

flacNews

FREE LEGAL ADVICE CENTRES

Paying to become insolvent: Up-front fees & the Personal Insolvency Act 2012

As we approach the end of June 2013, the Personal Insolvency Act 2012 remains to be commenced, though it was signed into law by President Higgins just after Christmas of last year. This Act provides for the setting up of a system of Personal Insolvency Practitioners, or PIPs, who will make proposals to creditors on behalf of insolvent debtors. These proposals will be for Debt Settlement Arrangements (DSAs) or Personal Insolvency Arrangements (PIAs), following the processing of a Protective Certificate application from the Insolvency Service and the Circuit Court.

However, the final regulations to provide for the licensing of such practitioners are only being issued at the end of June, so in practice it will likely be August before applications can be taken. Meanwhile, an approved intermediary unit has been assembled, composed of seconded advisors from the Money Advice & Budgeting Service (MABS). They will make applications for Debt Relief Notices (DRNs) to the Insolvency Service and the Circuit Court on behalf of debtors with lower levels of debt. The register of such intermediaries has not yet been published.

It is important to note that DRNs will only be available to people who do not have mortgages and where the amount of qualifying unsecured debts (which does not include arrears) – such as personal loans, credit card debts, utility etc – does not exceed €20,000 in total. We understand already that a substantial number of MABS clients and others who are insolvent will fail to meet these and other restrictive criteria, leaving the DSA or PIA application as the only avenue



L-R: Michael Mulhall, Paul Joyce of FLAC, Liam Edwards and Colette Bennett of MABSndI at the FLAC personal debt information session in Dublin. See a full report on page 15.

available. However, only a PIP may apply for either of these arrangements and there has been much speculation recently that insolvent debtors with little by way of saleable assets or surplus income may find it hard to get a practitioner to take on their case.

There have been some ambiguous soundings of late on the question of whether up-front fees will be allowed under the legislation. Our reading of the Act is that the question is not specifically addressed. Section 65 (2) (e) in relation to DSAs and Section 99 (2) (f) in relation to PIAs generally provide that proposed arrangements must encompass the costs and outlays of the PIP incurred in preparing and making proposals, in addition to the likely fees for

administering the arrangements into the future. It is commonly understood that this money will be paid out of funds made available to creditors by the debtor out of asset sale and surplus income; this is the norm in personal insolvency systems. If creditors vote in sufficient numbers to accept this proposal, the issue is clear cut. However, the Personal Insolvency Act appears to be silent on what might happen if the proposal is rejected at the creditor's meeting. If there is no viable DSA or PIA, the proposals in relation to costs and fees are redundant.

How, therefore, is the PIP to get paid in this scenario? The answer, in the absence of a ban on same, is by charging up-front fees.

Continued on page 2

in this edition...

Paying to become insolvent	1 & 2
Pre-Budget 2014 submission urges respect for dignity & fairness	3
Survey shows most callers 'very satisfied' with FLAC service	4
Team FLAC sparkles in mini-marathon	4
New community legal resource for Limerick	5
CCLR case reports published	6
Ombudsman's report criticises state bodies as 'improperly discriminatory'	7
Gauging 'reasonable behaviour' in the civil legal aid system	8
FLAC Director General elected to FIDH board	9
EU benefits advisor website	9
<i>Focus on FLAC:</i>	
Inside the Centre: Tallaght FLAC	10
Joanne Hyde, FLAC Council	11
<i>PILA update:</i>	
Focus on PILA Register lawyers: Katie Dawson BL	12
Meeting of European clearinghouses	12
A state apology to the transgender community?	13
Future Voices Ireland	14
Moving out of personal debt	15
Danske Bank Law Awards 2013	15
Racing funds for FLAC	16
Making your 1% count	16
Concerns around Land & Conveyancing Law Reform Bill	16

FLAC NEWS is published quarterly by Free Legal Advice Centres Ltd., 13 Lower Dorset Street, Dublin 1.

Editors: Noeline Blackwell, Emma Cassidy & Yvonne Woods

Layout & Printing: Printwell Design, D3

Contributors: Noeline Blackwell, Saoirse Brady, Emer Butler, Christopher Campbell, Emma Cassidy, Carol Coulter, Michael Farrell, Laura Feely, Mairead Healy, Paul Joyce, Gillian Kernan, Yvonne O'Sullivan, Maeve Regan, Zsé Varga, Yvonne Woods.

Photos by Derek Speirs, FLAC, Clive Wasson.

ISSN 07914148

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

[continued from front page]

Paying to become insolvent: Up-front fees & the Personal Insolvency Act

We in FLAC have already heard that some practitioners plan to charge a consultation fee of several hundred euro and preparatory fees of thousands. When the amount of work that a PIP will have to do in examining the debtor's situation, applying for a Protective Certificate and preparing a proposal for the creditor's meeting is factored in, a commercial practitioner may feel there is no option to do otherwise unless he or she is very confident that a proposal will be successful. There can be no such confidence in a situation of insolvency, given the highly impaired financial situation of so many potential applicants, the creditor voting approval thresholds built into the legislation and the reluctance of the credit industry so far to write down debt in Ireland.

Not that a ban on up-front fees were it to be introduced (and if it could be introduced) would solve this problem either. That would be likely to lead to PIP's refusing to look at potential clients with little payment capacity, knowing that they cannot charge for any preparatory work but must leave everything riding on the prospect of a successful proposal.

FLAC first flagged this issue in its submission of March 2012 responding to the publication of the heads of the draft scheme in January 2012. In that submission, we suggested that an alternative here would be for the State to set up a public system whereby an Insolvency Service would employ its own staff as public trustees to assess cases and propose repayment plans to creditors on behalf of debtors, perhaps referred from MABS (and others). We added that 'it may

be that this would be appropriate only for personal insolvencies of a lower amount, leaving private trustees to carry out the higher end work. Thus, a system that provided for both public trustees and private commercial trustees might be conceivable'.

In our submission on the draft Bill in September 2012, we suggested that:

a system that makes the proposing of arrangements entirely dependent upon the judgment calls of private practitioners (who after all have to earn a living) and which requires substantial levels of creditor approval, cannot work without access for the debtor to the equivalent of legal aid. In this regard, we reiterate the suggestion made in our submission on the scheme published in January [2012] that a register of state-funded public insolvency practitioners be put in place, in addition to the system of private practitioners proposed. As already outlined, such a service could be made up of seconded MABS money advisors and a clear line of referral could be established between MABS and any such unit'.

Some 15 months later, that view remains largely unchanged. It is not too late to revisit this issue. Otherwise, our long-awaited personal insolvency legislation may be in danger of falling at the first hurdle for debtors who are both insolvent and impoverished.

FLAC's latest submission on the Personal Insolvency issue is available at bit.ly/nov12PIsub

PILA & FLAC welcome students on CLE programme

In June, PILA and FLAC welcomed Caoimhín O'Madagain and Coiré McCrystall, third-year law students at University College Dublin, to work with us for the month as part of their Clinical Legal Education programme.

Caoimhín and Coiré have been excellent contributors to our work and we have been delighted to have them on board!

Pictured right are Caoimhín (L) and Coire (R) at the FLAC office.



Pre-Budget 2014 submission urges respect for dignity & fairness

In June 2013, FLAC made its Pre-Budget 2014 submission to the Department of Social Protection highlighting that human rights must be respected especially in times of austerity. The document also refers to our work on reforming the social welfare appeals system as well as the issue of EU migrants accessing social welfare payments in Ireland.

Budget Day will take place on 15 October this year, earlier than the usual December date, as Euro-zone Member States have decided on a “common budgetary timeline” for October while the government’s overall budget must be confirmed and published by 31 December each year. This means that this year’s Pre-Budget Forum will now take place in July.

FLAC was invited to make a submission to the Department on key areas of concern. Given recent statements by both the President of the European Commission, Manuel Barroso and former International Monetary Fund mission chief to Ireland, Ashoka Mody, that the policy of austerity is “not sustainable” and may be “counterproductive”, FLAC reiterated the importance of the State’s binding international human rights obligations, even in times of recession.

In our submission, FLAC recommended that the State ensure sufficient resources are allocated to social protection so that Ireland maintains its minimum core obligations to allow everyone to live a life of dignity. FLAC also outlined the requirement for a minimum income standard or right to an adequate income under various human rights instruments. The inclusion of protected income standards in the recently published personal insolvency guidelines indicates some level of state recognition that such a standard is necessary. However, this seems to be at odds with a decision to amend social welfare legislation to allow the Department of Social Protection to recover over-payments from a person’s social welfare payment, which could push him or her below the level accepted as a basic minimum income, that is, the basic rate of Supplementary Welfare Allowance.



In previous submissions, FLAC along with other organisations have called on the Government to carry out poverty impact assessments before introducing any budgetary measures which could potentially have a negative impact and increase poverty rates. In this light, FLAC welcomes the Social Impact Assessment of Budget 2013 carried out by the Social Inclusion Unit of the Department of Social Protection.

However, this assessment was only carried out after the cuts were introduced and did not include a public consultation which the authors themselves admit is “ordinarily an important component of social impact assessment”. FLAC highlights the value of consultation in the decision-making process and refers to the 2013 report by the UN Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda, which outlines the necessary steps to ensure meaningful participation.

Reform of the social welfare appeals system also featured in FLAC’s submission, building on our research in the *Not Fair Enough* report and looking at the latest information available on lengthy delays in the system. As already reported in FLAC news, the European Commission against Racism and Intolerance (ECRI), a human rights body of the Council of Europe recommended in its report issued

in February 2013 that clear rules be published for the application of the Habitual Residence Condition (HRC) as well as calling for the publication of Social Welfare Appeals Office decisions in cases involving the Condition. In relation to the Condition, FLAC highlighted research carried out in partnership with the Aire Centre in London and a colleague in the Netherlands relating to the barriers faced by EU migrants accessing certain social welfare payments.

FLAC’s submission is available to download at www.flac.ie.

For further reading see:

- **FLAC’s ‘Not Fair Enough’ report on social welfare appeals reform (2012): bit.ly/NFEfull**
- **Magdalena Sepúlveda’s report on the right to participation of people living in poverty (2013): bit.ly/SRparticip**
- **ECRI report (Feb 2013): bit.ly/ecri2013**
- **Tri City Project research (2013) on migrants accessing SW payment: bit.ly/tricityrep2013**

Survey shows most callers 'very satisfied' with FLAC service

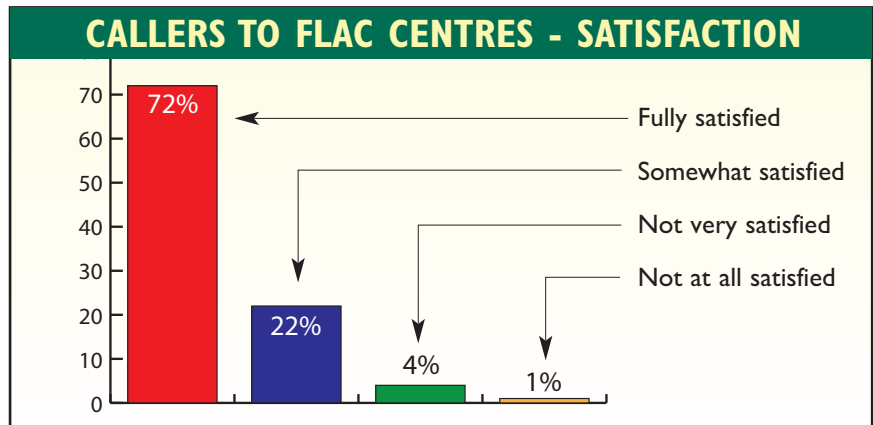
In late 2012 FLAC undertook a Caller Satisfaction Survey to gain an insight into the experience of callers to our legal advice centres and telephone information line. With the help of volunteer assistants, the survey was carried out in 14 centres around the country, with responses from 181 callers. We also ran it for two weeks on the telephone information line, with responses from a further 156 callers.

We would like to thank all the volunteer legal advisors for the fantastic work they do around the country, as well as the advisors on our telephone information line, and to share with you the results of our survey which highlights this work.

Of those who contacted the telephone information line, 96% got through to an information provider on their first attempt. (Three callers had to call a second time, and only one out of 156 callers was kept on hold). Some 92% of callers said they were fully satisfied with the information given to them. Eight per cent (12 callers) were somewhat satisfied, and no-one reported dissatisfaction with the service.

The survey found that both in the centres and on the telephone information line, the Citizen Information Centres are where most callers first hear about FLAC. While word-of-mouth is the second most common source of information about FLAC centres, internet search is the second most used method for those who contacted the phone line.

In the advice centres, about half of callers



surveyed were attending a drop-in service which requires minimal waiting time. Of the 85 callers who had made an appointment, 68% saw a legal advisor within a week of making it. Twenty-five callers saw an advisor within two weeks of making an appointment and just two waited between two and three weeks.

When asked how they rated the knowledge of the advisor in the area of law that they had discussed, 70% of callers said that the advisor was very knowledgeable. 21% thought that the advisor was somewhat knowledgeable, and 8% felt that the advisor was not very knowledgeable. FLAC plans to provide additional training in areas of law where the callers felt the advisor was not expert.

When asked if they found the advice helpful/satisfactory, almost three-quarters (72%) of callers to FLAC centres said they

were fully satisfied with the service. Twenty-two per cent were somewhat satisfied, four per cent were not very satisfied and only one per cent was not at all satisfied.

After the consultation, centres callers were asked whether their issue had been resolved or would require further action. Twenty-three callers (13%) believed that the issue had been resolved, while 158 callers (87%) felt that the matter required further action. Of these, 129 were very clear about the next steps required, while twenty callers were somewhat clear, 3 had a vague idea and 6 were not clear about the next steps.

Almost all callers (95%) said they would recommend FLAC to a friend if they had a legal problem. Four per cent were unsure and one per cent said that they would not recommend the service.

Team FLAC sparkles in Mini-Marathon 2013



A huge thank-you is due to the 20 women who walked, jogged and/or ran the 2013 Flora Dublin Women's Mini-Marathon for FLAC on 3 June. Taking part this year were: Amina Adanan, Noeline Blackwell, Emer Butler, Anne-Marie Butler, Cateriona Dooley, Lisa Dowd, Ciara Flatley, Mary Guy, Catherine Hickey, Iona Hueston, Ciara Izuchukwu, Niamh MacEvilly, Sarah McDermott, Amanda Moore, Christina Nash, Aoife O'Brien, Yvonne O'Sullivan, Lorraine Walsh & Yvonne Woods.

Sponsorship money is still coming in and of course we thank all those who sponsored the FLAC women! We also thank Cormac O'Hanrahan of Printwell Design for generously sponsoring our t-shirts. If you haven't had a chance to make a donation yet, please consider doing so. FLAC has to fundraise for all its activities and relies on grants and donations to support its work in promoting access to justice for all in Ireland. You can contribute online by clicking on the iDonate icon at www.flac.ie.

- If you're interested in other sporting events to raise money for our work, please get in touch with us at fundraising@flac.ie for a sponsorship pack!

New community legal resource for Limerick

On Friday 26 April, the Minister for Housing and TD for Limerick, Jan O’Sullivan, formally launched the Limerick Community Law and Mediation Centre. The Limerick Community Law and Mediation Centre is the first community law centre of its kind to be established outside Dublin. The Centre provides free legal information, advice, advocacy and representation services to families and individuals living in communities identified for regeneration and other socially and economically disadvantaged areas in Limerick. The Centre will also provide a dispute resolution service and will work to empower the community through education, research and campaigns.

The Law Centre is funded by the Office of Regeneration at Limerick City Council and PILA, the Public Interest Law Alliance. Caroline Keane was appointed Solicitor for the Centre in November 2012. Northside Community Law and Mediation Centre is responsible for the overall management of the Limerick Centre.

The Law Centre began providing legal services and free advice clinics in January 2013 and has also commenced community education training and aims to roll-out various training courses tailored to the needs of the regeneration communities.

While based in the Social Services Centre on Henry Street, the Law Centre provides free advice clinics to the communities of the four regeneration areas of Southill, Moyross, St. Mary’s and Ballinacurra Weston.

The establishment of the Law Centre came about from representations made by community representatives and activists in Limerick around establishing a community law centre to address a very significant unmet legal need identified primarily within the regeneration communities. The objective was to set up a Law Centre in Limerick based on the model of community law centres already established in Coolock and Ballymun. A Steering Committee was set up comprising representatives from various community groups and other key



L-R: Pictured at the launch Caroline Keane, solicitor, Limerick Community Law & Mediation Centre; Moya de Paor, Acting Managing Solicitor, Northside Community Law & Mediation Centre; and Minister Jan O’Sullivan TD

stakeholders to provide guidance on the direction and the development of the service.

The Law Centre undertook a community consultation process to establish the legal needs of the regeneration communities. It is clear from the findings of this process that a very significant need exists within the regeneration communities for an accessible legal service addressing issues such as housing, family/child related matters and social welfare entitlements. The findings and recommendations are set out in detail in a report entitled “Community Consultation Report- Unmet Legal Need in Limerick”.

The community law centre model aims to promote development and social inclusion by empowering the local community through the provision of legal services. The Law Centre works in partnership with various local groups in the four regeneration areas to provide advice clinics and other services.

Contact the Law Centre at (061) 536100 or by e-mail at limerick@nclc.ie
You can also find out more online at www.nclc.ie

Law & Policy online

The latest edition of the *Irish Review of Community Economic Development Law and Policy*, published by Northside Community Law and Mediation Centre, is now available online.

FLAC’s Policy and Advocacy Officer Saoirse Brady is among the contributors with an article outlining the fair procedure and access to justice concerns currently raised by the social welfare appeals system.

Her article ‘Making the case for reform of the social welfare appeals system’, along with further case studies and book reviews, is available to download at:

bit.ly/IRCEDLP2

Child Care Law Reporting Project case reports published

By Carol Coulter, CCLRP Director

In June the Child Care Law Reporting Project published the second volume of case reports on its website www.childlawproject.ie. This follows the first volume which was published at the launch of the website last April.

The demand for the opening up of these courts to more public scrutiny had been growing for some time, and was voiced frequently during the Children's Referendum debate. The Shannon / Gibbons report on the deaths of children in State care or known to the authorities, published in June last year, recommended that the in camera rule in child care proceedings be changed so that they could be reported on.

The making of the 2012 Regulations (S.I. 467 of 2012) under the Child Care (Amendment) Act 2007 permitted the setting up of the Child Care Law Reporting Project. Directed by Carol Coulter, former legal affairs editor of The Irish Times, the project was established under the umbrella of FLAC, with a brief to attend and report on child care cases and conduct additional research, to be published on a dedicated website.

When the website was launched in April last the President of the District Court, Judge Rosemary Horgan said that the matters raised were central to some of the most important and talked-about aspects of Irish society, including the supports provided for vulnerable families; the circumstances in which child care and supervision order proceedings are brought; how the rules of evidence are applied; how litigants, including vulnerable litigants, are represented and otherwise supported; how child neglect is identified and remediated and how family reunification can be achieved.

"The area of public child law is certainly in need of greater transparency," she said. "The issue at the core of public childcare cases is whether the State should remove the child from their parents' care. The rights of parents and



Noeline Blackwell, FLAC Director General; Judge Rosemary Horgan, President of the District Court and Carol Coulter, CCLRP Director pictured at the launch of the project's website in April.

children whether under the Constitution or under international or national legal provisions must be respected and taken into consideration."

The first volume of reports contained examples of neglect including three very young children, all under the age of five, being left alone in a flat without food, light or heat and a teenage boy sent to a residential centre who ran away from the centre and ricocheted between his grandmother's and his mother's house, not being fed or cared-for in either. Examples of abuse included a young girl being forced by her drug-addict mother to provide a urine sample the mother could use for urinalysis; another young girl locked out of the kitchen and denied food, while also being forced into a cold shower. Cases reported also include a number where the judge was severely critical of the care being provided to children by the HSE.

The cases covered in the second volume include two where the High Court asked the English courts to assume charge of care proceedings involving babies born in Ireland to English parents. In both cases the parents were facing care proceedings for their unborn children in England and fled to Ireland to avoid them. The mothers had already had children taken into care in England and both suffered

from addiction problems and had histories of violent relationships.

When the children were born in Ireland the hospitals involved contacted the HSE which got in touch with the local authorities in the UK. These confirmed that care proceedings were being planned relating to the babies. In separate cases the HSE then asked the High Court to decide, under the Brussels II Regulation, that the appropriate court to consider the welfare of the children was in the UK. However, because when it came to court the children's parents did not oppose the applications, the request went through without opposition.

The second volume also includes a case where a teenage African girl was taken into care when her teacher learned she appeared to have been trafficked into Ireland for prostitution. In another case, four children were taken into care when their mother was in psychiatric hospital and they were found to "cry silently" and not to know how to use showers, toilet paper or cutlery.

Further reports will be published on the website at regular intervals, along with statistics and other information:
www.childlawproject.ie

Ombudsman's report criticises state bodies as 'improperly discriminatory' of woman and her children

The Ombudsman's Office published an investigation report in June entitled *Appeal Overruled: A failure to provide basic income for a family seeking asylum*. It found that the repeated failure of both the Health Service Executive and the Department of Social Protection to pay a female asylum seeker and her family the social welfare payments to which they were entitled "...caused significant adverse consequences over an extended period for the family."

FLAC represented the woman at the centre of the Ombudsman's investigation during the later stages of her appeals process. She was initially represented by Cáirde, which advocates on ethnic minority health issues, during her first appeal. Cáirde then referred the case to FLAC when further difficulties arose.

Ms Kileni first came to Ireland in 2007 as an asylum seeker, accompanied by her two daughters. Originally, the family were housed in a direct provision centre but left this in August 2008 due to the deteriorating mental health of one of her daughters. Two months later, Ms Kileni made her first application for Supplementary Welfare Allowance (SWA), a basic social welfare payment designed to provide a standard minimum income.

When her initial application was refused, Ms Kileni appealed the refusal to the HSE Appeal Office. This process has since been abolished following the incorporation of the HSE's appeal mechanism into the Social Welfare Appeals Office. When the HSE appeal was rejected, she then appealed to the Social Welfare Appeals Office which overturned the previous decisions and confirmed her entitlement to SWA, recognising the medical and social circumstances of her family's situation. Ms Kileni received her first SWA payments at the end of 2009.

But within months of receiving her payment and arrears, she was again cut off from SWA in early 2010 by the Superintendent Community Welfare



© Photo by Derek Speirs

Ombudsman Emily O'Reilly speaking at the *FLAC Not Fair Enough report launch* in 2012.

Officer. The Officer queried her successful appeal and decided to pay Ms Kileni and her daughter a weekly equivalent of the direct provision payment (€19.10 for herself and €9.60 for one daughter). In the intervening period, Ms Kileni's other daughter had attempted suicide after leaving direct provision and was subsequently placed in foster care on a voluntary basis.

Without the full SWA payment to which she was entitled, Ms Kileni could not afford suitable accommodation; consequently, her daughter was unable to leave foster care and rejoin her family. At this point, FLAC intervened to assist Ms Kileni and appealed the second decision of the Superintendent Community Welfare Officer. An oral hearing took place in the summer of 2011 and the Appeals Office once again decided in her favour. However, it was another half a year before Ms Kileni received any payment or arrears from the CWO, motivated by the involvement of the Ombudsman's Office.

In her investigation report, Ombudsman Emily O'Reilly noted that the Superintendent Community Welfare Officer had failed to implement multiple Appeals Officers' decisions, despite the fact that such decisions are 'final and conclusive' in law. The Ombudsman also found that this failure to pay Ms Kileni the monies she was due prevented the reunification of Ms Kileni and her daughter who had to remain in foster care. The report concludes that this failure "...reflects actions which were taken without proper authority, were improperly discriminatory as well as being otherwise contrary to fair or sound administration." FLAC has recently highlighted the need for a more transparent and equitable social welfare appeals system in a comprehensive report entitled *Not Fair Enough*.

FLAC welcomes the Ombudsman's strong criticism of the maladministration and delay caused by the actions of the HSE and Department of Social Protection. FLAC also welcomes the comments in the Ombudsman's report that question the appropriateness of the direct provision system, especially for families, and the impact of that system on the mental health of both adults and children. FLAC drew attention to the negative impact that direct provision can have on asylum seekers in its 2010 report *One Size Doesn't Fit All*, stating that is "...an unfair system which does not adequately address the needs of the vulnerable group of people for whom it is meant to provide."

• *Not Fair Enough* and *One Size Doesn't Fit All* are available to download:

<http://www.flac.ie/publications/category/reports/>

• The Ombudsman's full investigative report is available to download at: <https://www.ombudsman.gov.ie/en/Publications/Investigation-Reports/>

Gauging ‘reasonable behaviour’ in the civil legal aid system

Access to justice is a fundamental human right enshrined in Article 6 of the European Convention of Human Rights Act (ECHR) 2003. States have a duty to ensure that citizens have a right to access justice. There are numerous consequences flowing from that right such as the right of appeal, right to an effective remedy and right to a fair hearing.

In Ireland, legal aid in civil matters is provided by the state-run Legal Aid Board. It was set up in part due to lobbying efforts by FLAC and others for the advancement of marginalised and disadvantaged groups’ right to access justice. A primary catalyst was Josie Airey’s case against the State where the European Court of Human Rights concluded that a right of access to the courts must be real and effective rather than theoretical or illusory. The Civil Legal Aid Scheme was put on a statutory footing in 1995 “to make provision for the grant by the State of legal aid and advice to persons of insufficient means in civil cases”.

To assess a person’s eligibility for legal aid in Ireland, he or she has to pass a means and merits test and agree to much the same terms and conditions that

would apply to the relationship between a private solicitor and client. If successful in these tests, the person receives a legal aid certificate and can get the legal aid that they need to represent them in court.

However, difficulties can arise in any client/solicitor relationship, whether state or private. Within the civil legal aid guidelines and legislation, clients of the Legal Aid Board and its Law Centres are expected to behave reasonably. If the client is deemed to behave unreasonably, the legal certificate can be withdrawn. In that case, the client is not only deprived of legal aid from the law centre where the difficulty arose, but is deprived of access to the entire network of Legal Aid Board Law Centres and therefore of access to state-funded legal aid. This is substantially different to a person who is engaging a private solicitor. The person using a private law firm can switch to another firm when problems arise and thus continue to have the support of a lawyer through the court case. The person on legal aid was deemed to qualify on merit, but is left without legal assistance to vindicate his or her rights.

The Legal Aid Board may withdraw a legal aid certificate where it considers that it is ‘reasonable’ to do so. Regulations made under the Civil Legal Aid Act 1995 specifically provide that the Board may terminate a certificate where it considers that the legally aided person is behaving unreasonably in connection with the conduct of the proceedings. However, what is unreasonable behaviour is not set out in those regulations. The Legal Aid Board has drawn up guidelines on what they perceive as unreasonable behaviour that might lead to the termination of legal services based on their experiences in Law Centres in the past. Such unreasonable behaviour can encompass the threat of or actual physical assault, threat of or actual self harm (whether active or passive), surveillance/stalking, abuse, obscene language and/or gestures, inappropriate behaviour of a personal nature, malicious or vexatious complaints made by clients, and clients who cause difficulties regarding instructions. (This list of what constitutes unreasonable behaviour is not

exhaustive; unreasonable behaviour can also be interpreted by the law centre and solicitor involved with the legal aid client.)

No-one is standing up for client behaviour which is abusive and destructive such as the examples given above. It clearly would not be proper to require a solicitor to suffer abuse or assault and to continue with the client regardless. Solicitors are entitled to protection from such behaviour.

However, termination of a person’s legal aid certificate on “unreasonable behaviour” grounds is a decision that has real and harsh consequences for the legally aided person and directly impacts on his or her right to access justice. The competing rights and obligations must be carefully balanced.

If a person’s legal aid certificate is in jeopardy due to “unreasonable behaviour”, he or she must be given proper opportunities for appeal and review. A person warned that his or her legal aid certificate is at risk may wish to seek a review. It may be that a discussion on the behaviour in question can clear the air and there may be an adjustment of the conditions attached to the legal aid certificate. If any adjustment is proposed, it is important that the client have a proper opportunity to consider and understand the proposed adjustments. Where a review does not result in any change of attitude by the Law Centre, then an appeal can be lodged with the Legal Aid Board’s Appeal Committee. However it is important to note that there is a time limit of one month from the time of the issue arising. The appeal must argue on issues of “unreasonable behaviour” by addressing the claim clearly and providing any further supporting information.

In all cases where legal aid has been initially granted, the State will have taken serious consideration of the client’s legal need and the client will have been certified as needing and deserving legal aid. Therefore, in the interests of access to justice and the rights of poor people to a fair hearing, any revocation of legal aid must be done with at least the same level of regard for the client’s rights as was the case in the initial decision.

Donegal law students



At the official launch of Letterkenny institute of Technology Student Legal Information Clinic in April 2013: L-R: Sharon McLaughlin Ph.D, LYIT Assistant Lecturer in Law; Zsé Varga, FLAC Volunteer & Centres Manager and Dr. Lynn Ramsey, Head of Department of Law & Humanities.

All at FLAC HQ wish LYIT the best of luck with its new venture!

FLAC Director General elected to board of international rights body

FLAC Director General Noeline Blackwell has been elected as a Vice-President of an international body championing human rights across the globe. Noeline was voted on to the Board of the International Federation for Human Rights (FIDH) at its congress in Istanbul at the end of May.

She joins leading human rights campaigners from around the world on the FIDH board, elected by the now 178 member organisations for a three-year term.

The Board also includes Belarusian activist Ales Bialiatski, who has been imprisoned in Belarus since August 2011. Exiled Iranian lawyer and long-time rights activist Dr Abdol-Karim Lahidji was elected President at this year's Congress.

The International Federation for Human Rights (FIDH) is the oldest international human rights organisation in the world with a core mandate to promote the rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.



The new international Board of the FIDH elected at its 38th Congress in Istanbul. FLAC's Noeline Blackwell is standing on the far right.

The Federation co-ordinates and supports the actions of its members and may act as their contact with intergovernmental organisations.

Noeline was nominated for the FIDH election by the Irish Council for Civil Liberties (ICCL). The ICCL is the affiliate member of the FIDH in Ireland, while FLAC is its correspondent member here. In Northern Ireland, the CAJ (Committee on the Administration of Justice) is also an FIDH correspondent member.

At the 38th Congress this year, members adopted 26 resolutions on human rights situations around the globe.

For more information and updates on human rights internationally, see

<http://www.fidh.org/>

EU benefits advisor website launched

Earlier this year, three groups working on welfare rights in Ireland, the UK and the Netherlands completed a 15-month European Union Commission-funded Tri-City project on EU migrants' access to special non-contributory benefits.

FLAC was the Irish partner, together with the AIRE Centre in London and a Dutch consultancy based in Amsterdam. The relevant social welfare payments in Ireland are Jobseekers' Allowance, State Pension (non-contributory), Widow's and Widower's (non-contributory) Pension, Disability Allowance, Mobility Allowance and Blind Pension. A full list of relevant payments is given in Annex X of EC Regulation 883/04.

One of the fruits of the collaboration is a new EU Benefits Adviser website, launched after the final project conference in London in February 2013. It provides a questionnaire which can be used by individuals and their representatives to determine the individual's eligibility for welfare benefits in Ireland, the UK or the Netherlands and is available in a number of European languages. The Tri-City Project Research Report is also available on this website.

On 30 May, after receiving several complaints from EU nationals living in the UK, the European Commission announced that it is referring the UK to the European Court of Justice for being

in breach of EU law. In its press release, the Commission stated that the UK fails to apply the 'habitual residence' test to EU nationals who reside in the UK and claim social security benefits. Instead, the UK applies a so-called "right to reside" test, as a result of which EU citizens cannot receive specific social security benefits to which they are entitled under EU law such as Child Benefit and Jobseeker's Allowance.

FLAC will monitor this development to ascertain whether it will have any implications in the Irish context.

For more information, see
www.eubenefitsadvisor.org

FOCUS ON FLAC:

Inside the Centre: FLAC @ Tallaght

“It is great to be able to use my knowledge to help someone else and to help people feel less frustrated” says FLAC volunteer advisor Deirdre Farrell.

This sentiment is echoed by many of Deirdre’s fellow advisors and assistants at Tallaght FLAC. The Free Legal Advice Centre in Tallaght operates out of the newly-opened Citizen’s Information Centre at Hainault House every Tuesday, from 7.30pm to 9pm.

A diverse group combining long-time volunteers alongside lawyers who are new to the world of FLAC volunteering gives weekly advice to the Dublin 24 community on a wide range of legal issues. Deirdre notes that unusual legal queries could arise on any given evening, meaning there is no such thing as a typical FLAC clinic. She admits that “people come in with a great variety of problems that might never arise in my practice, but I still try my very best. You are giving people a steer and through the research you do at the clinics, you get to know a lot of practical things yourself. For example, things like how to find out your landlords PPS number if you need it for a form, or similar things.”

Owen Garvey, another advisor based in Tallaght FLAC, agrees with Deirdre that the unpredictable nature of the caller queries can be challenging. Owen has been volunteering in Tallaght since 2009 and says that he “likes that challenge of confronting myself with areas I wouldn’t see every day in my work”. He also says that he would recommend volunteering with FLAC to colleagues in the legal



Owen Garvey, Elaine Conlan and Deirdre Farrell pictured at Tallaght FLAC.



Ciara Cloake, assistant at Tallaght FLAC.

profession as it is an experience that benefits everyone involved. “You are getting something out of it professionally as well as giving to the community”.

The sense of community is shared by Ciara Cloake. Ciara acts as an assistant in the Tallaght centre, having originally begun her volunteering time with FLAC in its Finglas centre. FLAC assistants support the legal advisor (who is generally a lawyer) by researching legal topics during meetings with callers.

It is more than two years since Ciara began volunteering with FLAC and she says that her love of voluntary work started at home. “My family always had a strong volunteering background, I grew up with everybody volunteering around me, it is normal for me. Sometimes I feel I learnt more than I gave in FLAC,” says Ciara.

Elaine Conlon was motivated to volunteer with FLAC through her

earlier interaction with PILA. “I always read the *PILA Bulletin* and I heard about Noeline Blackwell many times. It was inspiring, and I joined”. Since coming on board the volunteer team in Tallaght at the start of 2013, Elaine has been impressed with the level of training and support that FLAC advisors receive. “You can see that there is a system in FLAC and it feels safe” she commented.

However, the main motivating factor for all the Tallaght volunteers was the satisfaction of knowing that their work enables more people in Ireland to access justice. Elaine summed it up particularly well when she described the most enjoyable aspect of volunteering:

When somebody tells you that they now understand where they stand and they can deal with their problem now. It is very encouraging and fulfilling to be able to help like this.

Training Day for Cork volunteers



Volunteer advisors in FLAC centres in the Cork region had the opportunity in June to attend an information session on legal topics such as personal debt, bankruptcy and civil legal aid.

Pictured left is Noeline Blackwell speaking to the volunteers at the session.

If you live in the Tallaght area and need confidential legal advice, you can make an appointment by calling 076 107 8340.

The centre operates every Tuesday, from 7.30pm to 9.00pm at Tallaght Citizens' Information Centre, Hainault House, The Square, Tallaght, Dublin 24

FOCUS ON FLAC:

Joanne Hyde, FLAC Council

Joanne Hyde is the newest member of FLAC's Council, rejoining the board in January 2013 after a break of six years. FLAC's Council meets regularly to discuss policy issues and governance concerns. The Council is elected at FLAC's AGM and with Joanne is currently composed of its Chairperson Peter Ward, Cork-based solicitor Don Crewe, barrister and rights activist Roisin Webb and Dr Liam Thornton of UCD's School of Law.

Joanne is currently a Partner at Eversheds Solicitors and is also Head of the firm's Employment Law Department. While she did not harbour ambitions of qualifying as a solicitor in her school days, Joanne's early aptitude for English and history lent themselves to a legal career path. This natural progression saw her complete a BCL degree at University College Cork, where, with the benefit of hindsight, she made her first link with FLAC. "Peter Ward (current FLAC Chairperson) was actually my family law lecturer in college, so you could say I had a link to FLAC in my UCC days!" notes Joanne.

After graduating in 1991, Joanne moved to Dublin and began a traineeship with corporate law firm Gerrard Scallan O'Brien. When her traineeship was completed, Joanne moved to Australia. It was during her tenure as a paralegal in Sydney that she gained exposure to employment law. While initially daunting, the time Joanne spent working in New South Wales taught her how to adapt quickly and to take on legal challenges outside her comfort zone – skills that would come in very useful as a FLAC volunteer in later years!

Upon returning to Ireland, Joanne discovered that the employment landscape had markedly changed. There was huge growth in the legal sector and the demand for new Irish graduates often outweighed supply. In 1996, Joanne joined A&L Goodbody where she spent seven years working as a solicitor. It was during this time that she became involved in volunteering through A&L Goodbody in one of FLAC's evening advice clinics. "I volunteered in the Meath Street clinic and as a junior solicitor, I found it challenging and ultimately really rewarding" recalls Joanne. "I realised that all too often we



Joanne Hyde

take our legal training completely for granted. A lot of the callers to the FLAC evening clinics just needed help with navigating a financial or legal system or understanding a letter they'd received. Talking the problem through with someone is a great starting point and FLAC offer people the opportunity to get a basic steer on what their legal issue is."

Around this time Joanne also served on FLAC's Council, introduced by her good friend and former FLAC chairperson Siobhan Phelan BL. However, Joanne stepped down from the position when she left A&L Goodbody to take up a role as in-house lawyer with technology manufacturer, Intel. Joanne admits that time commitments associated with her new role and "...feeling out of the private practice loop to a certain extent..." meant that she decided to take some time away from FLAC Council. However, she returned to private practice in 2007 joining Eversheds and would later return to FLAC's Council at the start of 2013.

Joanne's current role as partner and Head of Employment Law Department means that every day is challenging and unpredictable. "That's the joy of my job" says Joanne, "there's no such thing as a typical day. I'm involved in both the contentious and non-contentious side of the firm's employment law work. That

could range from defending employment litigation to conducting stress at work audits and on top of that, as a partner, I have a managerial role in the firm's internal workings too."

Her new role with Eversheds had allowed Joanne to think about entering the boardroom again and a return to FLAC Council seemed the perfect fit. She notes that "...as a lawyer who wants to give something back at board level, it makes sense to use your legal skills and help out in the most practical way you can. With my professional experience and history of volunteering with FLAC, a return to the FLAC Council made complete sense."

In addition to her employment law role, Joanne is also the partner in charge of corporate social responsibility at Eversheds. This gives her an insight into the importance of *pro bono* work and also meant nurturing a close working relationship with PILA, FLAC's public interest arm. Joanne feels that Ireland is lagging behind its international counterparts in terms of recognising the power of *pro bono* work.

"In the USA and Australia for example, their levels of *pro bono* sophistication are light years ahead of us. One of the advantages of being an international law firm is that we can observe and learn from some of our international offices which may be ahead of us in this area," she says. Eversheds is one of the leading law firms who have signed up to PILA's *pro bono* register, which matches charitable organisations in need of assistance with willing legal practitioners.

Joanne greatly admires the work of PILA and all organisations who are attempting to promote the concept of *pro bono* in Ireland. One of her ambitions in the coming years is to foster a deeper understanding of what public interest law means. "I want to see more *pro bono* work being carried out and in a much more structured way. It's hard to create a *pro bono* culture unless the sector is more organised – and that is why the role of FLAC and PILA is so important in this regard."

pila

public interest law alliance
a project of FLAC

PUBLIC INTEREST LAW ALLIANCE UPDATE

Focus on PILA register lawyers: Katie Dawson BL

An interview with one of the volunteer lawyers who have signed up to PILA's Pro Bono Referral Scheme.

How did you find out about the PILA Pro Bono Referral Scheme?

I first heard about PILA when I volunteered with FLAC. A senior colleague and friend then recommended me to PILA and I believe that was how I was first contacted.

Did you find the scheme easy to deal with?

Very easy. A request is sent out and if it is an area of law or an issue in which I have expertise or interest, I can reply offering to assist. A meeting is generally arranged with the organisation to see what it is looking for in terms of legal research or advice and how volunteers might assist them.

What were the most challenging aspects of referrals that you have taken on through the scheme?

Probably the time limits, but they are mostly self-imposed! PILA and the organisations understand how long research might take and I never feel pressure to complete research or to volunteer for particular projects. The flexibility afforded is excellent for practitioners.

How did the experience complement your regular work?

I have found it very helpful. A lot of my work has involved researching how legal issues are addressed in other jurisdictions and considering what might work here in Ireland. Many organisations are looking for help in terms of advocating for legislative reform because they can see through their own work what reform is needed. In areas where I myself routinely practice, this is of assistance to me in terms of representing clients.

Would you do more pro bono work like this?

Absolutely. PILA plays an important role in placing NGOs, community groups and legal/advice centres in touch with practitioners who may be able to help them with legal issues. Barristers have a long tradition of *pro bono* work; it is something that is valued by our profession. I have always been interested in rights-based areas of law. It is fantastic to have the opportunity to work with organisations who offer services to often vulnerable and sometimes disenfranchised groups within our society. What they do matters to us all. To be able to play a role



in assisting them, even in a small capacity, is very rewarding.

Would you recommend doing pro bono work through the referral scheme to other barristers?

I highly recommend it, particularly for lawyers practising in rights-based areas of law. It is perhaps a cliché, but many of us became lawyers because we believe in protecting, upholding and vindicating people's rights. We see our laws as reflecting the values we hold as a society. *Pro bono* work gives us a way to offer help to organisations working to vindicate people's rights. It is a win-win situation for all involved.

Meeting of European clearinghouses

In May, PILA met with representatives from other European clearinghouses for a collaborative workshop and know-how exchange. The meeting was organised by PILnet, the global network for public interest law, at its European office in Budapest, Hungary.

As part of its work to bring together private sector lawyers and NGOs and advance local cultures of *pro bono* work, PILnet convenes an annual European Pro Bono Forum. At the meeting in Budapest, the group exchanged know-how about collaborations, organised by the clearinghouses, between lawyers and NGOs. PILA and other clearinghouse representatives



Maeve Regan of PILA at the clearinghouse meeting.

spoke to with PILnet about ideas for the upcoming Pro Bono Forum, which will be held in October in Warsaw. Top of the agenda was building the foundations for a Europe-wide *pro bono* network.

Staff update



All in PILA & FLAC were sorry to say goodbye to colleague Lianne Murphy recently. We wish her much success in her new job with Age Action and we welcome her successor as Project Officer, Mairead Healy (see Mairead's article on pg 14).

A state apology to the Transgender Community? If Malta can do it, why not Ireland?

The former Minister said:

We let them [the transgender community] down ... I apologise for failing to react at the opportune time when decisions taken did not grant [her] the rights she requested and for failing to enact the necessary legislation before.

And the current Minister replied:

It's about human rights. Even if it's about one person, we must guarantee that that person's rights are safeguarded. Everybody must be treated equally and we all have our rights and liberties. ... The law will not affect many people because the transgender persons are not many but their victory is everybody's victory. This is a victory for freedom.

Was this a report of the debate in the Dail when legislation to recognise transgender persons was finally passed? And was the first speaker referring to Lydia Foy's long struggle for recognition in her preferred female gender?

Sadly, not yet. This was the debate in the Maltese parliament in June when it passed a Bill to recognise transgender persons and allow them to marry in their own gender. And the references were not to Lydia Foy but to Joanne Cassar, who had been refused the right to marry in her own gender and had made a complaint to the European Court of Human Rights.

The Maltese Bill is not the most advanced or progressive gender recognition legislation in Europe. In fact, it is fairly restrictive, but it was a big step forward for hitherto intensely conservative Malta. And what was most impressive about it was the speed with which it was delivered and the generous apology to Joanne Cassar and the Maltese trans community.

A new Labour government was elected in Malta in March and during the election it had promised to withdraw the state's opposition to Joanne Cassar's case in Strasbourg and bring in gender recognition legislation. Within three months, by the



Lydia Foy pictured with President Michael D. Higgins in December 2012.

Photo by Derek Speirs and with kind permission of the IHRC

end of June, it had done so; further, the outgoing conservative government party had changed its stance as well.

It was the deputy leader of the former government party who acknowledged that his party had let down the transgender community. It was the new Minister for Social Dialogue, Consumer Affairs and Civil Liberties who said the law should be passed even if it affected only one person.

By contrast, and despite a promise in the Programme for Government to bring in gender recognition legislation, the Irish State has entered a full defence to the new legal proceedings begun this year by Lydia Foy. Dr Foy is trying to implement the judgment of the High Court in her case five years ago that the State had breached her rights under the European Convention on Human Rights.

But there are hopeful signs that attitudes are changing and that there is a movement to end the injustice that transgender persons have suffered for so long. Sinn Fein published a private members Bill in May that would provide for a liberal and inclusive scheme for recognising transgender persons. It has been welcomed by Transgender Equality Network Ireland (TENI) and FLAC.

And Independent Senator Katherine Zappone has also been preparing a Gender Recognition Bill for discussion in the Seanad. The Seanad Bill also takes account of the most recent developments in gender recognition legislation in Europe and in Argentina and again it has been warmly welcomed by TENI and FLAC.

Both Bills would do away with highly intrusive and demeaning medical criteria for gender recognition and with the proposal by the Government's advisory group on this issue that married transgender persons should have to divorce as a pre-condition for recognition in their preferred gender. This 'forced divorce' policy has been dropped by countries like Germany and Austria as a breach of the rights of transgender persons and it has become meaningless in the growing number of countries that provide for marriage equality.

Hopefully, the discussion around the two new Bills will help to shift public debate on this issue away from a narrow and excessively legalistic perspective and towards the view expressed by the Maltese Minister that transgender rights are human rights and a victory for the transgender community will be a victory for all.

Future Voices Ireland

By Mairead Healy, Project Director

Future Voices Ireland is a new *pro bono* youth empowerment/legal education project founded by 7 legal volunteers on a mission to diversify the legal profession. We are working with hand selected teenagers from DEIS Schools across Dublin with the lowest levels of third level progression. We are committed to empowering our young people through increasing their confidence and self-esteem to pursue their dreams regardless of their backgrounds. Secondly, we also equip them with the professional skills, practical experience and knowledge to realise their ambitions. FVI represents a different approach; we are a grassroots project investing in a long-term commitment to genuinely transform the aspirations of the teenagers we work with.

After many months of planning, we kicked off in January 2013 with our **Flagship** Project, a 6-month empowerment programme taking place every weekend focused on human rights. This includes meeting with legal experts, undertaking research with their peers and taking part in dynamic workshops and debates. We decided to focus on the most controversial and contemporary areas of human rights which is most relevant. For example, the abortion debate, media privacy, penal reform, Irish Traveller rights and cyber bullying, all of which are divisive issues in Irish society today, allowing our young people to form their own opinions.

We have been very lucky to receive the support of leading Irish legal figures each giving our students these life-changing experiences. For example, we have had the Children's Ombudsman Emily Logan speaking on children's rights, former Mountjoy Prison Governor John Lonergan speaking on prisoners' rights and Senator David Norris discussing gay rights. We are deeply indebted to all of our esteemed speakers who gave their time for free at weekends, as well as to the Education staff of the Law Society without whom we would not have been able to implement the project. We are also extremely lucky to have the support of trainee lawyers and law student volunteering as group leaders.



L-R: Emer Lyons, Sarah Sheppard, Mr Justice Frank Clarke, Dr Jacqueline Hayden, Donncha O Conmhui, Mairead Healy, Shona Madden, Grainne Hassett at the official project launch

In the course of the project, the students have transformed from shy teenagers into confident debaters with their own strong opinions. In particular, the students became particularly passionate about the situation of children of prisoners and decided to make a documentary about this. We were delighted to recently learn we were runners-up finalists in the ICCL Human Rights Film Awards (HRUMC) for this video. Linked to this, the students have decided to campaign for a Bill of Rights for children of prisoners and have set up a national coalition of NGOs and experts to do this.

In April, we held our official launch at the Mansion House, sponsored by FLAC. We were delighted to have Mr Justice Frank Clarke and Minister for Social Protection Joan Burton TD as keynote speakers. Both are former pupils of schools our students attend. Mr Justice Clarke's speech was inspirational as he generously shared with us his own story of triumph despite the odds. He has since kindly invited us to visit him down at his chambers at the Supreme Court and we look forward to meeting him soon.

Following the **Flagship** programme, our students will undertake summer work placements and we will welcome them back in January for our new **"Step up to the Mark"** programme to run

simultaneously with our new intake of flagship students. This builds on the flagship programme by supporting our students academically to progress onto third level. By raising their academic grades across exam subjects through tuition in subjects they may be struggling in, we seek to ensure they achieve their academic potential. This will be implemented through a group study group environment with specialist tuition from volunteer tutors alongside practical support including sessions on study skills and stress management. Following on from this, our young people will receive mentoring throughout their studies and assisted in making University applications.

Overall, we hope we can encourage our students to overcome obstacles to realising their goals. In so doing, we hope to have a more diversified legal profession which will encourage others behind them to have the confidence to do the same.

- Since writing this article, Mairead has joined FLAC's PILA project as Project Officer. Welcome on board!

Contact FVI at:
info@futurevoicesireland.org
More info at:
www.futurevoicesireland.org

Moving out of personal debt: An online information resource for all

On 16 May, FLAC hosted a personal debt information session covering the legal framework for personal debt from pre-arrears all the way through insolvency to bankruptcy. Entitled 'Moving out of Personal Debt: How to use the new legal infrastructure on personal debt and insolvency', the session was primarily aimed at FLAC's network of volunteer advisors, but any interested person was welcome to attend.

FLAC's information session aimed to provide our volunteers legal advisors with the tools they need to assist the many people calling to our evening advice clinics with debt queries. In 2012, advice on issues of credit and debt accounted for about 9.7% of enquiries country-wide.

We were very lucky to have a highly qualified array of speakers with the most up-to-date information on the various topics. These were:

- Lorcan O'Connor, Director, Insolvency Service: *An Introduction to the Insolvency Service of Ireland*
- Christopher Lehane, Official Assignee in Bankruptcy: *Bankruptcy as part of Personal Insolvency in Ireland*. (Christopher also prepared a very comprehensive three-part *Guide to Bankruptcy* covering secured creditors, personal insolvency & bankruptcy in general)

- Colette Bennett, Project Development Manager, MABS NDL: *Debt Relief Notices - What are they and how to apply for one?*
- Paul Joyce, Senior Policy Analyst, FLAC: *The Code of Conduct on Mortgage Arrears 2013 and the Personal Insolvency Act 2012 – a consumer perspective*.
- Tom Murray, Partner, Friel Stafford: *The Personal Insolvency Practitioner's (PIP) perspective*

The event was chaired by FLAC Director General, Noeline Blackwell. Please note that while you are free and welcome to download, use and distribute these materials, you should give credit to and clearly reference the person who originally wrote the materials in doing so. You may not use these works for commercial purposes and you may not alter, transform or build upon them.

Feedback from our volunteers and other attendees has been very positive, in particular around the materials provided by the speakers.

All materials are available for download at www.flac.ie

You can view video clips on our YouTube channel: youtube.com/flacireland



Some of the presenters at the 'Moving Out of Personal Debt' information session: (L-R) Christopher Lehane, Official Assignee; Tom Murray, Friel Stafford; Paul Joyce, FLAC; Colette Bennett, MABSndL.

Danske Bank Irish Law Awards 2013



FLAC Director General Noeline Blackwell is presented with the 2013 Law Award for Pro Bono/Public Interest Team of the Year by Brian O'Neill of Documatics, the Pro Bono category sponsor.

FLAC was named 'Pro Bono and Public Interest Team of the Year' at this year's Danske Bank Law Awards at a ceremony in the Four Seasons Hotel on 3 May 2013. Nominated in a category alongside some outstanding teams and individual practitioners, FLAC was honoured to be chosen as the overall category winner.

Now in its second year, the Irish Law Awards were designed to acknowledge the achievements of Ireland's legal community. Following on from the success of the inaugural awards, the 2013 event saw awards given out in 25 different categories.

FLAC was represented at the ceremony by Director General Noeline Blackwell, who received the very eye-catching hand-crafted glass award for Pro Bono and Public Interest Team of the Year from Brian O'Neill of Documatics, which sponsored this category.

FLAC would like to extend its congratulations to all this year's nominees and award winners.

Staff/Council update

All in FLAC were sorry recently to bid farewell to our colleague Kirsty Watterson. After five years as Financial & IT Co-ordinator, Kirsty has returned to her native Isle of Man. We wish her much success with her future endeavours. Congratulations go to FLAC Chairperson Peter Ward SC who received a Merit Certificate in the JUSTICE Media Awards 2013 recently for his radio series with producer Fiona Kelly, *The Lawmakers*.

Racing funds for FLAC!



On 3 May, legendary rockers Ten Speed Racer reformed - for one night only - in Dublin music venue Whelan's. The lads very generously split the proceeds of their reunion gig between FLAC and Amnesty Ireland.

The band's Pat Barrett stopped by to pass on this generous donation - he is pictured above with FLAC's Rachel Ferguson, Emma Cassidy and Emer Butler. Thanks very much to all the Ten Speed Racer crew!

Making your 1% mark

A campaign to encourage Irish people to think about how they can support causes that they believe in was launched on 19 June. The 'One Percent Difference Campaign' aims to develop a culture of sustained giving in Ireland, with everyone giving one percent of either their time or their income to a worthy cause.

Ireland is already a generous country and in terms of frequency of giving, we are one of the most generous countries in the world. The challenge is that we are less inclined to give in a considered and sustained manner which enables charities to plan over the longer term.

With two of the largest philanthropic foundations in Ireland, One Foundation and the Atlantic Philanthropies completing their grant-making over the next few years, many organisations including FLAC are looking for ways to diversify their funding base; this one percent has the potential to make a huge difference.

Learn more at www.onepercentdifference.ie

Concern around Land & Conveyancing Law Reform Bill

In spring 2013, Oireachtas debate on the Land & Conveyancing Law Reform Bill 2013 began in earnest. Having been presented to the Dáil at the end of March, an order for second stage was made on 30 April. Minister for Justice Alan Shatter TD introduced the Bill to the Dáil, saying that this relatively short piece of legislation aimed to restore "our law on aspects of repossession to where it was intended to be under legislation enacted in 2009".

The 2009 legislation referred to by Minister Shatter is the Land Conveyancing & Law Reform Act 2009. The High Court decision in *Start Mortgages v Gunn* handed down by Ms Justice Elizabeth Dunne highlighted a gap in the law created by the 2009 Act. As a result, repossession cases initiated after a certain date were halted. With the Troika calling on the state to resolve the bar on repossessions, the government put forward the Land & Conveyancing Law Reform Bill 2013, which attempts to close the legal loophole.

FLAC communicated its concerns about this Bill and its likely effects on Irish repossession rates to Oireachtas members. Prior to the second stage debate, FLAC reiterated the need to balance increased repossessions with greater consumer protection and the legal rights organisation made the following points:

1. Courts should have regard to the lender's compliance with the Code of Conduct of Mortgage Arrears when examining a repossession application. If not satisfied, the court should have the option of refusing the application.
2. The 2-month initial repossession adjournment period to allow borrowers to explore Personal Insolvency Arrangements should be longer, possibly 4 or 6 months.
3. In order to avoid unnecessarily higher costs and for logistical ease for borrowers, FLAC recommends that repossession proceedings be commenced in the Circuit Court instead of the High Court.
4. It would be helpful if it was clarified that one of the terms of an order for sale could be to allow the court to determine the responsibility for any shortfall of debt on the sale.
5. It would be helpful if the Bill included a requirement that the borrower have access to adequate legal and financial advice and assistance where a lender proposes a form of consent as these tend to be complex documents.
6. FLAC also has a general serious concern about the lack of adequate legal and financial advice available to

borrowers who are faced with negotiation under the Code of Conduct on Mortgage Arrears or faced with repossession proceedings.

During the Second Stage debate in the Dáil, 12 individual deputies mentioned FLAC's recommendations and other contributors to the debate echoed our views indirectly. Minister Shatter also noted that Committee Stage discussions would "...take account of the views expressed by the Free Legal Advice Centres..."

While no specific mention was made of FLAC's proposals at Committee Stage on 25 May, many of the amendments suggested to the Minister by the Select Justice Committee cited our concern around compliance with the Code of Conduct on Mortgage Arrears.

As *FLAC News* goes to print, the Land and Conveyancing Law Reform Bill 2013 has been referred back to the Dáil for Report Stage. FLAC will be watching with interest what changes (if any) are made to the Bill. Most importantly for borrowers, FLAC will be keeping a close eye on the Bill's place in the overall personal debt scheme, and if passed, how it fits in with the Insolvency Service, the Code of Conduct on Mortgage Arrears and the Personal Insolvency Act.