

# flacNews

FREE LEGAL ADVICE CENTRES

## What do you cut when cuts have to be made?

**N**ot only does the current recession cost jobs and money, it also creates enormous anxiety and uncertainty. As FLAC's annual report for 2010 published on 2 June 2011 shows, many of those who contact us for information or advice tell us that the dread of the unknown future is as substantial a challenge as the actual real events that bring them to seek information or advice at all.

One of the main functions of FLAC's services is to give people the information and advice that they need to understand their problem and to negotiate the legal and technical steps involved in dealing with it. While this will not make a debt or a threat of legal action go away, it does increase a person's power to act. Equally, legal jargon itself can be intimidating until it is explained in more straightforward language. This is why in our report we identify with pride the contribution made by FLAC in providing information and advice to people through our volunteer lawyers based in some 85 evening centres throughout the country during 2010, as well as providing legal information over the phone and through the website.

FLAC's telephone information line, our second-tier services, our website and our clinics around the country all provided support and information to tens of thousands of people, including

### Commissioner Hammarberg Follow-Up Visit



*Council of Europe Commissioner for Human Rights Thomas Hammarberg, who spoke at the National Gallery of Ireland in Dublin on June 1st.*

*See article on page 6.*

10,967 queries to our centres being recorded in 2011.

While family law remained the largest area of enquiry, making up 30% of all calls, there was a significant increase in the number of debt-related questions – an area which has seen an increase of 400% in the last three years. FLAC had warned of the dangers of widespread

credit and light-touch regulation as far back as 2003. Unfortunately those predictions have now been validated. Despite the scale and complexity of the difficulties, FLAC continued to seek to make positive proposals for effective action. During 2010, FLAC's representation on the government's Expert Group on Mortgage Arrears and

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# Time for action in Foy case

**It is now one year on since the Government dropped its appeal in the Lydia Foy case, taken by FLAC, and accepted that Ireland is in breach of the European Convention on Human Rights for failing to legally recognise transgender persons. And it is nearly four years since the High Court first made that ruling. But there is still no change in the law.**

Council of Europe Human Rights Commissioner Thomas Hammarberg on a recent visit to Ireland described the Government's failure to change the law as "unacceptable". He said the Foy case was widely discussed across Europe, where Ireland was one of only a handful of countries that did not give legal recognition to transgender persons.

It is believed that Commissioner Hammarberg will write to the Government after his visit and set out a number of issues that need to be addressed, including transgender rights.

The previous Government set up an interdepartmental Gender Recognition Advisory Group in May 2010 to prepare draft legislation but it has still not reported at the time of going to press. This is believed to be holding up Government action on the issue but Social Protection Minister Joan Burton has given a strong commitment to introduce legislation "within the shortest possible time-frame" when the Committee reports.

The UK has had a Gender Recognition Act since 2004 and legislation here would bring the Republic into line with Northern Ireland and Great Britain. But there is also an opportunity to remedy some flaws that have emerged in the UK legislation,



particularly the requirement that transgender persons who were married in their former gender must divorce before getting recognition, even if both parties want to stay together. Commissioner Hammarberg has suggested that Ireland has the opportunity to bring in legislation that could act as a model for other countries.

Hopefully all parties in the Oireachtas will support this legislation when it is brought forward and give long overdue recognition and relief to this very marginalised community.

Commissioner Hammarberg made another important point in his comments on the Foy case: currently the European Court of Human Rights faces a major crisis because of the huge numbers of cases it has to deal with every year. It is generally agreed that the only solution is for national courts to enforce the European Convention directly in each member state. The Irish Government is a strong supporter of that position. But that means that when the Irish courts hold that the Government is in breach of the Convention, it has an obligation to act promptly to remedy the problem. So far it has not done so in this case. It is high time it did.

# A Perspective on the Ombudsman for Children



**The Ombudsman for Children's Office (OCO) recently published a children's rights analysis of 10 key investigations undertaken by the Office over the last number of years. The research – undertaken by Dr Ursula Kilkelly, Senior Lecturer at the Faculty of Law at University College Cork – considered whether and to what extent the actions of the public bodies examined in each of the investigations met Ireland's children's rights obligations, particularly those flowing from the UN Convention on the Rights of the Child and the European Convention on Human Rights.**

The investigations covered a wide range of issues, including the provision of special care and high support services; school transport for a child with special needs; the death of a child in care; tenancy determination by a local authority; home tuition for a child with autism; the provision of HSE services to a young mother and her baby, both of whom were in care; and supports provided to a child with special needs in foster care.

The impetus for this work came from a desire to align more closely the different functions of the office under the Ombudsman for Children Act 2002. The 2002 Act provides that the Ombudsman for Children may undertake an investigation into any action by or on behalf of a public body where it appears to the Ombudsman for Children that the action has or may have adversely affected the child, and where the action was or may have been the result of maladministration.

The Ombudsman for Children is also empowered by the 2002 Act to promote the rights and welfare of children by advising Ministers of the

**By Manus de Barra**

(Policy and Human Rights Officer at the Ombudsman for Children's Office)

Government on the development and coordination of policy relating to the rights of children, and also by encouraging public bodies to develop policies, practices and procedures designed to promote children's rights and their welfare. In carrying out this latter function, the Ombudsman for Children is guided by Ireland's obligations under international human rights instruments to which the State is party.

However, the failure on the part of public bodies to act in compliance with the State's international children's rights obligations is not a ground on which the Ombudsman for Children can find fault with their actions in the context of its statutory investigation function.

The research highlighted a number of overarching themes common to many of the investigations undertaken by the OCO and the challenges faced in mainstreaming children's rights in public administration and decision-making. One of those themes was the absence of any routine consideration of Ireland's human rights obligations in framing policy or delivering services to children. It was also clear that child impact analyses, broadly conceived, did not feature in decision-making by public bodies in the cases that were investigated.

This links with the wider debate around the need to amend the Irish Constitution to give greater protection to children's rights. Much of the discussion on this issue has focused – quite reasonably – on

important decisions of the Courts that touch on the issue of how children's best interests are determined and how their rights are considered in complex cases where other rights are engaged and balanced against them.

However, the Ombudsman for Children's interventions on the question of amending the Constitution have emphasised the importance of considering the impact of such a change on the Oireachtas, Government Departments, local authorities, the HSE and other public bodies. In short, its experience leads it to believe that we should look beyond the Courts to how public administration affects children, and how the Constitution informs public administration and decision-making by public bodies.

The Ombudsman for Children's numerous submissions to the Oireachtas on the Constitution make clear that there is significant scope for improving practice in this area. In particular, it believes that incorporating the general principles of the UN Convention on the Rights of Child into the Constitution will oblige public bodies to ask certain questions on a consistent basis when drafting legislation, designing policy or delivering services to children. Are certain groups of children being left at a disadvantage? Does this proposed measure or action operate in the best interests of children? Are those decisions being informed by the views of children and young people?

If we are to move towards a culture of respect for children's rights, these questions must be asked meaningfully at all levels of public administration, all the time. Amending the Constitution along the lines suggested above would be a move in the right direction.

Continued from front page

# What do you cut when cuts have to be made?

Personal Debt contributed to recommendations from the Group which, when implemented, will go some way to addressing the problems of over-indebted home owners.

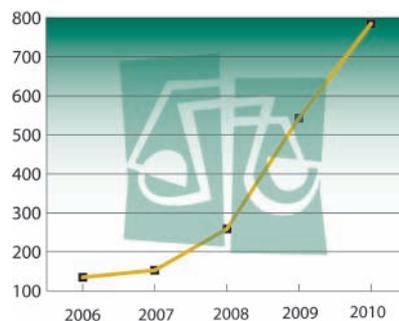
The Annual Report also highlights FLAC's concerns about delays in the State-funded legal aid system run by the Legal Aid Board upon which those on low incomes depend when they need to be represented before the law (see *article on waiting lists on page 9*). While there are inherent flaws in the scheme's structure so that it denies representation to poor people at Employment Appeals Tribunals and Social Welfare Appeals Tribunals, FLAC's report concentrated on problems connected to underfunding and staff reduction in the Legal Aid Board's Law Centres at a time when the need for their services is increasing. In FLAC, we hope that our service which is

**“Failure to provide a timely legal service means that vulnerable people get lost in the system.”**

provided by a roster of entirely voluntary lawyers will provide a bridge to help people while they wait. However, we can never be expected to replace the staff of the 29 full-time law centres of the state scheme who do not lack will or capacity, but simply lack people to give a service that is very badly needed.

The logical response to FLAC's complaint is that there are not enough resources. The country cannot afford it. Every government service has had to take a hit. However, where a service is

**“An increase of 400% in debt-related enquiries in the last four years.”**



Debt enquiries to FLAC from 2006 to 2010

considered important and front-line, the rule has been that the number of service providers can be maintained so that a level of essential service is maintained. There is an urgent need for people who have legal problems to understand and to be able to navigate the legal and administrative framework which surrounds them. Failure to provide a timely legal service means that vulnerable people get lost in the system.

To answer those who note with relief that the denial of a timely legal aid service means some immediate savings which are worth sacrificing some (other) people for, we say that the saving is illusory. The fear and worry that people feel causes problems for all of us as a society. We hear from those who have strained relationships at home, in the workplace, in neighbourhoods. We hear of their health and financial problems. All these make Ireland a society which functions less well, where more people become alienated, are subject to abuse and where their voices remain unheard. Therefore, even in times of great economic difficulty, care must be taken in the manner in which cuts are made.



The cover of FLAC's Annual Report 2010. Copies available from FLAC. (01) 887 3600

In particular, where services are being cut, the government is constrained by the solemn promises and commitments in international law it made to protect human rights. Because this has happened to many other countries, international human rights law has developed mechanisms which can guide our government too. Those rules and mechanisms say that no state should make cuts which make it impossible for people to live in dignity. They say that where actions must be taken which have the effect of reducing rights and dignity, then the State must make its decision to cut in a way which is non-discriminatory, which considers all available options and the precarious situation of disadvantaged and marginalised groups and which finally takes the option which best protects human rights.

Adoption of those standards, which is Ireland's obligation in international human rights law, would not make the pain of the recession go away. However, knowing that when cuts were made, the government considered people's dignity and rights would not just be the performance of a legal obligation, nor just a credit to the government; it would also be a solace to a people who are voiceless, and in dread of being forgotten and abandoned.

# Minister Lynch launches “Your Rights. Right Now”

**M**inister of State Kathleen Lynch launched “Your Rights. Right Now”, Ireland’s Civil Society Universal Periodic Review (UPR) Stakeholder Report on 19 April 2011. The Civil Society Stakeholder Report was produced by a coalition of 17 leading non-governmental organisations including FLAC and was co-ordinated by the Irish Council for Civil Liberties (ICCL).

Over 100 organisations and 90 individuals have endorsed the report, which has been submitted to the United Nations as part of its Universal Periodic Review process under which Ireland will have its human rights’ record examined in October 2011 by peers at the UN Human Rights Council.

Speaking at the launch of the Civil Society report, Minister of State for Disability, Equality, Mental Health and Older People, Kathleen Lynch TD stated “the UPR mechanism will help us to examine the issues identified by members of the public and civil society, and consider how we as a country approach the entire area of human rights”.

She noted that the “Your Rights. Right Now” campaign has been very successful in raising awareness of human rights and motivating people to engage in the UPR process.

Mark Kelly, Director of ICCL, speaking at the launch noted Ireland’s great efforts at protecting human rights abroad but that the “State has yet to match its international record at home”. He hoped that “the new government will look seriously at the protection gaps identified in this



*Minister of State Kathleen Lynch (above) and with ICCL Director Mark Kelly (left) at the launch of the “Your Rights Right Now” Report on April 19th*

**“the State has yet to match its international record at home”**

report and introduce more effective national mechanisms to guarantee that its international human rights obligations will be respected”.

The Government invited members of the public and organisations to take part in public consultation meetings to discuss Ireland’s human rights record as part of the UPR process, which were held in several locations around the country from the 16th to the 30th May. An inter-departmental working group chaired by the Department of Justice and Equality will prepare Ireland’s national report, which is due to be submitted to the

UN Human Rights Council by the 4 July.

FLAC attended some of these public consultations and was pleased to note that some of its main concerns in its submission to the UN were echoed by members of the public, including; transgender issues, discrepancies in the asylum process, standards of living in direct provision, the right to housing and the need for international human rights treaties which the State has ratified to be incorporated into Irish law.

**The “Your Rights. Right Now” submission on the UPR can be accessed at:**

<http://www.rightsnow.ie>

**FLAC’s submission to this report is available at**  
[http://www.flac.ie/download/pdf/flacs\\_submission\\_to\\_the\\_upr.pdf](http://www.flac.ie/download/pdf/flacs_submission_to_the_upr.pdf)

# Hammarberg follow-up visit

**O**n 1 June 2011, in the National Gallery of Ireland in Dublin, Thomas Hammarberg, the Council of Europe Commissioner for Human Rights, held a conversation with members of civil society and NGOs, hosted by the Irish Human Rights Commission.



The Commissioner discussed the impact of the economic crisis and called on the Government to take into account the long term effects of their budgetary policies, as hasty decisions will have consequences in future years and may lead to further social problems. A National Action Plan for Human Rights is even more important in recessionary times and this should inspire and inform other policies. Commissioner Hammarberg called for a strategic and systematic approach to legislation and planning by the Executive so that their intentions will be made real at a national and local

level. He spoke about the positive signs in the area of human rights due to the role of civil society and the media as monitoring mechanisms which can act as a “balance to the failure of political systems and politicians to follow through” on promises and ensure the real implementation of human rights standards.

One of the key messages from the presentation was the suggestion that Europe lacks moral leadership putting European values, such as tolerance and diversity, under threat. However, as it was pointed out on the

night, through his tireless campaigning for the implementation of human rights and raising difficult issues the Commissioner himself has provided Europe with a great example of what it is to be a moral and ethical leader.

FLAC looks forward to the Commissioner’s comments on his visit which will be informed by his meetings with government representatives as well as with the Irish Human Rights Commission and human rights and equality organisations. FLAC made a submission to the Commissioner in advance of his visit which is available at:



[http://www.flac.ie/download/pdf/may\\_2011\\_flac\\_submission\\_for\\_coe\\_commissioner\\_for\\_human\\_rights\\_hammarberg.pdf](http://www.flac.ie/download/pdf/may_2011_flac_submission_for_coe_commissioner_for_human_rights_hammarberg.pdf)

To download FLAC’s submission to a mobile device or phone, scan the QR code on the left. A free app such as “ScanLife” may be needed. Let us know what you think of this feature by emailing us at: [flacmedia@flac.ie](mailto:flacmedia@flac.ie)

## Joint Mobile Group visit FLAC

**O**n 12 May 2011, FLAC was visited by Dmitry Kazakov and Anton Ryjov, two members of the Joint Mobile Group. The Joint Mobile Group is composed of a network of human rights NGOs based in Russia who investigate alleged human rights abuses committed across the Russian Federation. The group recently won the 2011 Front Line Award for Human Rights Defenders at Risk for their work in

**Chechnya, which was presented to them by former President Mary Robinson at a ceremony in City Hall, Dublin.**

On presenting the award Mrs Robinson commended the work of the Joint Mobile Group calling it “an inspirational example of how committed individuals, despite all the pressures that are brought to bear on them, can hold the line in defence of justice, truth and the rule of law”. The Joint Mobile Group

was established in 2000 with the aim of using legal methods to vindicate human rights abuses in the Russian Federation. The group has been active in Chechnya since November 2009. They investigate alleged crimes such as torture and disappearances of persons and then use this evidence to persuade state investigators to initiate official investigations into the alleged crimes.

Joint Mobile work in very dangerous circumstances,



Michael Farrell, Senior Solicitor for FLAC, Jo Kenny, Legal Officer PILA, and Dmitry Kazakov (above).

# Ireland's first Report to the UN Committee Against Torture

**Ireland's first periodic review under the United Nations Convention Against Torture took place at the Office of the UN High Commissioner for Human Rights in May 2011.**

The UN Committee Against Torture (UNCAT) scrutinised Ireland's obligations under the convention, where the Government delegation was headed by Mr. Sean Aylward, Secretary General of the Department of Justice and Equality. The Committee questioned the Government on a variety of issues, particularly in relation to places of detention within the State, the asylum process and Ireland's lack of incorporation of international human rights treaties into domestic law.

During the hearing, Committee member Luis Gallegos of Ecuador praised the input of the NGO community in Ireland into the UNCAT process. The Irish Council for Civil Liberties (ICCL) and the Irish Penal Reform Trust (IPRT) submitted a joint shadow report to the Committee which was endorsed by a



number of organisations including FLAC. A number of Irish NGOs attended the hearing in Geneva. Mr Gallegos showed concern over the reduction in the granting of refugee status and observed that as the Irish economy declines the State seems to be becoming more hard-line towards migrants. The high rejection rate of Nigerian asylum seekers was also noted by Mr Gallegos. Committee member Fernando Mariño Menendez of Spain called for decisions of the Refugee Appeals Tribunal to be made available to the public rather than only to lawyers working in the area, as is the situation at present. The heavy backlog of complaints before the Garda Síochána Ombudsman Commission was noted by Committee

member Alessio Bruni of Italy.

Following this hearing, the Committee published its Concluding Observations on 6 June 2011. In relation to refugees and international protection, the Committee reiterated the recommendation made by the UN Committee for the Elimination of Racial Discrimination that the draft Immigration, Residence and Protection Bill be amended to comply with the requirements of the Convention. The UN Committee Against Torture also recommended that the Government ensure that due process is afforded to asylum seekers in the granting of refugee status and that an investigation be carried out to assess the decrease in the granting of refugee status in Ireland.

The State was encouraged to publicise its report to the Committee as well as the Committee's recommendations and to submit follow-up information to the Committee regarding certain recommendations within a year.



Anton Ryjov of the Joint Mobile Group, and Saoirse Brady, Policy and Campaigns Officer FLAC (above).

particularly as in Chechnya at present law enforcement poses many problems for NGOs. Nevertheless there are NGOs active in protecting human rights, including in the areas of prisoner rights, children's rights and the rights of journalists.

The members of the Group who visited FLAC are lawyers for the Committee Against Torture in Russia and are also involved in strategic litigation. They have taken approximately 70 public interest cases before the European Court of Human Rights and they have been successful on five occasions to date.

**The webcast of the UNCAT hearing can be viewed at <http://www.ustream.tv/channel/iprt>**

**The Joint ICCL and IPRT shadow report can be viewed at <http://www.iprt.ie/files/ICCL-IPRT-report-web.pdf>**

**The concluding recommendations made by the UNCAT Committee can be accessed at <http://www.pila.ie/bulletin/latestbulletin/2011/06/15/un-committee-against-torture-calls-for-independent-investigation-into-magdalene-laundries/>**

# A national strategy on over-indebtedness

**A**s this issue of **FLAC News** goes to print, the new administration has been in government for approximately four months. From the perspective of the increasing number of people finding themselves mired in mortgage and other personal debt, what has changed with the change of government? Very little so far, unfortunately.

Indeed, the new programme for government, insofar as it concerns the consumer debt crisis, is long on generalisation and short on specifics. To summarise, it suggests that the government will examine introducing a two year moratorium on repossession of 'modest' family homes, fast tracking personal bankruptcy reform, converting the Money Advice and Budgeting Service (MABS) into a Personal Debt Management Agency with strong legal powers and making greater use of Mortgage Interest Supplement to support families who cannot meet their mortgage payments.

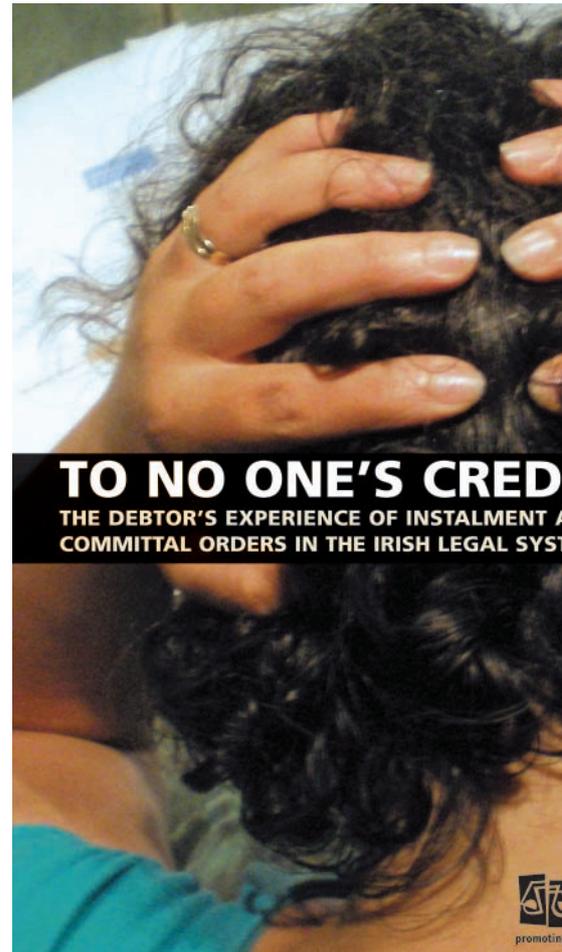
Taking each of these in turn, no great sense of the urgency or complexity of the problem is apparent. While a two year moratorium will undoubtedly help some people who are now in crisis to ride out that crisis, this proposal fails to deal with the unfortunate reality that a number of mortgages are ultimately unsustainable and a way must be found to bring them to a clean end and provide access to social housing or rental options.

There is movement on personal bankruptcy law to honour a commitment given to the IMF as part of the bail out to introduce such legislation by the end of the first quarter of 2012.

While the Minister for Justice Equality and Defence has improved on that timeline with the publication of a Bill proposing to fix a maximum length of twelve years on bankruptcy and reduce the average period from 12 to 5 years, this is in reality just a minor adjustment to our antiquated bankruptcy laws, which will have no significance for the majority of over-indebted consumers. Converting MABS into a Personal Debt Management Agency may look attractive on the surface but it is not an option without complications, particularly as it is inconceivable that a debt management agency could act as an independent money advisor at the same time.

Finally, it is notable that the Social Welfare and Pension Bill 2011 which was introduced and debated in June 2011 contains no amendments to the Mortgage Interest Supplement scheme, despite recommendations for change both in the Department's own review and arising out of the Interim and final reports of the Mortgage Arrears and Personal Debt Group.

An honourable exception perhaps to the current vacuum is the rapid publication by the Department of Environment of a new Housing Policy Statement. Despite emphasising future lack of resources, it is refreshing for its candid and honest evaluation of the failed policy of the 'boom' years, in particular the obsession with house ownership. The commitments given to improve security of tenure and the quality of rental accommodation and to better regulate landlords, to increase the provision of social housing and to secure a social dividend in terms of housing stock from NAMA, to place approved housing bodies at the heart of future housing provision and finally to introduce a single Mortgage Arrears Resolution



**TO NO ONE'S CREDIT**  
THE DEBTOR'S EXPERIENCE OF INSTALMENT  
COMMITTAL ORDERS IN THE IRISH LEGAL SYSTEM

Process for use by local authorities in relation to housing loan arrears are welcome.

It is abundantly clear, however, that the need to respond to the debt crisis affects a number of government departments. This is evident from the membership of the Expert Group on Mortgage Arrears which examined potential solutions in 2010, with the Departments of Justice, Environment and Social Protection as well as the Department of Finance and the Financial Regulator having participated. FLAC, which itself participated in the group to identify solutions in the interests of consumers, believes that a national strategy is urgently required that would involve the simultaneous implementation of a number of overdue reforms. These should include:

- ◆ The immediate implementation of the remaining recommendations of the Expert Group on



Mortgage Arrears including those relating to Mortgage Interest Supplement

- ◆ Fast tracking the recommendations of the Law Reform Commission in relation to personal insolvency legislation, bankruptcy and debt enforcement reform
- ◆ Setting up an independent Re-scheduling Service that would adjudicate on the sustainability of mortgages where lender and borrower do not agree
- ◆ Providing a suite of options for borrowers in arrears whose mortgages may be sustainable, including an improved mortgage arrears resolution pro-

cess, a compulsory deferred interest scheme and an examination of targeted debt forgiveness options

- ◆ Providing a range of rights for borrowers whose mortgages may be unsustainable, including a right of sale, a right of residence until sale, debt settlement of any residual debt after sale, an immediate assessment of social housing need and access to rent supplement pending the provision of social housing
- ◆ A focus on delivering more social housing units, if necessary utilising the assets available through the medium of NAMA and the introduction

of suitable rental schemes

- ◆ Provision of greater resources to advise and assist those with unmanageable debt.

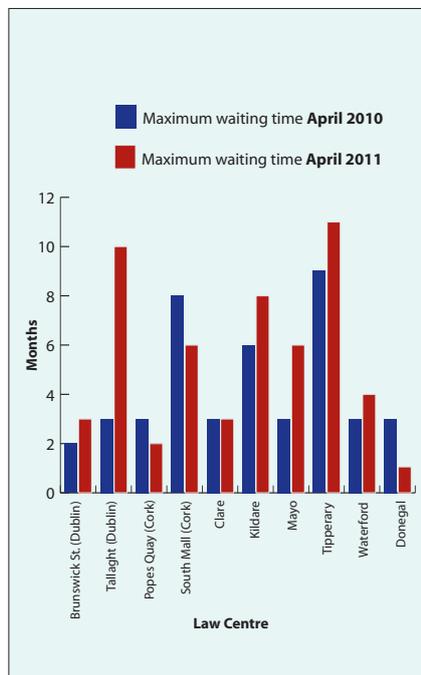
The conclusion to the introduction to the programme for government states that *'our country deserves a fresh start from the failed politics of the years past. It also deserves a new hope that a new Government guided by the needs of the many rather than the greed of the few can make a real, positive difference in their lives'*. It also declares that *'there isn't a moment to be lost'*.

Many indebted people far from the corridors of power struggling to hold their lives together would agree. So what is causing the delay?

## Waiting for Civil Legal Aid

**W**aiting times for civil legal aid have seen a substantial increase in recent years. Between January and March 2011 alone the demand for legal aid rose by approximately 28%. As of May 2011, 3,399 people were approved for legal aid but were still on the waiting list for a first consultation with a solicitor.

This issue of waiting times and its impediment to the constitutional right to legal aid was addressed in the 2004 case of *O'Donoghue -v- The Legal Aid Board & Ors*. The Court stated that a reasonable waiting period for a person to access a solicitor would be between two and four months. Following the judgment, the Legal Aid Board made a commitment to ensure that this four month target was met, including the introduction of a Private Practitioners' Scheme. Those measures were successful in reducing waiting times across the country. However, it is now clear that the demand for legal aid has increased substantially in the last number of years, primarily because more people are qualifying for legal aid due to loss of



employment and overall reduction in wages.

Additionally, because of the embargo imposed on public service recruitment, staff members of the Legal Aid Board who leave, either permanently or temporarily, are not being replaced. This has posed considerable problems

regarding access to legal aid, particularly when considering that from 2007-2010 there has been an estimated increase of 69% in demand for the service. At the same time, severe restrictions have been imposed on the private practitioners' scheme as its budget too has been cut. FLAC is of the opinion that legal aid should be considered a front line service which would mean that staff could be replaced, easing pressure on the law centres, as much of the current delay can be put down to this lack of personnel.

Article 6 of the European Convention on Human Rights and Fundamental Freedoms states that access to justice is a human right. The realisation of that right has come before the European Court on Human Rights, specifically in relation to Ireland in the 1979 case of *Airey v Ireland* where the Court stated *'the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective'*. At present, waiting times for Tallaght or Tipperary (10 and 11 months respectively) could be argued to be both theoretical and illusory.

## FOCUS ON FLAC

# Roisin Webb, FLAC Council

**R**oisin joined FLAC as an intern in 2000 under a FÁS placement scheme and has stayed involved in different ways over the years, most recently becoming a FLAC National Council member in 2007.

As a former employee of FLAC, Roisin is passionate about the importance of the work that FLAC does and therefore enjoys being able to keep up-to-date with this in her role on FLAC Council. Roisin's work with the Council mainly involves attending the monthly Council meetings, where the implementation and direction of FLAC's strategic plan is discussed and overseen. Roisin very much enjoyed the process of devising FLAC's latest strategic plan as it provided the opportunity for FLAC Council and staff to work together to talk through what should be given priority.

Prior to working with FLAC as an intern, Roisin completed a B.A. in Law and European Studies in the University of Limerick. During this undergraduate degree she completed a work placement with a public interest lawyer in Los Angeles, Bob Myers, primarily working on two death penalty post-conviction appeal cases, but also on a number of class actions in relation to disability law and special educational needs. This experience illuminated the whole area of public interest law for Roisin, an area which was little emphasised at the time in Irish universities. Therefore when she came across the work of FLAC in her final year when applying for the FLAC fellowship, Roisin knew that she would like to become involved with the work of FLAC.

After completing her FLAC internship Roisin went on to work for FLAC fulltime for two years in its work on legal aid. This involved advocating on behalf of individuals who had been refused legal aid and working on



FLAC's Legal Aid Report. This is an area which Roisin is still passionate about, particularly in relation to the limitations of the current legal aid system in meeting the legal needs of vulnerable individuals and groups.

Looking back on her involvement with FLAC so far, Roisin has a number of fond memories. One of the early highlights was going through FLAC's old archived material while working on the Civil Legal Aid Report. As well as finding some amazing photos from the 70s and 80s, many of which now adorn the walls of FLAC offices, Roisin also had the opportunity to interview many lawyers who were involved in the early days of FLAC, including Judge Catherine McGuinness, Judge Susan Denham and the recently retired Judge Vivian Lavan. *"It was brilliant to get their insights and hear some of their stories in relation to the early days of FLAC – it gave me such a sense of the history of FLAC. It was such an inspiring time – FLAC volunteers were so proactive in campaigning for legal aid and for providing a service when none existed – in some cases, law students were even permitted by the court to represent FLAC clients due to the complete lack of state services."*

Another highlight was working with the late Dave Ellis on the Legal Aid Report who was a mentor to Roisin

and remains an inspiration to her in her work.

Since her time working with FLAC Roisin has completed a European MA in Human Rights and Democratization in Venice. She subsequently qualified and worked as a Barrister in Ireland in areas such as criminal law, immigration and asylum law, disability and equality laws and child protection law. Roisin also worked as legal policy officer with the Children's Rights Alliance from 2007-2008 and was commissioned to write a report for the Irish Council for Civil Liberties (ICCL) entitled "Protecting Children and Respecting the Rule of Law" which was published in July 2009.

Roisin is excited about her future involvement with FLAC Council, in particular helping to oversee the development of the Public Interest Law Alliance (PILA), a project of FLAC. Roisin has seen this develop from the earliest stages and is excited about the new opportunities for law students and lawyers to engage in public interest law which she hopes will lead to the law being used increasingly as a tool to affect social change for vulnerable individuals and groups in Ireland.

Over the coming few years, one of Roisin's main hopes for FLAC is to help monitor and improve the legal aid system in Ireland, the services of which are hugely stretched. This is *"very serious for the public and those who need access to the services, but also to solicitors that work within the Legal Aid Board who are put under tremendous pressure. Their existing budget simply cannot stretch to the service that it needs to provide."* FLAC therefore has an important role in helping the general public understand that those legal services are vital in order to ensure genuine access to proper legal advice and legal services for people who can't afford it.

## INSIDE THE FLAC CENTRE

# CRUMLIN FREE LEGAL ADVICE CENTRE

**C**atherine McLoone, a barrister, has been volunteering with FLAC in Crumlin for the last five years. Catherine provides legal advice to drop-in callers on a diverse range of areas, from family law and domestic disputes to employment law and debt queries. She notes that the best part of volunteering is seeing the relief in people when they know how to deal with their legal query, what to do and where to go.

Crumlin Citizens Information Centre (CIC), where the FLAC centre is housed, is one of the oldest of the CICs. It grew out of Crumlin Social Service Centre, where FLAC has operated out of since the early 1970s. The CIC is managed by Anne McCloskey, who assists FLAC with the operation of its service. The FLAC centre is run by volunteers including volunteer receptionists, assistants and advisors and is known locally 'as the place to go, if you want to know'.

Helping to keep this reputation alive is Louisa Richardson, an in-house solicitor, who has been volunteering with FLAC for the past eight years. Louisa finds volunteering in the Crumlin centre a positive experience, both due to the opportunity of meeting with individual clients in a personal capacity, something which is not part of her working day and also the gratitude expressed by



Pictured: Brenda McGarrity, Louisa Richardson and Catherine McLoone.

callers. This sentiment is echoed by Brenda McGarrity, a law student, who has been an assistant volunteer with FLAC for the past 12 months. She notes that the community in Crumlin is a well established one and FLAC has been very well received there.

However, the volunteers in the Crumlin free legal advice centre do note some common challenges, such as the long waiting times faced by those clients that they refer onto the Legal Aid Board. "I imagine this to be their greatest challenge. Time." commented Catherine McLoone. Another challenge noted by the team is staying abreast of the changes in the areas of the law that they would not be involved in on a day to day basis as part of their job but which are

relevant for the clients of FLAC.

The Crumlin free legal advice centre takes place every Wednesday evening from 7.00 to 9.00pm in the Crumlin CIC, located at 146 Sundrive Road, Crumlin, Dublin 12. This centre is operated on a drop-in basis. The Crumlin volunteers saw a total number of 367 callers in 2010. Of these, 196 were referred on to another agency or body for further assistance, including to private solicitors, the Legal Aid Board, the Money Advice and Budgeting Services, Family Mediation Services and other statutory or voluntary organisations. This year there has already been over 165 callers to the centre seeking legal advice.

### TRAINING

As part of our support to our volunteers' work in FLAC centres, we regularly organise training courses and events.

During our training events we aim to cover two main areas of law that might come up frequently in the FLAC centres. We also invite another agency or organisation to briefly introduce its work so that our volunteers can refer clients to it in confidence. We have already run two training events in Dublin and one in Cork this year, with more

training courses scheduled for the rest of the year.

For further information please contact ZseVarga Volunteer and Centres Manager at [volunteers@flac.ie](mailto:volunteers@flac.ie)

### SUPPORTING FLAC VOLUNTEERS

#### Volunteer Assistants:

In the last year we have taken on more and more assistant volunteers in our centres whose role is to support the advisors in our FLAC Centres.

Assistants are usually law graduates, but not fully qualified. They can be of great help to the FLAC advisors, whether that be filling out the data collection forms, undertaking on-the-spot internet research if needed, or finding relevant leaflets in our resource folders. According to our policy, assistants are not allowed to give legal advice without the close supervision of an advisor. We are hoping that these enthusiastic new volunteers make our advisors' lives easier by their work and that once they qualify, they will be ready to start up as advisors in our centres too.

**pila**  
public interest law alliance  
a project of FLAC

**PUBLIC INTEREST LAW ALLIANCE  
UPDATE**

**PILA hosts Business, Law & Human Rights seminar**

On 13 April 2011, PILA co-hosted the well-attended and popular Business, Law & Human Rights seminar in conjunction with the Law Society. The seminar focused on corporate social responsibility (CSR) and the practical implementation of CSR and *pro bono* work by law firms. It featured Michael

Smyth CBE as keynote speaker. He is a former partner in the London legal practice of Clifford Chance and led their public policy and government affairs practice for over twenty years and also had overall responsibility for the firm's *pro bono* activities.

Michael Smyth made it clear that commercial law firms no longer have a choice about whether they undertake *pro bono* matters, as clients are increasingly demanding that law firms demonstrate CSR and *pro bono* records

when pitching for work.

Esther Lynch of the Irish Congress of Trade Unions and Tomás Sercovich of Business in the Community Ireland also spoke on the theme of CSR. Esther Lynch noted that a company's treatment of human rights law in all aspects of its business decides whether it can be called "ethical". Tomás Sercovich discussed the essential nature of CSR for Irish business and the way in which lawyers' *pro bono* work can benefit their community.

**Seminar on the ECHR**

On 13 May 2011, PILA hosted a seminar reviewing the Irish and British experiences of using the European Convention on Human Rights (ECHR). This featured UCD's Dr Fiona De Londras and Brian Kennelly, a barrister with the prestigious Blackstone Chambers in London.



Pictured are Brian Kennelly BL, from Blackstone Chambers London, Larry Donnelly, PILA Manager and Dr Fiona De Londras, UCD.

that as the ECHR has been adopted into Irish law, this jurisdiction should embrace it and make sure rights are properly protected.

Brian Kennelly's review of the British position included comment on two ECHR cases on social welfare and housing (the Tomlinson and Pinnock cases), and his personal experience with infamous super-injunction matters (under the umbrella of privacy rights). He stated that the ECHR had "recalibrated the relationship between the individual and the state", emphasising that its rights had set standards to be observed and a measure against which to health check legislation.

Videos from both seminars are available on PILA's YouTube channel: [youtube.com/PILAireland](http://youtube.com/PILAireland).

**PILA hosts seminar for NGOs and Lawyers**

PILA hosted a seminar on public interest



Pictured left: Larry Donnelly, PILA Manager and Colin Daly, solicitor with the Northside Community Law Centre.

law for NGOs on 1st April 2011 at the Gresham Hotel. Colin Daly of Northside Community Law Centre gave an insightful presentation on public interest law in Ireland from the perspective of a Community Law Centre.

The seminar was followed by a lively "Meet & Greet" drinks event for NGOs and lawyers on the PILA *pro bono* register. You can see pictures of the event on PILA's Facebook Page: <http://www.facebook.com/home.php#!PILAie>.



**PILA Workshops for NGOs**

Through the *pro bono* referral system, PILA organised legal workshops for NGO staff on 5 April (Drafting Skills) and 19 April (Advocacy Skills) 2011. These events focused on training NGO staff in the kind of practical legal skills that can benefit their work. Gary Fitzgerald, Noreen Maguire, Michael Dillon and Elizabeth Mitrow presented at the Drafting Skills workshop, and Geraldine Hynes and Brian Foley presented at the Advocacy Skills workshop. The workshops featured themed group sessions, where lawyers supervised and gave feedback on drafting exercises for participants.

# South African Conference was ‘a humbling experience’

**I**t is not often someone would describe a meeting with lawyers as a humbling experience. But that was what it proved to be when a group of lawyers from FLAC and other NGOs in both parts of Ireland visited South Africa in May for a conference on public interest litigation organised by the Atlantic Philanthropies.

The conference brought together lawyers from NGOs funded by Atlantic in Ireland, South Africa and the United States to share experiences and compare notes about using litigation to end injustices and improve the conditions of disadvantaged people in their different jurisdictions. And what better place to hold the meeting than South Africa where the work of lawyers played a significant part in bringing down the racist apartheid regime and where lawyers (some of them the same people) are now using the uniquely inclusive and democratic new Constitution to try to improve the lives of its most disadvantaged citizens.

The week's events started, appropriately, with a visit to the old women's prison in Johannesburg, which once held well-known activists like Winnie Mandela and the recently deceased Albertina Sisulu. Today part of the prison is preserved as a reminder of the suffering and the struggle against apartheid but in its courtyard two modern buildings house the Equality Court, now headed by a former inmate of the prison, and the offices of ProBono.Org, one of the NGOs supported by Atlantic. It also gets funding from the major South African law firms and organises law clinics and strategic casework, helped by a mandatory *pro bono* work requirement imposed on all lawyers by the South African legal professional bodies.

The visits to the NGOs working on these issues set the scene for a two-day conference of leading South African human rights lawyers dealing with “Strategies and tactics for the next

generation of public interest litigation in South Africa”. It began with a powerful presentation of a report on strategic litigation by two of the country's best known advocates, Marcus Gilbert SC and Steven Budlender. Drawing on groundbreaking cases on social and economic rights before the South African

Constitutional Court, their report is a virtual handbook of how and when to take public interest cases.

It was followed by presentations by a series of lawyers taking cases on issues like access to sanitation and electricity in the townships and informal settlements, and the replacement of mud-built schools in the Western Cape Province. The scale of the problems was illustrated by a case where the authorities provided a new brick-built toilet block for a mud school and it was so much better than the school building that the teachers moved the classes into the toilet block.

Perhaps the most important session of the trip was a one-day roundtable of Atlantic grantees from Ireland (North and South), South Africa and the United States. That was the really humbling part, where we learned how much tougher things were in the other jurisdictions. The South Africans talked about corruption, incompetence, prejudice against gays and lesbians, xenophobia against immigrants and refugees, and poverty everywhere.

The US lawyers all worked on death penalty cases and told shocking stories of the vengeful death penalty



South Africa's Constitutional Court (above) was completed in 2004, in the grounds of the old Johannesburg Fort Prison (inset).

© Photo : Constitutional Court South Africa

culture in the southern states where some judges boasted about how many people they had sent to the electric chair. They also spoke of the inherent racism in the US justice system whereby African Americans make up 12% of the population but nearly 60% of its prison inmates.

But despite the huge disparities between the different countries, and the much graver problems faced by the South Africans and Americans, similar issues kept emerging. And perhaps the key point was that to bring about social change, litigation had to be closely aligned with policy work, lobbying and campaigning and that getting a positive judgment from the courts was often only a stop on the road. The harder task was to get the judgment implemented.

The trip ended with a visit to the deeply moving Museum of Apartheid, recounting the brutality of the racist regime and the years of suffering, pain and tears during the struggle to end it. It is a different struggle in South Africa now – against poverty, disease and corruption and towards building a truly inclusive and integrated society, but the suffering and sacrifices endured during the struggle to end apartheid show that it can be done.

## FLAC CASEWORK AND CAMPAIGNS UPDATE:

# FLAC Challenges Decision of Financial Services Ombudsman

**F**LAC has taken an appeal against a decision of the Financial Services Ombudsman in relation to the interpretation of Section 63 of the Consumer Credit Act 1995. The case involved a complaint made by a consumer who wished to terminate a hire-purchase agreement using Section 63, more commonly known as the ‘half rule’.

The section allows a hirer to terminate the hire-purchase agreement, return the vehicle and only be liable for half the hire-purchase price. In this case the hirer had yet to reach the half way point and the finance company refused to accept the termination until the hirer made a payment to bring her account up to half the hire-purchase price.

The hirer complained to the Financial Service Ombudsman and sought a declaration from the Ombudsman stating that the company implement the termination under Section 63. The Ombudsman found against the hirer and stated that all payments required under Section 63 must be made before termination can take place.

The hirer, with FLAC’s assistance,



appealed this decision to the High Court, which is the only appeal available from decisions of the Financial Services Ombudsman. FLAC argued in the High Court before Hanna J that the wording of Section 63 did not require payment before termination can occur but in fact allows the hirer to terminate the agreement and ‘then’ be liable to pay any outstanding amounts in the form of a statutory debt.

Counsel for the Ombudsman stated that there are two views on the interpretation of the Section and argued that the decision of the Ombudsman had been a reasonable one. The Ombudsman interpreted the Section to require the hirer to make immediate payment of any outstanding amounts. Counsel for

the Ombudsman, submitted that the Court should apply curial deference to the decision and allow it to stand.

Counsel for the Financial Institution argued that in order to terminate a hire-purchase agreement using Section 63 there is a requirement that all payments required be made before termination can take place.

A decision in the case is awaited as judgment was reserved.

### Sepulveda expresses “deep concern” over State’s asylum policy

The United Nations Independent Expert on Extreme Poverty Magdalena Sepulveda in her recent



report of her mission to Ireland stressed that the State has an obligation to ensure that those seeking its protection are guaranteed the enjoyment of all human rights including the right to private and family life and the right to an adequate standard of living including access to the labour market. She also called on the Government to adopt a single procedure for determining refugee and subsidiary claims. The United Nations Committee against Torture has also expressed deep concern about the States asylum policy and the recognition rates for refugees in their examination of Ireland under the UN Convention against Torture in May 2011.

### Woman wins Appeal against Social Welfare Overpayment claim

A decision by the social welfare authorities to stop payment of a One Parent Family Payment to a woman with a large family and to demand that she pay back an alleged over-payment of €21,000 was overturned by an Appeals Officer recently. FLAC represented the woman in a case where the Department of Social Protection

claimed that her marriage tie to her separated partner was not broken.

The criteria for making such a claim are very vague and unsatisfactory but the Social Welfare Appeals Officer found that the Department had not proved its case and allowed the woman’s appeal.

## FLAC CASEWORK AND CAMPAIGNS

# Direct Provision Campaign

**In a previous edition of FLAC News we noted that the NGO forum on direct provision, of which FLAC is a member, sent a letter to Labour and Fine Gael asking each party for a commitment to introduce an alternative to the direct provision system and establish an independent complaints mechanism.**

To date the forum has not received a response. Two Parliamentary Questions have been put to Alan Shatter TD, the Minister for Justice, Equality and Defence, on the system of direct provision. Caoimhghín ÓCaoláin TD (Sinn Féin) (11th May 2011) asked the Minister for Justice Equality and Defence if any plans were in place to introduce an independent complaints mechanism in direct provision. Sean Kyne TD (Fine Gael) (19th May 2011) asked the Minister his plans to reform the direct provision system in view of the unacceptable delays and

inadequate living conditions experienced by persons seeking asylum in Ireland.

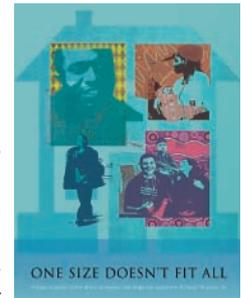
On the issue of the independent complaints mechanism, Minister Shatter suggested that *“the system of direct provision exists within its own circumstances and the RIA is satisfied that the structure of the complaints procedure contained within the revised House Rules is fair and is broadly in line with the guidelines set out by the Office of the Ombudsman for internal complaints systems”*

As outlined in *One Size Doesn't Fit All*, FLAC's report on the direct provision system, the current complaints procedure does not comply with the principles set out in *The Ombudsman's Guide to Internal Complaints Procedures* as it lacks fairness, independence and impartiality.

On the issue of reforming the direct provision system, the Minister made

no commitment to reform the system in line with his previous assertion to carry out a review of the system if he got into office; instead he focused on the determination of claims for protection stating that *“It is [his] objective to speed up the asylum determination process to the greatest possible extent consistent with natural justice and asylum law. It is also my resolve to keep the number of persons in this system as low as humanly possible consistent with the needs for temporary accommodation”*.

FLAC stresses to the Minister the need for the State to carry out an audit of its policy of direct provision and dispersal to ensure it meets human rights standards in Irish law and international human rights treaties that Ireland has ratified.



## Social Welfare & Pensions Bill 2011

**In June 2011, FLAC sent a submission to all members of the Oireachtas, voicing concerns about certain provisions contained in the Social Welfare & Pensions Bill 2011. FLAC was concerned with ss12 and 18 of the Bill and the absence of any reference to Mortgage Interest Supplement.**

FLAC also used the opportunity to raise concerns about the Habitual Residence Condition. Section 12 of the Bill confers on the Minister the power to prescribe different types and forms of information from different classes of claimants. The reference to *“different classes of claimants or beneficiaries”* is not sufficiently clear to ensure that this will not involve discriminatory profiling of different categories of claimants; therefore FLAC suggested that such provision be deleted. Section 18 provides that persons who are erroneously in receipt of a payment on the

basis of false or misleading information, cannot offset that overpayment against a payment to which they were genuinely entitled. FLAC has called for s18 to be deleted as it has the potential to impose a punishment tantamount to a fine without regard for due process rights.

FLAC noted the absence of any reference to the Mortgage Interest Supplement in the Bill, including any reference to recommendations made by the Expert Group on Mortgage Arrears & Personal Debt and urged that they would be implemented as a matter of urgency. FLAC has also called for a review of the Habitual Residence Condition given its negative impact on vulnerable groups and recommended removing the reference to the 'two year rule' from primary legislation as it no longer applies.

Catherine Murphy Independent TD for Kildare North, noting FLAC's

submission on the Mortgage Interest Supplement issue, stated that it was *“a major omission from the Bill, because the situation is urgent if we are to have some management of personal and mortgage debt”*. Minister for Social Protection Joan Burton TD responded that *“any changes to the mortgage interest supplement scheme must be considered in a budgetary context... and very detailed work is being done on the detail of the recommendations of the mortgage arrears and personal debt expert group”*.

Opposition Spokespersons on Social Protection Aengus Ó Snodaigh TD (Sinn Féin) and Barry Cowen TD (Fianna Fáil) also raised FLAC's concerns surrounding s18 of the Bill. The Social Welfare & Pensions Bill was quickly guillotined in the Seanad without comprehensive debate as only six of the 43 sections were discussed.

**The submission is available at:  
[www.flac.ie](http://www.flac.ie)**

## Tributes paid to Mr. Justice Lavan

**T**ributes were paid to Mr. Justice Vivian Lavan, a founding member of the Free Legal Advice Centres, on his retirement from the High Court in May this year. 2009 marked the 40th anniversary of FLAC's founding by four law students in 1969, former Attorney General David Byrne SC, Denis McCullough SC, Mr Justice Vivian Lavan and retired Hong Kong magistrate Ian Candy. Mr Lavan's career began when a neighbour brought him into the Supreme Court 52 years ago, inspiring him to then pursue a career in the legal field.



Pictured at the celebration to mark FLAC at 40, left to right: David Byrne SC, Judge Vivian Lavan, Denis McCullough SC and Judge Ian Candy.

© Photo by Derek Speirs

## FLAC Publishes Guide to Social Welfare Appeals

In response to queries FLAC has produced this guide to explain the social welfare appeals process for claimants who wish to appeal a decision on a social welfare payment. In the current economic climate people are more reliant on the social welfare system as evidenced by the high volume of appeals received. The annual intake of appeals increased from 14,070 in 2007 to 32,432 in 2010 which represents an increase of 130.5%. The Guide also includes information on making a Freedom of Information request. Available to download at:

[http://www.flac.ie/download/pdf/april\\_2011\\_guide\\_to\\_sw\\_appeals\\_process\\_final.pdf](http://www.flac.ie/download/pdf/april_2011_guide_to_sw_appeals_process_final.pdf)



## 2011 Flora Women's Mini Marathon

26 people participated for FLAC in the Flora Women's Mini Marathon on 6 June. The total raised for far is in excess of €4,000 with money still coming in! Thanks to all who took part and helped out on the day.