

**Opening Statement
by FLAC
to the Oireachtas
Special Committee
on COVID-19
response.**

September 2020

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Wednesday, 9 September 2020

FLAC welcomes the opportunity to make a submission to the Oireachtas Special Committee on COVID-19 response.

We believe that access to justice is even more important in a pandemic. FLAC's information line which provides an insight into the acute and stressful situations that people are facing, is overwhelmed with complex new queries from people who have lost their jobs, had their wages or hours cut, are unable to pay rent ,and facing evictions, some have been unable to work because of illness or health and safety concerns or lack of childcare.

The queries highlight the acute need for information, advocacy, legal advice and legal aid in areas of law that most impact on vulnerable and disadvantaged individuals and groups, areas of law that are largely not dealt with by the underfunded Legal Aid Board with its strict means test, delays and areas of law excluded. The Legal Aid Board have said that they expect a surge in demand for their services once normal practices resume in the Courts. The Courts Services had been under resourced before the pandemic and are now facing very significant additional delays

FLAC is very concerned at the difficulties claimants will face in accessing legal assistance and this will be compounded by the inevitable growing delays in the Courts and Tribunal system.

While we welcome the move to online courts, it is only a partial solution and will be unsuitable for certain cases and people with literacy, language or certain mental health issues. The digital divide needs to be tackled. Where possible hearings should be held safely within the existing physical infrastructure.

The Courts Services and the Legal Aid Board are essential to the administration of justice and the rule of law and need to be resourced accordingly. Access to justice needs to be factored into government responses to the pandemic.

Social Welfare

The Covid pandemic payment introduced in March was a vital response to a critical situation. However, it is regrettable that no primary legislation was

introduced for five months. Many of the issues which arise in the context of the Covid PUP were due to the lack of clarity regarding eligibility criteria for the scheme and its legal basis, and confusion amongst existing claimants as to their continuing eligibility for the payment.

These issues were exacerbated by unclear and conflicting information published by the Department of Social Protection as to the eligibility criteria for the payment. It is notable that the amendments were made to sections of the Covid PUP webpage on gov.ie setting out the eligibility criteria for the payment at least seven times between 13 March and 5 August 2020. These changes including the addition of criteria to the effect that claimants were required to abide by certain “Holiday Rules” while in receipt of the payment and to “genuinely seek work”. In FLAC’s submission, these criteria cannot be considered as having been conditions for receipt of the payment prior to 5 August.

In relation to the reported actions of Departmental officials at ports and airports, it appears to FLAC that Social Welfare Inspectors have been conducting checks in such settings which exceed their powers under the 2005 Act, which only provides for the questioning of persons in such settings on the basis of a “reasonable grounds” for suspicion and after the production of the Inspectors Certificate of Appointment. Recent information released by the Department under FOI raises significant questions around the Department’s rationale for targeting certain flights, with 70% of the flights targeted for checks during this period flying to either Romania or Moldova.

While the 2020 Act provides welcome clarity in relation to the eligibility criteria for the Covid PUP scheme, FLAC is concerned about the imposition of a requirement to “genuinely seek work” while in receipt of that payment. Many claimants for that payment have been temporarily laid-off, and have every expectation of resuming their previous employment or self-employment. Further, employees who have been laid off may have to forego statutory redundancy payments from their original employer if they take up other employment elsewhere.

No regulations have been introduced for the purpose of setting out how recipients for the Covid PUP are to be assessed as “genuinely seeking work”. No regulations have been introduced providing for the circumstances in which claimants may receive the payment while absent from the State. It is therefore the case that the new legislative regime under the 2020 Act disqualifies claimants from receiving the Covid PUP during any travel abroad for any period, however brief, and for any reason, however urgent.

Covid has highlighted and exacerbated a number of other gaps and systemic

failures in our social protective legislation which predate Covid-19 in a number of areas.

Employment law

Between March 2020 and August 2020, employment law queries on FLAC's Telephone Information Line increased by 58.7 per cent compared to same period in 2019. For the first time at the end of May employment law queries were the top query on our phone line overtaking Family law for the first time in FLAC history.

Employment law issues have arisen in relation to lay off limbos, refusals of and/or impositions of annual leave, refusal of leave for childcare and the harshness of the suspension of the right to claim a redundancy sum.

Evictions and Part 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020

Section 5(7) of the 2020 Act, purported to extend the prohibition on evictions under the 2004 Act to all tenancies, as well as prohibiting the forced movement of members of the Traveller community.

However, it is FLAC's view that the section lacked clarity and suffered from interpretative ambiguities that deprived those, who ostensibly should have been protected by its provisions, of any means to resist an eviction or seek a remedy. In relation to evictions it must be remembered that the legislative framework governing evictions in any event needs to be reviewed in the light of the decision of the European Committee of Social Rights.

Debt

In relation to debt we know that persistent mortgage debt from the last recession remains with over 26,421 accounts remaining in arrears. To these will undoubtedly be added people who find themselves with debt problems following loss of employment, closure of business etc.

The framework of information, advocacy, legal advice and legal aid for debtors needs to be reviewed. A Covid debt code to deal with legacy mortgage arrears, new mortgage arrears and unsecured debt needs to be considered.

Myself or my colleague Christopher Bowes, FLAC Legal Officer are happy to answer any questions you may have. FLAC would also be open to attending this committee again or meet with any individual members and discuss these issues.

Thank you.