

Submission on the Central Bank (Supervision and Enforcement) Bill 2013

FLAC

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About FLAC

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all.

FLAC Policy

Towards achieving its stated aims, FLAC produces policy papers on relevant issues to ensure that government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

You can download/read FLAC's policy papers at <http://www.flac.ie/publications/policy.html>

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FLAC would like to flag several issues relating to the Central Bank (Supervision and Enforcement) Bill 2013: the provisions relating to debt management companies and the lack of provisions relating to debt collectors.

Debt Management Companies

This legislation provides for extra powers for the Central Bank. FLAC is glad to see that in the two years that have passed since it was initiated the Bill has been improved by recent amendments to include Central Bank regulation of debt management and debt advisory companies. This is long overdue. The failure to regulate them to date has meant that anyone could set up as debt management advisors without any authorisation or oversight at all. When FLAC raised the issue previously, we were told that the Central Bank did not have the power to regulate. This legislation will give it the necessary power. It would be interesting for all those who use such companies to know when it is proposed to commence or activate the legislation. FLAC believes that it should be soon for the protection of a lot of vulnerable consumers who use these services. It would also be useful to hear the government views on the amount of information that it is intended will be generally available to such consumers, even before they approach a company or a company approaches them. What, for instance, will the Central Bank tell us on their website?

Debt Collectors

The glaring gap which remains is the consistent failure to regulate debt collectors. We read with interest the debate that members had with the Minister for Finance at the Select Committee and the debate with the Minister for State at Report Stage in the Dáil. Both indicated that the regulation of debt collectors is a matter for the Department of Justice and Equality. From our enquiries over the past couple of years and from an inspection of the proposed programme of planned legislation, it does not seem that the Minister for Justice and Equality is considering any such legislation.

Therefore, throughout this recession, at a time when people are under incredible pressure to pay debts due to various creditors, there are no minimum standard which debt collectors must meet, nor is there any supervision or oversight of their activities unless they commit and are convicted of a criminal offence. As Minister for State Brian Hayes pointed out at Report Stage in the Dáil, it is an offence to demand payment of a debt in way designed to cause harm and distress. However, this requires the indebted person who is harmed and distressed to make and pursue an individual complaint without support against the debt collector that they fear and bring the matter to open court for adjudication. This is therefore only likely to happen in extreme cases – sometimes not even then. Even if someone is convicted of such an offence, it does not debar them from acting as a debt collector.

As assurance to Dáil deputies, the Minister for State also referred to the requirements of financial institutions to comply with the revised consumer protection code. That code does not impose any

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minimum standards on debt collectors nor does it oversee their activities. In a general way, it asks financial institutions to deal appropriately and in a proportionate way with debtors and – to an extent – imposes limits on the number of contacts. The code – which is not legislation - does not oversee the behaviour of debt collectors nor require them to adhere to particular guidelines. It does not envisage any sanctions for debt collectors nor set up any register from which rogue debt collectors could be excluded.

Therefore, those in debt continue to have a serious problem where anyone, no matter what their qualifications or background, no matter what the commission, can collect debts without any regulatory oversight or licensing whatsoever.

In the absence of any other planned legislation, and given how long it has taken to advance this legislation, FLAC believes that this Bill is a suitable and appropriate one to rectify a problem that particularly affects members of the public who are distressed at a time when they are extremely vulnerable.