

# flacNews

FREE LEGAL ADVICE CENTRES

## 40 Years of FLAC

### Celebrating four decades of the Free Legal Advice Centres in Ireland

**FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.**

We provide necessary legal services to the public, including an information and referral line, and we support a network of 70 free legal advice centres throughout Ireland.

The helpline, available at **1890 350 250**, is open during office hours Monday to Friday. While it does not provide legal advice, it offers basic information on the law and referrals to an appropriate service or centre. Our centres are open in the evenings and are staffed by volunteer lawyers who advise people on their legal queries. We do not offer representation.

**In 2008 FLAC answered some 9500 queries on its helpline and provided non-means tested legal advice to about 7500 people at its centres**, which are operated in



conjunction with Citizens Information Centres. FLAC's website offers a wealth of useful information and is available at [www.flac.ie](http://www.flac.ie)

FLAC campaigns on a range of issues connected with our core areas of work: civil legal aid, social welfare law and credit & debt law. In addition we seek to advance the use of law in the public interest.

We take cases to challenge the law and so promote access to justice on behalf of marginalised or disadvantaged groups. Some cases have led to important law reform and enhanced rights for such groups.

Underpinning our campaigning and casework is a strong tradition of research and policy work. FLAC generates submissions on legal and social policy developments and proposes reforms to the law. The organisation produces substantive reports on our key areas of work as well as smaller publications designed to explain and make relevant legal issues for a wider audience.

Our newsletter, *FLAC News*, is now in its 19th year and appears quarterly. To mark the organisation's 40th anniversary, *FLAC News* will include a special insert documenting the four decades of the organisation's existence in photographs and press clippings. This will appear in each issue throughout 2009.

This second issue of 2009 covers the 1980s and 1990s, when FLAC diversified and expanded, despite major financial constraints. We hope you enjoy this series and welcome any feedback.

**FLAC News is available free on subscription, in print or PDF format. For this 40th anniversary year, it is being sent to all Irish legal practitioners. If you want to receive an electronic version rather than a printed one, or no longer wish to receive FLAC News, please e-mail us at [flacmedia@flac.ie](mailto:flacmedia@flac.ie)**

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Editing & Layout: Yvonne Woods

Contributors: Noeline Blackwell, Saoirse Brady, Siobhan Cumiskey, Tracy Ennis Faherty, Michael Farrell, Catherine Hickey, Sarah Horgan, Paul Joyce, Aisling McHugh, Fintan Monaghan, Jill Nesbitt, Orla O'Malley, Edel Quinn, Caoimhe Sheridan, Yvonne Woods, Nusha Yonkova.

Photos: FLAC, Hugh McIlveen, ITM, Eamonn O'Dwyer, Derek Speirs

*The views of individual contributors do not necessarily represent the views of FLAC.*

# FLAC research shows how

**T**he right of equal access to justice is a firmly imbedded and fundamental human right. Nowhere is the need to protect rights, the need to curb abuses of power and the need to produce fair and effective resolution mechanisms clearer than where law meets commerce. Law reform in these areas has been very slow to materialise, particularly in the area of debt enforcement.

On 6 July, singer and songwriter Mary Coughlan launched FLAC's report entitled *To No One's Credit*, a study of the debtor's experience of Instalment and Committal Orders in the Irish legal system (see page 8 for a full report on the launch).

This was the culmination of three years' research work, commencing with a series of 38 in-depth interviews with clients of the Money Advice and Budgeting Service (MABS). Accordingly, the main purpose of the study was to hear the views of those affected by debt enforcement procedures and indebtedness generally. A wide-ranging series of observations were made by interviewees emphasising, in some cases very poignantly, the fear, stress, confusion and sense of helplessness and hopelessness felt by debtors who find themselves on the receiving end of legal proceedings as well as the consequences for themselves and their dependants.

The key findings of *To No One's Credit* include:

- ▶ Two-thirds of debtors were social welfare recipients at the time legal and debt enforcement proceedings were brought against them and the remainder were on limited incomes, having suffered an adverse change in their financial circumstances.
- ▶ A significant majority of those interviewed said they did not understand much of the legal documentation and their options at various stages of the procedure.
- ▶ A number claimed not to have received documents served by registered post that others had signed for and had not passed on to them.
- ▶ Many were unaware of where to get

assistance and looked for help from MABS or other sources far too late in the process. Informal offers of payment by debtors were generally refused by creditors but similar offers made by MABS money advisors were usually accepted.

- ▶ There was great reluctance to appear at debt enforcement hearings in open court unless MABS advice had been received. Of 27 applications for Instalment Orders, 23 failed to send in details of their finances or attend the hearing so that the court set instalments with out-of-date or no financial information. This resulted in only one out of 27 Instalment Orders being fully paid.
- ▶ Of 22 applications for arrest and imprisonment, 16 resulted in Committal Orders being granted. Not one of these 16 debtors was in court to defend his/her position. Three successfully appealed to the Circuit Court, two paid the arrears with borrowings and five served terms of imprisonment. The remaining six creditors eventually declined to follow through on the execution of the committal when it became apparent (usually through MABS) that there was inability as opposed to unwillingness to pay, clear proof of an inefficient system that allowed matters to progress so far.

A brief summary of some recommendations includes:

- ▶ Court documents should be simplified and explanatory booklets provided which would include details of where debtors can get help at the earliest opportunity.
- ▶ The 'money advice approach' of presenting verifiable financial information should be the basis upon which assessments are made of those with limited capacity to pay, ideally prior to any legal proceedings being brought. All debts should be taken into account on a *pro rata* basis.
- ▶ The Legal Aid Board should check whether debts are actually owed and where appropriate, provide legal

# Ireland's debt laws must change now

representation to defend claims.

- ▶▶ The Instalment Order procedure should be completely reformed. Hearings should take place in private and the attendance of the debtor should be compulsory.
- ▶▶ In order to frame future policy, far more extensive information should be available on participation in debt enforcement proceedings. Creditors too should have access to more comprehensive information in order to prevent pointless applications.
- ▶▶ Imprisonment should be removed as an option for those unable to pay their debts and non-penal remedies such as attachment of earnings should be examined.
- ▶▶ A Debt Rescheduling Service operating in private should be set up as an alternative to deal with debt enforcement cases. It could have a debt settlement role in consumer bankruptcy cases where a person's debt situation is chronic and unlikely to be resolved in the long term.

It is regrettable that the government did not seize the opportunity in better economic times to reform the laws on debt enforcement in Ireland, in particular because a downturn was inevitable and casualties of that downturn are growing. Still, we must start from where we are

now. The recent High Court judgement in the *McCann* case has resulted in new legislation that excises the more extreme outcomes of our outdated procedures (see page 4 for more detail).

This is a chance to build on that progress and to haul our debt enforcement system into the 21st century.

The Law Reform Commission's forthcoming Consultation Paper on debt enforcement, due to be published before the end of September, presents the ideal opportunity to achieve that goal. The Commission has consulted widely in preparation for this publication and the indications are that it will take a broad rather than a narrow approach to the subject.

It is encouraging that the Minister for Justice, Equality and Law Reform, Dermot Ahern TD, during the course of the Dail debate on the Enforcement of Court Orders (Amendment) Bill on 10 July, has flagged his support for this work.

Specifically, he said that *it will lead to the publication of a major paper next year in which [the LRC] will*



Photo by Derek Speiris

*After the launch of To No One's Credit on 6 April, pictured outside Dail Eireann: Senior Policy Researcher Paul Joyce, singer Mary Coughlan and Director General Noeline Blackwell*

*make recommendations for any in-depth reform of this area, which undoubtedly is overdue. The Commission has lengthy experience of broad consultation and produces excellent, workable solutions in complex areas. I have no doubt that it will take into account the jurisprudence, as well as the detailed and helpful research produced this week by FLAC. Any other issues arising in this area can and will be considered in that context.*

For hard-pressed borrowers facing an uncertain future, many of whom have found their financial situation deteriorating beyond their control, it cannot come quick enough.



*ITM Law Centre solicitor Siobhan Cummiskey (above) comes to the Law Centre from general practice and has worked with human rights NGOs in India and the UK*

## Traveller law centre opens

**T**he Irish Traveller Movement Law Centre opened its doors on 2 June 2009. The Law Centre replaces the Legal Unit, which was attached to the Irish Traveller Movement from 2003 to 2008. It will operate as an Independent Law Centre within ITM and is one of the five Independent Law Centres in Ireland.

The Centre will provide a unique specialist legal service to Travellers in Ireland. It recognises an unmet legal need in the Traveller community and that a specialist legal service is essential to advancing Traveller rights in Ireland. It aims to advance the ability of Travellers to access expert legal advice and representation; Traveller human rights under the various legislative frameworks; recogni-

tion of Travellers as an ethnic minority; and the capacity of Traveller organisations to respond to legal issues facing Travellers.

The Law Centre will take test cases to challenge laws that attack Traveller culture. It will pursue cases in line with ITM's core issues (Accommodation, Equality and Human Rights, Education, Access to Services and Ethnicity) and is seeking case referrals. Legal Outreach Clinics will run in ITM's five Regional Centres. Legal Education workshops and research & policy work will also be undertaken. The Law Centre hopes to lobby for the re-establishment of the Oireachtas sub-committee on Travellers.

Contact the Centre at [itmlawcentre@gmail.com](mailto:itmlawcentre@gmail.com)

# The *McCann* case and the Enforcement of Court Orders (Amendment) Bill 2009

On 18 June 2009, judgment was delivered by Ms Justice Mary Laffoy in the High Court in the case of *McCann vs Judge of Monaghan District Court & others*, a landmark action that challenged the constitutionality of Section 6 of the Enforcement of Court Orders Act 1940 and its compatibility with the European Convention on Human Rights and Fundamental Freedoms.

A single parent with two children, Caroline McCann, without ever having been present at a sitting, had been sentenced to one month in prison by her local District Court following debt enforcement proceedings taken by Monaghan Credit Union.

The credit union had obtained a judgment for just over €18,000 on a loan that Ms McCann had failed to pay due to financial, family and personal difficulties. This was followed by an application for the debt to be repaid by instalments. An Instalment Order was made for €82 per month. Ms McCann did not attend the hearing, as she did not sufficiently understand the nature of the proceedings given her limited educational background and did not (at the time) have access to legal or financial advice.

Surviving on one-parent family payment and living with her mother in local authority accommodation, she could not pay the Instalment Order amount and arrears quickly developed. The credit union applied for her arrest and imprisonment and an order to serve one month was granted.

By that time, Ms McCann had become a client of Monaghan Money Advice and Budgeting Service (MABS) who in turn had sought legal advice from Northside Community Law Centre (NCLC) on her behalf. NCLC looked to extend the 14-day time period to appeal the order to the Circuit Court. This application was denied in the District Court and the constitutional challenge followed.

The Laffoy judgment is very thorough

and is critical of the continuance of a scheme of enforcement of debt described as vague and lacking in guidance for either creditor or debtor. In a nutshell, it finds Section 6 of the 1940 Act deficient primarily on three grounds.

Firstly, it allows for the imprisonment of the debtor in his/her absence. Secondly, the onus of proof is on the debtor to show that his/her failure to pay the instalments is not due to 'wilful refusal' or 'culpable neglect'. Thirdly, the State does not provide legal representation for the debtor to defend him or herself. Given that the sanction that can be imposed at such a hearing is a term of imprisonment, these were found to be unacceptable infringements on a debtor's right to liberty and fair trial procedures. Having found the section unconstitutional, the Court did not find it necessary to deal with the question of its compatibility with the Convention.

The publication of the judgment sparked applications for the release of debtors who had been imprisoned under the terms of this section and the adjournment of other cases where committal applications were pending. The Minister for Justice, Equality and Law Reform Dermot Ahern TD ordered the release of a number of debtors and by 10 July it was reported by the Minister that "there were no loan defaulters in Irish prisons."

On 29 June, the government approved the drafting of the Enforcement of Court Orders (Amendment) Bill 2009, signalling its intention to shore up the committal procedure in relation to debt with emergency legislation. The press release that accompanied this announcement left no doubt that the Department still valued the potential option of imprisonment as it stated that the procedure "is used sparingly by the courts, even prior to the High Court judgment. However, its value is its persuasive power – people tend to settle up when they know they are at risk of prison."

As FLAC commented when the Bill was published, it attempts only to rectify the

defects identified in *McCann* and no more, with the government press release relying heavily on the upcoming publication of the Law Reform Commission's consultation paper on debt enforcement in September as a possible source of future changes.

However, at least imprisonment of a debtor without establishing his/her capacity to make instalment payments should immediately become a thing of the past, as the Bill basically makes attendance at the committal hearing compulsory. It also provides that the onus will now be on the creditor to establish that the debtor's failure to pay instalments was due to wilful refusal or culpable neglect. Finally, it provides for the debtor's right to criminal legal aid where s/he cannot afford a solicitor.

Until *McCann*, Ireland was the only country in Europe where you could be jailed for failure to pay a privately contracted debt. This is not the same as failure to pay a fine, the subject of a recent bill which introduces the idea of 'equality of impact.' This gives the courts power to assess a person's financial situation and how repayments will impact on the debtor and his/her dependants – something which would be very welcome in the area of civil debt.

## Irish Rail must welcome wheelchair users

The Equality Tribunal has ordered Iarnród Éireann to put up signs near designated wheelchair spaces in their carriages stating that people with disabilities are welcome to travel on their trains and are protected in doing so by the provisions of the Equal Status Acts. The rail company has also been ordered to train all its staff in the requirements of the Equal Status Acts 2000-2004.

It found that William Hennessey, a disabled man who is confined to a wheelchair, was harassed by Iarnród Éireann staff who apparently felt his wheelchair got in their way. Represented by FLAC, he was awarded €3000 compensation for the distress, humiliation and intimidation he suffered.

## FLAC appears at Joint Oireachtas Committee on personal indebtedness

On 22 April FLAC made a presentation to the Oireachtas Joint Committee on Social and Family Affairs. This was an important opportunity for FLAC to persuade the Government and the Financial Regulator of the need to make the current code on mortgage arrears more protective of people facing personal debt. Several Government departments and state agencies also made presentations.

FLAC focused on the sharp increase in personal indebtedness and especially the increase in the number of people going to prison due to the non-payment of instalment orders. Some 276 people were jailed in 2008 under the heading 'offences relating to debt' in 2008, up from 201 the previous year.

FLAC has been involved in the area of credit and debt since the 1990s. It saw a doubling in requests for advice on debt in its legal advice centres between 2007 and 2008. There was a five-fold increase in the number of telephone calls received in the first quarter of 2009 compared to the same period in 2008.

FLAC's main objective is to improve procedures for people in arrears and to ensure that there are alternatives to taking legal action. With this in mind, the delegation made the following recom-

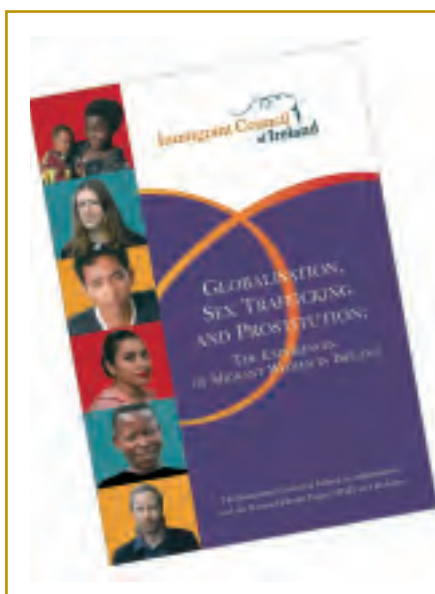
mendations to the Committee:

- ▶▶ That the Financial Regulator's code on mortgage arrears be extended to cover all kinds of debt arrears, in particular, credit agreements, personal loans and hire purchase agreements.
- ▶▶ That the code should contain a compulsory referral to the Money Advice and Budgeting Services for people in arrears, while acknowledging that this clearly poses a resources problem for MABS.
- ▶▶ That there should be an obligation on lenders to look at the complete financial circumstances of borrowers, taking into account over-indebtedness, and to look at affordable repayment options as an alternative to legal action.
- ▶▶ That the current court order legislation be reformed. District court judges should be given the power to adjourn proceedings where the debtor fails to make an appearance. This would help prevent a debtor being sent to prison for non-compliance of an instalment order where the order was made in their absence. A person in such circumstances should be entitled to civil legal aid from the Legal Aid Board if needed in order to fully understand and participate in the proceedings.

Regarding the government's current review of the Mortgage Interest Supplement scheme, FLAC believes that this should include an examination of reckless lending and, in particular, sub-prime lending. As the scheme was set up to protect the consumer, FLAC believes this must be reflected in practice and that legislation should be introduced for a rescheduling of loans in certain circumstances where repossession of the family home is likely.

FLAC's presentation received wide support and positive feedback from all sides of the Committee and from the other groups present. Ms Mary O'Dea, speaking on behalf of the Financial Regulator, said that the mortgage code had been put on a statutory footing very quickly and that they would be open to discussing the issues raised by FLAC to improve the code. Deputy Thomas Byrne recommended that the Financial Regulator and FLAC should both be invited back at a later date in order to further discuss the code of conduct on mortgage arrears.

Please see [www.flac.ie](http://www.flac.ie) for a full version of the presentation and more information on FLAC's campaign to reform credit and debt law. Transcripts of the committee meeting on 29 April 2009 are on [www.oireachtas.ie](http://www.oireachtas.ie) - follow the link for Committee Debates.



### Globalisation, Sex Trafficking & Prostitution: The Experiences of Migrant Women in Ireland

Research released by the Immigrant Council of Ireland (ICI) earlier this year showed that 102 women and girls were trafficked into or through this country over a 21-month period for the purpose of sexual exploitation. The research report, "Globalisation, Sex Trafficking and Prostitution: the Experiences of Migrant Women in Ireland", also found many hundreds of migrant women are being exploited in Ireland's sex industry. The ICI has called for a comprehensive

and urgent response from the government to address sex trafficking and exploitation of migrant women and children, with the needs of victims at the heart of that response.

Funded by the Religious Sisters of Charity, the groundbreaking report is available at <http://www.immigrantcouncil.ie> in PDF format (hard copies of the Summary & Recommendations can be obtained from the ICI office at 2 St Andrews Street, Dublin 2).

## Irish Refugee Council launches report on Single Protection Procedure

The Irish Refugee Council's new report, *The Single Protection Procedure—A Chance for Change*, by Brian Barrington BL, was launched by the Hon Mrs Justice Catherine McGuinness on 31 March 2009. It is hoped that the recommendations put forward in the report will be realised with the enactment of the Immigration, Residence and Protection Bill later this year and the creation of the new Single Procedure for those seeking international protection in Ireland.

With the introduction of the Single Procedure, the time period usually faced by asylum seekers under the current process should be shortened significantly. An applicant will be considered for refugee status, subsidiary protection and any other “compelling reasons” as to why they should stay in the State. However, in order for this new procedure to offer a fairer and more efficient system, significant changes still need to be made to both the legislation and the administrative practices. The Hon Mrs Justice Catherine McGuinness welcomed the proposed procedure, criticising the current one stating that it was very prolonged and benefits neither the applicant nor the State.

One of the main areas in which change was recommended was with regards to the proposal to introduce “frontloading”. This generally refers to the provision of increased legal resources at a very early stage in the asylum process. It also envisages consultation between the legal representative and the interviewer before the interview in order to identify the main issues in the applicant's asylum claim that are in contention. The legal representative would attend the hearing with the applicant, something that generally does not happen at present.

After the interview, the interviewer and the legal representative would meet to discuss any further issues that needed to be resolved, if any evidence is outstanding or if further written submissions are required. This model was carried out in Solihull in the UK as a pilot project and, when evaluating the project, it showed



Photo by Derek Speirs

At the launch of the IRC report (L-R): The Hon Mrs Justice Catherine McGuinness, the Hon Mr Justice Donal Barrington and Brian Barrington BL

higher recognition rates as well as lower rates of appeals allowed, faster determinations and lower costs overall. On this basis it was recommended that the Office of the Refugee Applications Commissioner and the Refugee Legal Service introduce frontloading. It is thought that such a model will lead to fairer and more efficient decision making.

*A Chance for Change* also focuses on the importance of ensuring transparency and accountability. In Ireland, unlike in other countries, guidelines on the protection procedure are not published. It is recommended that all current guidelines are published and that there be consultation on their revision to take account of the single procedure and any other points that consultees may raise. Furthermore at present neither the initial nor the substantive interview is audio recorded by ORAC. Audio recording is standard in many counties including Sweden, Germany, Luxembourg and Canada. In order to alleviate any discrepancies in interpretation and to protect the applicant and the interviewer alike, it is recommended that the initial and substantive interviews be audio recorded. This would provide an accurate record and inspire confidence in the asylum process.

The report compared protection statistics in Ireland to the rest of Europe and

it transpired that the overall positive decisions to grant protection in Ireland is relatively low and that the recognition rate is far below the EU average. It also looked at Judicial Review figures, many of which are being taken and settled. The Hon Mrs Justice Catherine McGuinness noted that the fact we have such a high level of Judicial Review may indicate that there is a fault in the system. She also expressed concern at the large number of cases being settled, which at over 26% could indicate that something may be wrong with the current process. It is recommended, amongst other things, that full statistics on Judicial Reviews commenced against each of the bodies involved in managing the immigration system be published, including information on the defendants in cases, the stage at which settlements were reached, the outcome of cases not settled, the type of cases and the legal costs involved. It is also recommended that research be independently commissioned to investigate why the Irish protection recognition rate is lower than the EU average.

These are but a few of the recommendations put forward in the report, it is hoped that by highlighting some of the areas that can and need to be improved upon, it will mean a fairer protection system and that those who are in need of protection will receive it.

## New report on access to justice shows major gaps still exist in state provision

In April FLAC launched its report, *Civil Legal Aid in Ireland: Forty Years On*. Lobbying for and working towards a more comprehensive civil legal aid scheme has long been a core part of FLAC's work.

This document is timely given the increasing number of people who will require legal assistance and representation and who may not be able to afford it as a result of the current economic climate.

The report puts the spotlight on:

- ▶▶ The scope of the civil legal aid scheme;
- ▶▶ The practice and funding of the Legal Aid Board;
- ▶▶ Financial eligibility to qualify for civil legal aid; and
- ▶▶ A study of unmet legal need in the north east inner city area of Dublin.

In spite of certain improvements that have been made to the civil legal aid scheme over the years, issues remain in terms of meeting the unmet legal needs of marginalised groups and ensuring the vindication of their right of access to justice.

In 2008 FLAC carried out a survey with the help of some of its volunteers. It surveyed a range of organisations in the north-east inner city area of Dublin, the area where our head office is situated. The purpose of the survey was to investigate issues of unmet legal need.

What FLAC found was:

- ▶▶ a lack of knowledge of basic legal rights and entitlements among the people who presented themselves at the organisations we surveyed;
- ▶▶ legal services are neither adequate nor understood;
- ▶▶ a majority of the organisations do not have the capacity to provide the advice and services required. (And indeed, it is not their role to provide the legal services omitted by the civil legal aid scheme.)

FLAC learned that the major barriers to obtaining adequate legal information are a lack of awareness that an issue or problem may have a legal dimension and the prohibitive costs of seeking legal advice and proceeding with a case.

The organisations reported that the three legal areas most commonly dealt with by them are local authority housing, social welfare and domestic violence. Yet the civil legal aid scheme only readily offers assistance in one of these areas, domestic violence, which incidentally also comes under the criminal legal aid scheme. Social welfare issues are not covered by the scheme at all and local authority housing only on a very limited basis.

This highlights a fundamental flaw in the civil legal aid system – the exclusion of certain areas of law, nine in total, from the remit of the work of the Legal Aid Board. As a result, many of the people who

require legal aid are denied it and as a result are effectively denied their right of access to justice.

For example, while civil legal aid may be granted to a person to take a case before the High Court, it is not available to access the Employment Appeals Tribunal, or most other tribunals such as the Equality Tribunal. This is in spite of the fact that these tribunals often the only means by which certain groups of people will attempt to access justice. These groups are left with no legal support. This is not referring to individuals who work in the Legal Aid Board or the quality of their work, this is a comment on the system.

The Legal Aid Board predominantly deals with family law issues at over 90% of its work, even though its actual remit is much broader. While family law is a very important area of law for those who use its services, FLAC data – again collected with the help of the volunteers at FLAC centres – shows that only approximately one-third of the queries to FLAC centres relate to family law. Awareness of the Board and its actual remit should be improved for both potential service users and for all those involved in the administration of justice.

In 2009, the government faces enormous challenges with the recession. That cannot be used as a reason to deny access to legal services and representation to those who need it the most.



### Team FLAC: Mini-Marathon 09

FLAC had its first ever team in this year's Dublin Women's Mini-Marathon on 1 June. Our sixteen walkers & runners were raising much-needed funds for FLAC under the banner of 'Equal Access to Justice: One Step at a Time!' Despite the heat, the team all managed to cross the line in respectable times and are already planning for 2010. (See the back page for info on how to donate to FLAC.)

# Singer reveals lasting trauma

**F**ILAC unveiled its report on debt enforcement in Ireland at a press conference in Dublin's Buswell's Hotel, chaired by FLAC Director General Noeline Blackwell, on 6 July.

The report, *To No One's Credit*, details the debtor's experience of the Instalment and Committal Order process in the Irish legal system and proposes new measures as well as amendments to existing procedures which will make the system more efficient and human rights-compliant.

Blues singer Mary Coughlan launched the report, relating her own personal experience of debt enforcement, right up to the stage where Gardaí were waiting outside her house ready to take her to Mountjoy.

Her re-mortgaging of her house to finance a major tour resulted in the bank repossessing her home, but that was not the end of it. Pregnant at the time, with small children, Mary was dismayed when even her car was taken as well. Added to this, there was a shortfall in the sale price of the house which meant the bank pursued Mary for the outstanding amount over 10 years, getting payments when she could afford them.

Finally, the bank obtained an order for her imprisonment. With the gardaí outside, she rang businessman Richard Branson, with whom she was about to sign a record deal, to see if he could help. "He came to a deal that I couldn't come to with the bank in the previous 10 years, that was leading up to this, and even before he signed me, he paid off my debt,"

said Mary. His deal cut the final amount paid by almost half.

"But it has still followed me!" she continued. "I still have a bad name with those people. The rent has been paid every month. I have enquired, my mortgage would be much less than the 1800 a month, and I still can't get a mortgage. So, it's not just something that happened 20 years ago, it's every single day. My most recent refusal was last Friday from another banking institution, to say 'I'm sorry Mary but we can't help you.'"

As FLAC's Senior Policy Researcher Paul Joyce pointed out, the "purpose of this report primarily is to give people in this situation a voice. Up to now, people in this situation are often talked about but they don't get a chance to articulate their own situation."

Those surveyed in *To No One's Credit* were failed by our debt enforcement system because of "its lack of common sense, its lack of efficiency and primarily its lack of compassion."

The report finds that two-thirds of those facing debt enforcement proceedings were on social welfare when proceedings were taken against them; none of these people said they wouldn't pay, they were simply incapable of paying. Five ended up in prison. What the report makes clear is that people are getting assistance far too late.

Among FLAC's recommendations are the need for more user-friendly documents;

that creditors should be obliged to refer debtors to the Money Advice and Budgeting Service (MABS) at the earliest opportunity as a pre-requisite to having the right to bring legal proceedings. Debtors should be entitled to have advisors with them to put forward proposals on affordable repayments. Legal aid should be made available either through the civil or the criminal legal aid scheme if a debtor is trying to keep him/herself out of prison. Imprisonment should be removed as an option in debt cases and other types of enforcement used such as attachment of earnings. FLAC has also proposed an alternative system, a Debt Rescheduling and Mediation Service, that would take debt enforcement hearings out of the courts.

Colin Daly of Northside Community Law Centre which represented Ms Caroline McCann in the recent High Court case said that we need a new system which takes a "holistic view" of a debtors' circumstances. Mr Daly said it needs to give protection to priority payments like mortgages, utilities, rent, light, heat and recognise a minimum income threshold. He said it also needs to offer some degree of privacy "because this is possibly one of the biggest barriers to people actually actively engaging in the process."

Patricia Rickard Clarke, chief executive of the Law Reform Commission, said that the Commission will be looking at responsible lending and mandatory codes; arrears management and debt settlement. "We've already produced a paper on mediation but we will be going into quite



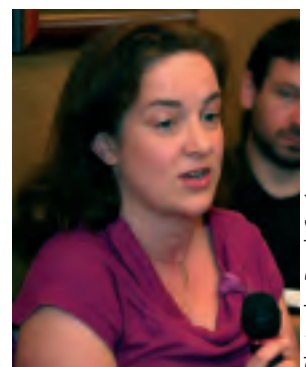
Colin Daly, Solicitor-in-charge, Northside Community Law Centre



Anne Marie O'Connor, Business Manager, MABSndI



Liam Herrick, Director, Irish Penal Reform Trust



Louise O'Mahony, Advisor, Irish Banking Federation

Photos by Derek Speirs



# 1980s & 1990s: Campaigning & Casework

In response to the establishment of the state-run Legal Aid Board, in 1980 FLAC discontinued its centres which provided legal casework and court representation. However FLAC then reopened them as legal advice centres. Short-comings in the state legal aid scheme quickly became apparent almost all of their resources were taken up with family law work. Representation at tribunals was excluded, thus limiting the service it could provide in employment and social welfare matters.

FLAC addressed this gap by setting up a network of welfare rights advice centres in conjunction with other social service organisations. However, FLAC itself faced difficult times. Having created the Legal Aid Board, the government ceased its funding to FLAC. Financing basic operations became a constant worry. Yet despite limited resources, FLAC responded to public demand by expanding its range of advice centres.

FLAC's finances improved in the mid-1980s as the Bar Council and the Law Society organised donations as did other agencies.

FLAC continued to take cases, primarily testing welfare issues. Tens of thousands of women won back-payment of welfare arrears as a result of the outcome of *Cotter & McDermott vs Minister for Social Welfare & AG*. FLAC acted on behalf of 1,800 married women in the Equal Treatment Arrears Cases and reached a settlement with the Department of Social Welfare in relation to arrears dating back to 1984. This case was finally settled in April 1994.

FLAC also continued to monitor and criticise the limitations of legal aid, notably in a report *The Closed Door: a Report on Civil Legal Aid Services in Ireland* in 1987.

During the 1990s FLAC expanded its campaigning. Alongside legal aid and social welfare work, operations expanded to include human rights, credit and debt and immigration. FLAC held a protest outside the Department of Justice in January 2002 yielding last-minute funding to FLAC of IR£40,000 and enabling it to stay open, with promises of continued support.

Another FLAC campaign aimed to pressurise the government to expand the range of the state civil legal aid scheme. Although the campaign led to the Legal Aid Board gaining a statutory footing with the Civil Legal Aid Act 1995, its scope and funding remained restricted.

In the 1990s, FLAC commissioned and published a range of studies and guides on social welfare and on evaluating FLAC's social welfare campaigns. Written by Mel Cousins and Gerry Whyte, the social welfare guides were aimed at the general public.

The 1990s also saw the launch of *FLAC News*.

Together with MSF trade union, FLAC organised an annual labour law seminar for much of the 1990s.

FLAC also began to develop an expertise in credit and debt. In 1993, FLAC began to research this area at the request of the European Commission as Ireland had not yet implemented relevant EC Directives. This research culminated in submissions being made to government on the Consumer Credit Bill.

Involvement in asylum and immigration issues also developed. Working with the Immigration Law Practitioners' Association, FLAC held a seminar on legal remedies for discrimination and racial attacks in 1993. FLAC was later among the organisations which successfully called for a legal aid scheme for asylum seekers.

FLAC was also involved in the successful campaign to remove the constitutional ban on divorce in 1995, as well as the campaign to establish a community law centre in Ballymun in the late nineties.

In 1999, the FLAC arranged its first Fellowship exchange in International public Interest Law in conjunction with the University of Washington, Seattle, USA.

Throughout this period, FLAC continued to operate a growing number of legal advice centres in conjunction with Citizens Information Centres.

The 1980s and 90s saw a great expansion in FLAC's areas of work, its core campaign continues to be equal access to justice for all.

*Few people would disagree with the constitutional principle that all people are equal before the law. We take for granted the notion that anyone appearing in a court of law is entitled to an even-handed application of the law without regard for personal status or wealth. In practice, we should accept that this principle also requires equality of access to the law and, by extension, equality of access to effective legal assistance.*

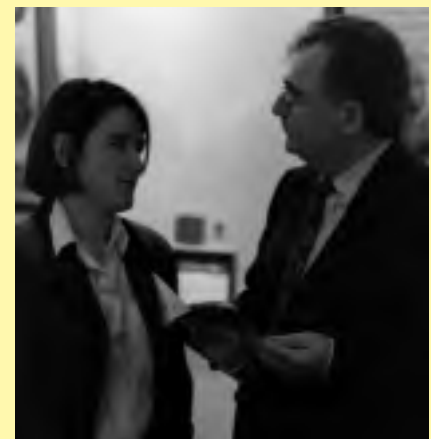
— Iseult O'Malley, *FLAC Chairperson, 1995.*



11 January 1980 – Bill Shipsey speaking at a FLAC meeting in TCD  
Photo by Derek Speirs



*Irish Times*, 28 January 1981



February 1998 - FLAC Chairperson Siobhan Phelan with Pat Rabbitte TD at the launch of *Moneylending and the Law*



Evening Herald, 3 June 1984



1 Feb 1981: Geraldine Shanley & Mary O'Malley at the FLAC AGM. Photo (also below) by Eamonn O'Dwyer.



4 Feb 1981: William Durcan, Ruairi Quinn, Catherine McGuinness & Lily Doyle at Divorce Action Group meeting, Mansion House.



1 Feb 1981: Gerry Durcan and Sue Doyle at a presentation to Gerry for his work. Photo by Eamonn O'Dwyer.



Irish Times, 18 March 1981



Irish Times, 12 June 1986



Irish Times, 11 March 1985



12 Dec 1980: Walter Walsh & Bill Shipsey at FLAC press conference, Photo by Eamonn O'Dwyer.



*Irish Times, 21 October 1988*



27 May 1995: Brian Gallagher, Peter Ward, Iseult O'Malley, Dr Anthony Clare and Carmel Stewart at FLAC conference on 'Clearing the Way for Divorce'.



*Irish Times, 12 March 1984*



*Irish Times, 14 October 1996*



2 October 1991: Eric Byrne TD, Mel Cousins and Leonie Lunny at the launch of *Moving within the EC: Your Rights to Social Welfare*.



FLAC's Resources Manager Sabha Greene in 1996.



FLAC Solicitor Mary Johnson in 1993.



14 July 1997: Gerry Whyte, Minister for Social Welfare Dermot Ahern and Mel Cousins at the launch of FLAC's *Guide to Sickness and Disability Payments*.



Jan 1992: Peggy O'Rourke & Siobhán Phelan picket for FLAC funding at Dept of Justice



At FLAC's 25th anniversary celebrations in June 1995, President Mary Robinson (L) is greeted by FLAC's Paul Joyce and Iseult O'Malley.



*Irish Times, 21 January 1991*



14 June 1999: The Hon. Mr. Justice Donal Barrington (L) and FLAC's Peter Ward (R) present the first Thomas Addis Emmet Fellowship to Nuala Ní Mhuirheartaigh.

30 Oct 1993: Eilis Barry, Matt Merrigan Sr, and Tony Kerr BL at the FLAC Annual Labour Law Seminar at the MSF office.

Left: 12 Oct 1992: Launch of Civil Legal Aid Alliance. Back row L-R: Amanda Jane Field BL, Susan McKay, Eamonn Carroll, Karen Armstrong; Front row L-R: Grainne O'Hara, Mary Higgins, Roisin McDermott.



29 January 1997: Paul Joyce, Gerry Whyte, RTE's Ciana Campbell, Siobhan Phelan & Dave Ellis at the joint launch of Guide to Maternity Rights & Social Welfare by FLAC & CCLC.



*Evening Herald, 4 January 1991*



*Irish Times, 14 March 1991*

# of debt at FLAC report launch

a bit of detail on the need for appropriate debt mediation in relation to debt settlement,” added Ms Rickard Clarke.

Speaking on behalf of MABSndI, Anne Marie O’Connor said that the report highlighted the importance of developing protocols with a range of agencies. “We’ve already developed a protocol with the Irish Bankers Federation with a view to formalising existing processes and making it easier to agree affordable, sustainable repayment plans outside of the courts.”

Louise O’Mahony of the Irish Bankers Federation, expressing the IBF’s support for FLAC’s proposals, said that the IBF’s Pilot Debt Settlement Scheme included the “principle of a fresh start.”

The idea that prison is an appropriate sanction by the State for somebody in financial difficulties was queried by Liam Herrick of the Irish Penal Reform Trust who said it was “great to see the Irish Banking Federation supporting this initiative.”

“It’s worth bearing in mind that very small periods of imprisonment can cause huge harm to individual lives and their families in terms of family life, employment, long-term credit and so on,” he said. Even with short sentences, “the effect that can have on a vulnerable person can be life-lasting.”

The principle of imprisonment as a last resort meant that all other alternatives had to be tried first. It was clear from the report that there were “many more practical and effective” avenues which were not being exhausted, which really showed that the State was failing to observe that principle.



Photos by Derek Speirs

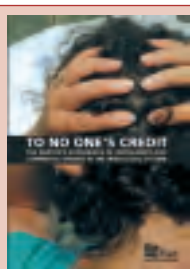
Mary Coughlan (L) pictured at press conference for launch of To No One’s Credit, with FLAC’s Noeline Blackwell and Paul Joyce



Press conference attendees



Members of the Law Reform Commission (L-R): Patricia Rickard Clark, Joseph Spooner & Commission President the Hon Mrs Justice Catherine McGuinness



Copies of the Report & Executive Summary are available to download for free from [www.flac.ie](http://www.flac.ie) or for free collection at FLAC’s office. You can receive it by post at a cost of €10.

## FLAC at 40: President McAleese honours founders and volunteers at Mansion House

**F**LAC turns 40 in 2009 and the organisation marked this milestone with an event thanking volunteers and supporters in Dublin's Mansion House on 25 April, attended by some 300 guests. President Mary McAleese spoke to the gathering, praising the initiative of the organisation's founders, who were all present – former Attorney General David Byrne SC, Denis McCullough SC, Mr Justice Vivian Lavan and retired Hong Kong magistrate Ian Candy.

President McAleese spoke of the significance of FLAC's founding in 1969 for many people who needed legal assistance when none was available:

*From the moment its doors first opened FLAC was deluged. The unmet needs of so many of our citizens became undeniably obvious as thousands sought the only help available to them. The FLAC volunteers became advocates not just for those individuals but for a society where equality of access to justice was a reality. It was their pressure that provoked political change, their advocacy that brought epoch changing cases before the courts, in particular the legendary Airey case which, with the great help of my predecessor Mary Robinson, was to set the scene for a new statutory Legal Aid Board.*

The President acknowledged the difficulties FLAC has encountered over the years and praised the tireless work of volunteers, commenting, "to the extent that your work has been substantially augmented, though not replaced, by government provided services, you can take considerable credit and pride in a job of proving and persuasion that was well done."



Photos by Derek Speirs

*FLAC founders meet the President (L-R): Ian Candy, Mr Justice Vivian Lavan, President McAleese, Denis McCullough SC, David Byrne SC.*

President McAleese also recognised the fears and sense of exclusion experienced by people facing legal worries and why it was so crucial that people could rely on someone to help steer them through:

*The legal world so familiar to many of us here is often still impenetrable and frightening to laymen and women. FLAC, possibly because it was set up by students still trying to get their own heads around the language and practices of the law, has always had a huge sensitivity to that public fear and sense of exclusion. Part of its mission has been to be the interpreter, guide, demystifier and friend to those who would otherwise have felt like outsiders.*

Wishing FLAC and its volunteers continued success, the President concluded that the future "will see the continuation of the positive contribution to Irish society that has been FLAC's hallmark since 1969."

The four founders were presented with framed copies of the first comprehensive article published on FLAC, from the *Irish*

*Times* of 16 February 1970. David Byrne, speaking on behalf of the four founders, said it was one thing to have established FLAC, but another to have continued it. He wanted to thank all those who had volunteered over the last 40 years.

FLAC's latest report on access to justice in Ireland, *Civil Legal Aid in Ireland: 40 Years On*, was launched on the night – see page 7 for further details. FLAC's new Public Interest Law Initiative (PILA) was introduced to guests by its newly appointed manager, Tony O'Riordan (see opposite page for more PILA news). Finally, the gathering was addressed by Deputy Lord Mayor, Emer Costello.

The evening presented many with a chance to meet old friends and former colleagues, and so it was not until the small hours that proceedings ended, amid much music and chat. FLAC will be marking its 40th anniversary with other events in 2009 – please check the website for updates!



*President McAleese addressing the audience*



*Dr Martin McAleese & President McAleese with FLAC Council (L-R): Róisín Webb, Iseult O'Malley, Liam Thornton, Don Crewe, Peter Ward*

## Voices for Justice: Poetry reading marks FLAC's 40th anniversary

**F**LAC marked the 40th anniversary of its founding with a poetry reading at the James Joyce House, Ushers Island, Dublin 8 on Sunday 26 April.

Irish poets Dennis O'Driscoll and John O'Donnell and US poet Jane Hirshfield read from their work. FLAC was fortunate enough to be able to present poetry from three poets with connections to the law and justice, the area in which the organisation campaigns and works.

Denis O'Driscoll, a noted and internationally acclaimed poet, studied law at UCD and his philosophical and thoughtful poetry has been described as seeking to "give a voice to the language of law and commerce."

Jane Hirshfield, a leading US poet, has written six books of poetry, several translations and two collections of essays. She has written several poems with justice as a central theme including the poem 'Justice without Passion' in 2003, explaining later that the poem was inspired by a



Photo by Hugh McElveen

*At the reading in Dublin's James Joyce House (L-R): John O'Donnell SC, Noeline Blackwell, Jane Hirshfield, Denis O'Driscoll and host Brendan Kilty SC*

hope that in the word 'passion' readers might also hear the word 'compassion.'

John O'Donnell has been published in newspapers, journals and anthologies in Ireland, England, Australia, and the United States. His most recent collection of poems is *Icarus Sees His Father Fly*, which

appeared from Dedalus in 2004.

The reading was generously hosted by Brendan Kilty, owner of the James Joyce House. FLAC was honoured to welcome three esteemed poets with the shared aspirations of giving a voice to law and bringing compassion to the pursuit of justice.

## New members for PILA team

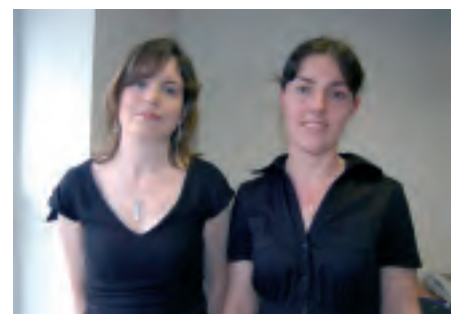
*The newly established Public Interest Law Alliance has recently appointed two new team members: Jo Kenny as Legal Officer and Lianne Murphy as Project Officer. They join PILA Manager Tony O'Riordan and Legal Information Officer Edel Quinn.*

**J**o qualified as a barrister in England and worked as a legal advisor to the Department for Work and Pensions for three years. During this time she defended statutory appeals, judicial reviews and matters before the European Court of Human Rights. She also advised on the ECHR aspects of policy proposals and legislation. Jo has an LLM in International Law and has worked as a legal researcher on textbooks on international law and human rights. She also trained and volunteered as an advisor at the Citizens' Advice Bureau.

On returning to Dublin, Jo worked as an associate at Arthur Cox for 2 years and co-authored the pensions chapter in the recently published *Employment Law* (Tottels). She has volunteered with FLAC as a law centre advisor and researcher.

Prior to her appointment to PILA, Jo undertook a professional placement at the Irish Human Rights Commission. She did her undergraduate degree in Spanish and Anthropology at St Andrews University and spent two years teaching English in Madrid.

Lianne has a BA in History and Politics from UCD and a LLM in International Human Rights Law from the Irish Centre for Human Rights, NUI Galway. On completing the LLM, Lianne interned in the Human Rights Law Network in Delhi, India, where she wrote a research piece on fair trial rights in the Indian criminal justice system and worked with the Women's Rights Unit. She also got an insight into how HRLN used public interest law in India. Lianne then completed an internship in FLAC where she worked on



*Jo Kenny (L) and Lianne Murphy*

FLAC's campaign to restore universal child benefit.

Prior to taking the role in PILA, Lianne was Advocacy Officer in Amnesty International Ireland, working on lobbying and researching areas in Amnesty's advocacy programme on domestic issues, including trafficking in human beings, violence against women, refugee rights, and children's rights. She also worked on Amnesty's human rights-based approach initiative.

## Focus on FLAC: Michael Farrell FLAC Senior Solicitor

**A** former Civil Rights activist in Northern Ireland and then a journalist before he became a lawyer, Michael Farrell was a member of the Irish Commission for Prisoners Overseas in the 1980s and was involved in the campaigns against miscarriages of justice like the Birmingham Six, Guildford Four and Sallins mail train case.

He qualified as a solicitor in 1993, working with Michael E. Hanahoe Solicitors, a firm which deals with a mixture of criminal and civil cases. During his time in Hanahoes, Michael worked on a number of high profile trials in the Special Criminal Court. He also did a lot of libel cases, reflecting his journalistic background, including cases for the Birmingham Six, when there was a smear campaign against them in sections of the British media after their wrongful convictions had been overturned. A few substantial settlements soon put paid to the smear campaign.

Michael also worked on many ordinary civil litigation cases, where he says he learned his trade. He acted in a number of Redress Board cases for victims of abuse in residential institutions. The details of the abuse were shocking but it was satisfying to be able to help people who often wanted to be heard and believed as much as to get compensation for what they had been through. He did some work for the Equality Authority in pregnancy dismissal and gender discrimination cases and was surprised to find how common this still is. He is really angry at how the Equality Authority has been undermined and has had its budget slashed recently and believes that this will allow discrimination and bad practices to continue.

During most of the 1990s, Michael was vice-chair and then co-chair of the Irish Council for Civil Liberties and since 2001 he has been a member of the Irish Human Rights Commission.

He joined FLAC in 2005 as part of an initiative to try to increase the legal resources available to marginalised and excluded groups. That has led to the Public Interest Law Alliance, which aims to

stimulate more 'buy-in' to public interest law by the legal community generally. As part of the initiative, FLAC also aimed at increasing the amount of strategic public interest litigation it does.

The most high profile FLAC public interest case is that of transgendered woman Lydia Foy, now in its twelfth year, and Michael pays tribute to the FLAC solicitors before him who started and carried on this case in tougher times. Lydia Foy finally won her case in the High Court at the end of 2007 with the first ever declaration of incompatibility with the European Convention on Human Rights (ECHR).

This outcome has given a measure of recognition and hope to a small and very vulnerable group and has also showed how the ECHR Act 2003 can be used to effect change. Unfortunately for Lydia Foy and other transgendered people, the State has decided to appeal to the Supreme Court, underlining Ireland's isolation from the rest of Europe on this issue.

Other interesting cases included challenging both the age limit for jury service – the law was amended before the case could come to court – and the exclusion of deaf people from juries. A judgment is still awaited in the deaf juror case over a year since it was heard in the High Court.

However, much of Michael's time has been taken up with less high-profile but, in his opinion, equally important work on social welfare appeals. It began with challenges to the withdrawal of Child Benefit from asylum-seekers and immigrants under the Habitual Residence Condition for social welfare benefits and has expanded to challenging the use of this condition to



Photo by Derek Speirs

block payment of other benefits as well.

There have been some significant successes, including the recent rejection of a bid by the Department of Social and Family Affairs to impose a blanket ban on any asylum seeker receiving benefits unless s/he is granted asylum or leave to remain. It is gratifying to be able to stop something that would make life even harder for people for whom it is hard enough already, he says.

In the short term Michael would like to see full legal recognition of the rights of transgendered people and would like asylum-seekers and immigrants – and especially their children – to be entitled to the same welfare benefits as anyone else. In the slightly longer term he would like to see Ireland enthusiastically embrace the ECHR and other international human rights treaties it has signed up to, instead of its present grudging attitude. And he would like to see a legally enforceable right to at least minimum standards of shelter and subsistence guaranteed to everyone in our society.



# Inside the Centre: The Free Legal Advice Centre @ Dublin North-West CIS, Finglas Village

*Tracy Ennis Faherty BL is a volunteer with Finglas FLAC, which has just moved offices to the new Finglas Citizens Information Centre.*

I have volunteered in FLAC in Finglas for almost three years and have encountered a wide variety of legal queries. However, in the last year and in light of the economic downturn, I have noticed a huge change in queries to the centre. In particular, queries around employment have increased dramatically. These generally relate to a dismissal the employee believes is unfair. Sadly, in many of these cases the dismissal might be morally unfair, but legally there is no redress.

Another growth area is debt collection and repossession complaints on foot of mortgage default. Rules on repossession have been addressed to a small degree, with agreement by some of the main lenders to defer repossession proceedings for a period. But there is no such assistance for debt collection and the vast majority of such queries to the centre involve situations where clients have received summons to attend court, which causes huge upset and worry. Worryingly, legal aid generally does not cover debt collection. Evidence suggests these complainants do not have the money to engage a solicitor and on most occasions must attend court unrepresented.

While family law usually forms a high percentage of queries to the clinic, over the past year difficulties with people losing their jobs, debt collection, mortgage repayment difficulties etc., have led to a higher percentage of family law queries, in particular on unpaid or reduced maintenance payments. Indeed, at present, District Court judges are awarding a figure of €0 to €20 in respect of maintenance where a father is unemployed.

Thankfully FLAC continues to provide a support network for people with legal problems and goes some way in assisting people affected by the current state of the economy.



### Case Study:

A recent case in Finglas FLAC involved a person who had left a full-time job in October last year for a permanent pensionable job in a very good company. This man is married and has children. He was on six month probation and had his review in March 2009. He was told at that point that he was being put on a further three months probation after which he was dismissed for having unsatisfactorily completed his probationary period. This is a classic example, where the employer has an 'out', i.e., a way to avoid redundancy payments and uses it.



Tracy Ennis Faherty BL in the new office for Finglas FLAC

## ICCPR follow-up conference: Cuts in human rights "a scandal", says UN expert

Readers may be aware from previous items in *FLAC News* that in July 2008, Ireland was reviewed by the UN Human Rights Committee under the UN International Covenant on Civil and Political Rights (ICCPR). As a result, the Committee produced its observations and recommendations as to how Ireland should best progress the developments already made to further the civil and political rights agenda in the State.

Together with the Irish Council for Civil Liberties and the Irish Penal Reform Trust, FLAC hosted a one-day conference entitled *Implementing Human Rights in a Time of Change: Facing Up to Challenges under the UN International Covenant on Civil and Political Rights* on 6 April 2009. The aim of the event was to ensure that the ICCPR process is not forgotten with the issuance of the Committee's recommendations; focus must be maintained on the implementation of the recommendations and in raising awareness of both the process and the recommendations in Ireland. The event was very well attended with almost 150 delegates.

Keynote speakers at the event were UN Human Rights Committee members:

- ▶▶ Judge Elisabeth Palm, Rapporteur on Ireland and former judge of the Swedish courts and former Vice-President of the European Court of Human Rights, and
- ▶▶ Professor Michael O'Flaherty, Co-Director of the Centre for Human Rights at the University of Nottingham and the Irish elected member of the Committee

Both speakers expressed dismay at ongoing cuts to the budgets of the Irish Human Rights Commission and the Equality Authority. Prof O'Flaherty called the cuts a "scandal" and went on to say "it beggars belief that the Government has failed to designate human rights protection and promotion as a charitable purpose in the Charities

Act (2009)". Elisabeth Palm said she was deeply disappointed by the heavy cuts which came only a short time after the Committee recommended to the government that the resources of the Commission be increased.

The morning session of the conference was chaired by Dr Maurice Hayes, former Chairman of the National Forum on Europe. Tanya Ward, ICCL Deputy Director, provided an overview of the involvement of the three host organisations with the shadow reporting process and James McIntyre of the Department of Foreign Affairs delivered a brief statement on government plans for follow-up.

The afternoon session was led by recently appointed Director of the National Women's Council of Ireland, Susan McKay, who chaired a panel of three speakers followed by an open discussion forum. The panel of speakers included Éamonn MacAodha, Chief Executive of the Irish Human Rights Commission, Michael Farrell, FLAC Senior Solicitor and Dr Siobhan Mullally of UCC. They were joined by speakers from the morning session for an engaging open forum where a wide range of interested groups gave their views.

The government is due to submit its next periodic report to the Committee by 31 July 2012, but in their Concluding Observations the Committee stipulated three primary areas of concern: prison conditions, rendition and religion in education. They requested that the government report back to them within one year on these issues.

For information on the conference, the HRC review of Ireland and the Concluding Observations, see: [www.rightsmonitor.org](http://www.rightsmonitor.org).



Standing, L-R: Liam Herick, IPRT; Siobhan Mullally, UCC; Michael Farrell, FLAC; Dr Maurice Hayes; Eamonn MacAodha, IHRC; Susan McKay; Seated: Judge Elisabeth Palm; Prof Michael O'Flaherty, Noline Blackwell, FLAC

Photos by Derek Speirs



Conference delegates



(L-R) Judge Elisabeth Palm, Prof Michael O'Flaherty & Dr Maurice Hayes before the event



(L-R) Eamonn MacAodha, Prof Michael O'Flaherty, Judge Elisabeth Palm, Michael Farrell, Dr Maurice Hayes, Tanya Ward, ICCL.

## FLAC casework round-up

### Appeals chief rejects welfare ban Key decision on benefits for asylum/protection seekers

**T**he Chief Social Welfare Appeals Officer has rejected a bid by the Department of Social and Family Affairs to exclude all asylum seekers and people seeking leave to remain in Ireland from receiving social welfare benefits other than through the direct provision scheme.

In two cases decided in June and July, Chief Appeals Officer Brian Flynn has rejected claims by the Department that people in the asylum/leave to remain process cannot satisfy the Habitual Residence Condition (HRC) for social welfare introduced in 2004. FLAC represented the women involved in the cases.

Both women, one from Africa and the other from the Middle East, were unsuccessful asylum seekers who had then applied for protection or humanitarian leave to remain. Social Welfare Appeals Officers had held that they had sufficient connections with this country to satisfy the HRC and qualify for Child Benefit in addition to the €9.60 per week they receive for their children under direct provision.

The Department promptly asked the Chief Appeals Officer to review these positive decisions and refused to pay the benefit in the meantime. It claimed that people in the asylum or leave to remain process were only “present” in this country and could not be regarded as “resident” unless or until they were granted asylum or leave to remain. Mere “presence” could not count towards satisfying the HRC.

The Department based its argument on a Supreme Court decision in *Goncescu v. Minister for Justice, Equality & Law Reform* from 2003, i.e. before the HRC was introduced, which did not deal with social welfare issues. It also quoted advice from the Attorney General’s office which said that time spent in the asylum process could not count towards ‘habitual residence’.

Unfortunately, the Department did not include another part of the Attorney General’s advice, which said that although time spent in the asylum process could not count towards habitual residence,

length of time in the country was only one of five factors to be taken into account in assessing habitual residence. It added that connections built up during the time people were in the asylum process could go towards establishing habitual residence.

FLAC made detailed submissions to the Chief Appeals Officer on behalf of the applicants in a review process that took more than a year. In the end, Mr Flynn said that because the *Goncescu* case “did not have a social welfare relevance and ... predated the introduction of the habitual residence condition legislation”, he doubted its relevance to the cases in question. He also noted that the Department had not quoted the portion of the Attorney General’s advice which indicated that people in the asylum process could build up links during that time that would help to meet the HRC.

He concluded in both cases that it would be hard to argue that the applicants did not satisfy the HRC. And he added in an important passage:

I do not believe there was any intention in framing the legislation [on the HRC] to exclude a particular category such as asylum/protection seekers from access to social welfare benefits. If there was any such intention, the relevant legislative provisions would have reflected that intention and removed any doubt on the issue.

FLAC is involved in another six related cases awaiting decision by Mr Flynn but the general principles seem to have been clearly established in these cases. The Department has not appealed the first decision.

The HRC is still in operation but the Department’s attempt to exclude everyone in the asylum/leave to remain process from qualifying under it has been firmly rejected. And Mr Flynn’s decisions seem to point to a more flexible interpretation of the five factors used in assessing compliance with the HRC.

These are important and welcome decisions at a time of increasing hardship for the most vulnerable in our society.

### Department eases rules where documents can’t be obtained

**A** recent decision by the Department of Social and Family Affairs in a case taken by FLAC should help asylum/protection seekers who cannot obtain official documents because the civil administration has broken down in their home country.

The Guardians Section of the Department had refused to pay Guardians Payment in respect of M, a young woman from an African country where civil war and armed conflict have led to the collapse of the government and administration in her area.

One of M’s parents had been killed in the conflict and she had lost contact with the rest of her family when she came to Ireland and applied for asylum. She was given refugee status and went to live with a relative who applied for Guardians Payment for her.

The Department refused because she could not produce an official death certificate for her dead parent, even though her guardian had sworn an affidavit setting out her circumstances and pointing out that it was impossible for her to get an official certificate.

The Department was relying on legal advice given by the Attorney General’s office some years earlier, saying that they should insist on official certificates and, oddly, that affidavits were not proof of what was stated in them.

Following submissions from FLAC, the Guardians Section accepted that the Attorney General’s advice was given in relation to the situation in Ireland and could not be applied to countries where the administration had collapsed and certificates could not be obtained. They also noted that where the Department of Justice, Equality and Law Reform had accepted M’s credibility and had given her refugee status without official certificates, it would be “incongruous” for the Guardians Section to demand a higher standard of proof for social welfare payments.

They accepted that in such circumstances and where no official documents were available, affidavits should be taken into account. And they paid the benefit in M’s case.

Though this decision was made specifically in the case of someone who had been declared a refugee, it is hoped that in future the principle of not insisting on documents that cannot be obtained will be applied more generally across the Department of Social and Family Affairs.

# Legal challenge to government cuts in equality and human rights infrastructure

**T**he Equality & Rights Alliance (ERA) plans to lodge a legal complaint with the European Commission and a parallel complaint to the Petitions Committee of the European Parliament that Ireland is in breach of EU Equality Law.

The initiative came from a Roundtable held on 25 May to explore legal grounds for lodging such complaints. ERA, a coalition of over 90 civil society groups, formed in reaction to government cutbacks to the human rights and equality infrastructure in Ireland.

Speaking at the event, ERA Chairperson Joanna McMinn said that Ireland could ill afford to tear down its watchdog bodies, adding that “the Ryan Report shows how essential it is that Ireland has independent, well funded equality and human rights bodies to blow the whistle on behalf of vulnerable, and often voiceless, people at all times,” she said.

ERA’s complaints centre on the independence and viability of the Equality Authority following the 43% cut to its budget last October as well as other ongoing developments. At the Roundtable, European and Irish anti-discrimination and equality experts set out how the disproportionate nature of the cuts to the Equality Authority

and the Human Rights Commission formed the nub of the case for complaint. This, combined with the threat of copy-cat actions by other European governments also looking to limit their equality bodies during the tougher economic times, meant that a complaint should be taken seriously by the Commission and the Parliament, they concluded.

Anti-discrimination lawyer Orlagh O’Farrell said that “in the face of recession, can anyone doubt the case, not for less protection from discrimination, but more?” Cutting back on the rights infrastructure was a false economy, she said, pointing out that in societies with greater income inequality, more people are sent to prison and less is spent on education and welfare.

“This gives a hollow ring to our Minister for Justice’s explanation that he has halved the Equality Authority’s budget in order to permit increased spending on policing and tackling crime,” O’Farrell pointed out.

Lodging a legal complaint with the European Commission is the start of a process which can take two to three years. If accepted, the Commission must question the member state about issues raised within the complaint. If, after questioning, the complaint is



At ERA’s Roundtable, L-R: Equality law expert Orlagh O’Farrell, Proinnsias de Rossa MEP, former Equality Authority CEO Niall Crowley, FLAC’s Michael Farrell.

upheld, it then moves to the European Court of Justice.

In April, UN Human Rights Committee member Professor Michael O’Flaherty decried what he described as the “scandal” of deep government cuts to the budgets of the Irish Human Rights Commission and the Equality Authority, only weeks after the UN’s top human rights body had recommended that the resources available to the Commission be increased and its independence strengthened. He was speaking at the follow-up conference on the International Covenant on Civil and Political Rights jointly organised by FLAC, the Irish Council for Civil Liberties and the Irish Penal Reform Trust - for more details see page 14.

## Making access to justice possible

**FLAC has been working for equal access to justice for all people in Ireland since it was set up in 1969. Forty years later, we are still campaigning, researching and providing practical help to people all over the country. In 2008, FLAC answered some 9,500 queries over its telephone helpline and provided free legal advice to around 7,500 people via its centres around the country.**

**The current economic climate means increased strain on FLAC’s workload. If you would like to help FLAC continue its work promoting equal access to justice for all, please consider making a donation to the organisation.**

**You can help FLAC by:**

- ▶ Sending a cheque/postal order with your details to **FLAC, 13 Lower Dorset Street, Dublin 1**
- ▶ Logging on to [www.flac.ie](http://www.flac.ie) and following the link to [www.mycharity.ie](http://www.mycharity.ie)
- ▶ Making a credit/laser card donation by completing and returning the donation form below:

Name: .....	Amount: € .....	<input type="checkbox"/> I am : a PAYE taxpayer <input type="checkbox"/> a non-PAYE taxpayer
Address: .....	If you are a PAYE-only taxpayer, a gift of €250 or more could be worth up to an extra 72% to us!	
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Card number: <input type="text"/>	Expiry date: <input type="text"/>   <input type="text"/>	CSV: <input type="text"/>