and legal. MLRC provides the required legal expertise to complement the other strands of analysis for campaign materials. In particular, MLRC is currently involved in the following high-profile policy campaigns:

i. Constitutional Convention

MLRC is collaborating with an informal 'Housing Group', a collective group of law centres and homelessness organisations across Ireland¹³ to develop a campaign to put housing rights on the agenda for the Constitutional Convention.¹⁴ A survey carried out for Focus Ireland found 80 per cent of the public supported a Constitutional right to housing for Irish citizens. The poll of 1,000 people nationwide by Amarach Consulting found that 8 per cent of people disagreed with the proposal.

12 Ballymun Community Law Centre, Irish Traveller Movement Law Centre and Northside Community Law Centre.

13 This group comprises MLRC, Ballymun Community Law Centre, Northside Community Law Centre, PILA, Irish Traveller Movement, Barnardos, Focus Ireland, Community Action Network, Dr. Padraic Kenna, Lecturer NUI Galway, Member of FEANTSA (European Homeless). The group meets on a monthly basis to share information and consider matters of policy.

14 See <http://www.irishtimes.com/newspaper/breaking/2012/0716/breaking41.html> accessed 14 August 2012.

MLRC's contribution to the campaign is to assist in drafting submissions for the group to send to government, outlining legal aspects of the reasons why a right to housing should be brought to the table at the impending Constitutional Convention.

ii. Collective Complaint

MLRC is currently collaborating with the same Housing Group to formulate a complaint to the European Committee of Social Rights under the auspice of FEANTSA,¹⁵ a major European network that focuses exclusively on homelessness at European level. FEANTSA enjoys participatory status with the Council of Europe and is entitled to lodge such collective complaints. This Collective Complaint aims to explain how Irish governmental policy on social housing and the issue of homelessness amounts to violations of Article 16,¹⁶ Article 30¹⁷ and Article E¹⁸ of the Revised European Social Charter. The ultimate purpose of the Collective Complaint is to apply pressure on the Irish government to level up their policies in this area to the standards required by the European Social Charter.

iii. Other Policy Work

MLRC has produced papers on the following topics:

- ▶ NAMA
- ▶ Criminal Justice (Public Order) Bill 2010
- ▶ Proposed licensing and tenancy agreements under Pathway to Home
- ▶ United Nations Universal Periodic Review
- ▶ Local Authority Anti Social Behaviour Strategies
- ▶ Exemption in the Civil Legal Aid legislation in respect of Housing matters
- ▶ Mental Capacity Bill
- ▶ Response to the UN Special Rapporteur on Extreme Poverty and Human Rights
- ▶ Response to the Blueprint to Deliver a World-Class Workplace Relations Service.

MLRC continues to work with central and local government to highlight anomalies or injustices in the law affecting its client group.

15 FEANTSA: "European Federation of National Organisations Working with the Homeless"

16 **Article 16 – The right of the family to social, legal and economic protection.**

With a view to ensuring the necessary conditions for the full development of the family, which is a fundamental unit of society, the Parties undertake to promote the economic, legal and social protection of family life by such means as social and family benefits, fiscal arrangements, provision of family housing, benefits for the newly married and other appropriate means.

17 **Article 30 – Everyone has the right to protection against poverty and social exclusion.**

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake: to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance; to review these measures with a view to their adaptation if necessary.

18 **Article E – Non-discrimination.**

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

V. Looking Forward: Using Law to Redress the Issue of Homelessness

In an earlier volume of this journal, Maria Antonieta Nestor describes CED lawyering “as a strategy for redressing urban poverty that acts as a facilitator by building and empowering communities through the use of different legal tools and approaches.”¹⁹

The combination of MLRC’s activities bears many of the hallmarks of this concept, specialising in a particular area. In the 3 years since opening its doors, through legal discourse the Centre has impacted considerably on furthering equitable social development in the areas of social housing and social welfare on behalf of its client group. The Centre provides a “composite, mixed-recipe of legal, social policy and community development tools”²⁰ as described by Nestor.

As outlined above, the work of MLRC (like all Community Law Centres) is restricted by its limited resources and its geographical focus. Although limited in these respects, the work of the Centre, as described above, demonstrates how the input of a small team of specialist legal professionals and support staff can play a unique and central role in addressing a specific issue of community poverty and disempowerment and ultimately help to reduce the problem on a national level. For instance, in *Lisa Kinsella v Dun Laoghaire Rathdown County Council*,²¹ in which MLRC acted for the plaintiff, the judgment may have the effect of drastically reducing the scope of circumstances in which a local authority may refuse to consider social housing applications. On a non-litigious note, MLRC constantly engages with the State’s services, in particular the local authorities in the Dublin area, providing a professional, legally competent voice on behalf of those who may not have the means to do so independently. Through negotiation and a clear understanding of particular clients’ circumstances and how the law applies to them, compromises and solutions are frequently arrived at between MLRC’s clients and the relevant state body. Through negotiation at this level, Law Centres such as MLRC provide balance between certain groups on the margins of Irish society and their engagements with State services. This particular role should not be underestimated in the broader context of how professional legal services can assist in reducing the social issue at hand.

The ever-expanding client base within the Dublin area demonstrates that there is a sizable demand for legal services for this client group. Ideally, such services should be available for people experiencing homelessness on a nationwide level.

19 Nestor, (n2).

20 *Ibid.*

21 [2012] IEHC 344.

Conclusion

The combined effect of MLRC's direct client contact at clinics, strategic litigation, and policy work (undertaken both by MLRC alone in a collaborative context) serves as a multi-purpose service that supports its client group by making the law more accessible to them, by advocating and campaigning effectively on their behalf in order to change the laws, policies and attitudes which unduly and adversely impact on them.

MLRC serves a particular role within the complex system of homelessness, social housing and social welfare services. Although in essence a legal service in a defined area, MLRC operates in a broader context in an advisory capacity to other NGOs who may not have specialist legal expertise. It also accepts referrals of legal queries from these other organisations. While other organisations work for the same client group to provide other specialist services to improve their quality of life, MLRC offers its legal expertise and assistance to the client group - both directly to them, and indirectly through these other organisations.

MLRC also works with state bodies, to reason and negotiate with them, and to highlight particular instances of perceived breaches of law or other injustices. Where necessary, MLRC engages the state bodies through litigation. In a sense, MLRC plays a delicate dual role in its relationship with state bodies, making efforts to collaborate with them to ensure the fairest results available to its clients within the parameters of the law, and on other occasions, holding them to account through litigation or the threat of such, where a state body's interpretation of the law is possibly unjust.

In this way, and through policy development, MLRC acts as a crucial communicative link between these state bodies and the people that they are designed to serve.

Law plays a central part in the prevalent social problems which MLRC's client group face. While the client group's issues and needs are, on the face of it, frequently immediate and tangible in the sense that their accommodation or financial situation is unsustainable, the application of law through CED lawyering is often decisive in improving their situation. MLRC acts as a facilitator to bridge the gap between their problem and the law, to arrive at a fair and appropriate resolution and, as such, plays a vital part in the system of co-existing services endeavouring to improve the quality of life of its client group in a fair and appropriate way.