

# **Submission to the Oireachtas Committee on Housing & Homelessness**

**FLAC**

**May 2016**

## About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. As an organisation, FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence.

## 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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## 1. Introduction

The Council and staff of Free Legal Advice Centres Ltd thank the Chairperson, the members of the Committee and the Committee officials for the opportunity to address you today. We welcome the setting up of this Committee to investigate these very urgent issues and to make swift recommendations to address them.

FLAC's presentation today will focus primarily on the problem of loss of accommodation and potential homelessness arising from mortgage arrears, a major focus of our organisation's work in this area. We also believe that a number of changes need to be made to the social welfare system to better support and target households in danger of homelessness and these will also be outlined in this paper, together with some other proposed changes. That does not of course mean that we are not extremely concerned about the broader aspects of the housing crisis in Ireland but we would seek to support rather than duplicate the efforts of colleagues in that area.

In this respect, we recognise the considerable efforts of fellow NGOs and voluntary groups – Focus Ireland, the Simon Community and the McVerry Trust amongst others – who both campaign and provide services in the housing and homelessness arena. We also support the advocacy work of the independent law centres in this area, and note the recent call by Mercy Law Resource Centre for a right to housing to be enshrined in the Constitution in its recently published report 'The Right to Housing in Ireland'. We are also acutely aware of the ongoing campaigning of Threshold for reform of the private rented sector and we also acknowledge the work of a broad range of housing associations across the country.

We think it unlikely, however, that the Committee would like us to waste much time on matters where we may have views but little in the way of expertise to offer. Briefly, however, on the broader questions we would suggest that the 'privatisation' of housing into a commercial lending and borrowing market and the move away from the construction of social housing by the State is the principal contributor to the current housing crisis and should be reversed with all possible speed. It is apparent too that there is a 'supply side' problem with construction generally, with numerous obstacles seeming to stand in the way of house building, including a shortage of access to finance for developers, planning difficulties and regulatory complexities, and these must be urgently addressed. We are also of the view that it is unlikely that the moderate 'rent certainty' measures recently (and belatedly) introduced will help to stabilise the increasing problem of excessive rents and associated evictions, until the shortage of supply of both private rented accommodation and public housing is effectively tackled.

## 2. Mortgage arrears

One of principal areas of FLAC's current work programme of relevance to today's discussion is the ongoing campaign to prevent the unnecessary repossession of family homes and to ensure legally binding arrangements to resolve personal over-indebtedness and insolvency.

In our view, mortgage arrears is a significant potential and actual contributor to the homelessness problem, in addition to the lack of social housing options together with high rents and evictions in the private rented sector.

Before moving on to suggest reforms, we would like to briefly outline our assessment of the reality of the current situation, as suggested by the most recent Central Bank statistics in respect of arrears on principal dwelling house and buy-to-let mortgages. We provide some comments on the operation and effectiveness of the Central Bank's Code of Conduct on Mortgage Arrears and outline current proposals to belatedly provided borrowers facing or potentially facing repossession with support and advice.

## 2.1 - Central Bank statistics on mortgage arrears – Principal Dwelling Houses

### General arrears

- At the end of 2013, some **136,564** (17.9% of the total) mortgages on principal dwelling houses (or family homes) were in arrears.
- By the end of 2014, this figure had reduced to **110,366** (14.5%).
- By the end of 2015, the figure was down to **88,292** (11.8% of the total).

Thus, progress on reducing arrears has been made, but in the context of a very specific Central Bank supervised Mortgage Arrears Resolution Target (MART) programme for lenders, it has also arguably been far too slow. In addition, beneath these headline figures lurk some less than encouraging signs.

### Two years plus arrears category

- At end 2013, some 33,589 of PDH mortgages had been in arrears for over two years, this being **25.0%** of arrears total (one-in-four)
- By end 2014, this number was 37,778 and amounted to **34.2%** of the total (just over one-in-three)
- At end 2015, there were 36,351 in arrears over two years which amounted to **41.2%** of the total in arrears (just over two-in-five)

The over two years arrears category is therefore growing rapidly as a percentage of the overall total even though the overall total is declining, with the average arrears figure now up to an average of **€56,841** on these accounts. It is absolutely clear from this that the more intractable cases are being resolved at a far slower rate than the less serious cases. Note too that a further **11,745** mortgages have been in arrears for between one and two years.

Some of these 36,351 accounts will be top-ups on existing mortgages but even at that, we might conservatively estimate that well over 30,000 family homes are in danger of Homelessness. That is a very alarming figure in the context of an already grave housing and homelessness crisis.

### Key restructures figures

Neither should it be assumed that the problems of those who appear to have exited arrears are necessarily over. FLAC believes that over-reliance on arrears capitalisation and split mortgages as suitable permanent restructuring arrangements in mortgage arrears cases may, unfortunately, also be creating a problem of loss of accommodation well into the future for some people.

	Split mortgages	Arrears capitalisation	Term extension
<b>End 2013</b>	3,268 (3.9%)	18,516 (22.0%)	15,922 (18.9%)
<b>End 2014</b>	19,837 (17.3%)	29,615 (25.8%)	17,070 (14.9%)
<b>End 2015</b>	25,014 (20.7%)	34,914 (28.9%)	16,650 (13.8%)

Note that the end of 2013, split mortgages and arrears capitalisation accounted for approximately **one-in-four** restructures. Two years later, at the end of 2015, **every second** restructure is either a split mortgage or a capitalisation of arrears arrangement. By contrast, extensions of the term of the mortgage have substantially decreased over the same period.

Again, according to the Central Bank, 95.1% of split mortgages are said to be meeting the terms of the arrangement – meaning that 5% (or 1,226 arrangements) are already not. And for those that do manage to keep up agreed payments for the full term, they still face an often substantial capital payment when that term comes to an end. With many people at or approaching retirement age at that point, future occupation of the family home will be in doubt and there are currently few guarantees available as to how these cases will be resolved.

Of the arrears capitalisations, 76.3% are said to be sticking to the terms of the arrangement, meaning that approximately a quarter - a disturbing 8,275 arrangements - are not. It might be said that this is hardly surprising; capitalisation of arrears essentially involves the borrower paying more on a monthly basis than when the arrears accumulated in the first place.

The ease with which capitalisation of arrears is being offered is alarming in some instances. Though the financial circumstances of some borrowers have clearly improved to justify such an arrangement, it is very doubtful that this is justified on such a widespread basis. There is to our knowledge no further detailed information here. For example, we do not know how many of the 35,000 arrears capitalisation cases cleared the arrears with assistance from relatives, rather than from their own resources.

Finally, it is worth noting that there is no category in the Central Bank restructuring figures of **debt write-down**; even within the 'Other' catch-all category, it is not listed as a possible option. Nonetheless, the Personal Insolvency Act 2012 at Section 102 (6) (g) and Section 103 (2) (b) does envisage that a proposal for a Personal Insolvency Arrangement (PIA) may be made on terms that see the borrower/s remain in the family home and reduce the principal sum due to the creditor on a secured debt (such as a mortgage on a family home) down to the current market value of the security, with a right for the creditor to 'claw back' any increase in value over the following 20 years.

It is also notable that the quarterly reports of the Insolvency Service do not appear to contain information on the number of Personal Insolvency Arrangements in existence with this write-down feature. Anecdotally, however, write-down with the borrower remaining in the family home is very rare compared with write-down or write-off of the shortfall on the mortgage when a property is repossessed and the former borrowers have had to seek alternative accommodation.

### Three years of repossession figures - Principal Dwelling Houses only

It has been commonly suggested that repossession activity in the courts in Ireland is very low for the scale of the arrears problem. The Minister for Finance Michael Noonan TD, for example, said on 9 March 2015: *"I don't think that the figures show a lot of houses being repossessed by the banks. I think what the figures show is the banks using the courts to get people to engage with them who haven't engaged"*.

The actual figures as compiled again by the Central Bank are set out below.

	<b>New Cases</b>	<b>Orders</b>	<b>Executions</b>	<b>Surrenders</b>
<b>2013</b>	<b>3,846</b>	<b>626</b>	<b>251</b>	<b>515</b>
<b>2014</b>	<b>11,424</b>	<b>968</b>	<b>313</b>	<b>998</b>
<b>2015</b>	<b>7,902</b>	<b>1,517</b>	<b>726</b>	<b>809</b>
<b>Total</b>	<b>23,172</b>	<b>3,111</b>	<b>1,290</b>	<b>2,322</b>

Cumulatively, these show that over 3,600 family homes have been repossessed in the three years of 2013, 2014 and 2015 through the executions of Possession Orders and voluntary surrender by borrowers. Where have these households gone to live? We don't think anyone is tracking this.

The figures also show that a lot of repossession cases have gone into the legal system and many remain there, as adjourned cases, or where an order has been granted with a stay, or where the lender has obtained an order but has not (as yet) chosen to execute it.

### 2.2 - Central Bank statistics on mortgage arrears – Buy-to-let mortgages

In brief, as of the end of 2015, **28,760** buy-to-let mortgages (20.9% of the total) were in arrears. Some **15,064** of those (11% of the total) have been in arrears for over two years.

From 2013 to 2015, a total of **1488** buy-to-let properties were repossessed by court order or voluntary surrender. It is suggested that the majority of these would have involved the eviction of a tenant, either by the borrower landlord or by the lender. It is notable that this trend has dramatically increased over the period – **283** properties were repossessed in 2013, **366** in 2014 but in 2015 alone **839** were repossessed.

At the end of 2015, a total of **5,967** buy-to-let properties were in the hands of rent receivers appointed by lenders and the future occupation of tenants in these dwellings is insecure. FLAC's understanding is that subject to complying with the minimum notice periods under the residential tenancies legislation or the terms of an existing lease, the current lender (or the purchaser of a portfolio of secured loans such as an investment or 'vulture' fund) may elect to evict the tenant and sell the property as they choose.

### 2.3 – Resolving Principal Dwelling House mortgage arrears cases – The CCMA/MARP process

Right now, County Registrars in Circuit Courts the length and breadth of Ireland are, generally speaking, attempting to see whether payment arrangements can be put in place that will prevent the repossession of family homes. However, when push ultimately comes to shove, they have little or no power to oblige lenders to accept any such proposals.

Prior to ever arriving at a Circuit Court, the lender is supposed to have already carried out a comprehensive assessment of whether it is appropriate to put a so called ‘alternative repayment arrangement’ in place under the terms of the Central Bank’s Code of Conduct on Mortgage Arrears 2013 (CCMA) which imposes a mandatory ‘Mortgage Arrears Resolution Process’ (MARP). Critically, a lender is allowed to choose which options from a range of alternative repayment arrangements set out in the Code it wishes to offer. It is then only obliged to look at the feasibility of these, it is not obliged to offer anything.

Figures on outcomes under the MARP process are either not maintained or are not made available by the Central Bank. However, essentially a lender may make one of three key decisions under the MARP as follows:

- 1) An alternative repayment arrangement is offered to the borrower which the borrower may accept or reject as unsuitable
- 2) An alternative repayment arrangement is not offered to the borrower, in effect a declaration that the mortgage is not sustainable
- 3) The borrower is deemed not be ‘not co-operating’ with the MARP, for example by not submitting the required financial information within time limits prescribed by the lender. This declaration by the lender is unilateral, subject to an obligation to give the borrower advance warning and 20 days to correct the situation.

In the case of a rejected alternative repayment arrangement or where none is offered, the lender must wait three months before bringing repossession action. In the case of alleged non-cooperation the borrower is out of the MARP process and open to potential legal action immediately.

A borrower may appeal any of these three decisions from the lender’s Arrears Support Unit to the lender’s Appeals Board. Again there are no published figures on the outcomes of these appeals, but anecdotally FLAC understands that many are rejections of the ‘rubber stamp’ variety, with little or no reasoning provided for the lender’s decision.

There is no right of appeal to an independent third party against any of these three substantive decisions made by the lender. A complaint may be made to the Financial Services Ombudsman on a lender’s failure to adhere to the MARP process, but the Ombudsman’s office has made it abundantly clear that it does not see itself as having the power to overturn the substantive decisions of lenders.

In summary, the balance of power remains with the lender throughout the CCMA/MARP and from the borrower’s perspective this process can be a nightmare in terms of fair procedures and access to the detailed reasons for lender’s decisions.

In May 2015, the Supreme Court found in *Irish Life and Permanent PLC and Dunne and Dunphy*<sup>1</sup> that the CCMA was effectively inadmissible in repossession proceedings, apart from the requirement to satisfy the ‘moratorium’ (referred to above) before repossession action is brought.

In July 2015, the High Court found in *Stepstone Mortgage Funding Ltd and Hughes*<sup>2</sup> found that the plaintiff lender engaged in ‘tick box’ and ‘formulaic’ compliance with CCMA but granted the Possession Order sought as the lender had complied with the moratorium.

In *Dunne and Dunphy*, the Supreme Court said that:

*‘If it is to be regarded, as a matter of policy, that the law governing the circumstances in which financial institutions may be entitled to possession is too heavily weighted in favour of those financial institutions then it is, in accordance with the separation of powers, a matter for the Oireachtas to recalibrate those laws. No such formal recalibration has yet taken place’.*

and

*‘In the absence of there being some legal basis on which it can be said that the right to possession has not been established or does not arise, then the only role which the Court may have is, occasionally, to adjourn a case to afford an opportunity for some accommodation to be reached’.*

This is a clear statement that the courts will not invent legal defences for borrowers that the Oireachtas has not provided for in its role under Article 15 of Bunreacht na hEireann as having ‘*the sole and exclusive power of making laws for the State*’.

#### **2.4 – State funded services to assist borrowers facing repossession**

At the time of writing, a new system of access to legal assistance for insolvent borrowers in mortgage arrears is finally on the point of being rolled out by the Departments of Justice and Social Protection through the Legal Aid Board (LAB), the Insolvency Service of Ireland (ISI), the Citizens Information Board (CIB) and the Money Advice and Budgeting Service (MABS).

Staff from both ISI and MABS already provide a court mentoring service for borrowers facing court repossession proceedings and MABS has in recent months established a number of ‘Dedicated Mortgage Arrears Advisor’ roles to advise borrowers in mortgage arrears generally.

According to a recent answer by Minister for Justice, Frances Fitzgerald TD to a parliamentary question from Pearse Doherty TD, the additional (legal aid) services will include:<sup>3</sup>

1. A Solicitor Consultation Service
2. A Duty Solicitor Service and
3. A Personal Insolvency Arrangement Review

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<sup>1</sup> Irish Life and Permanent Plc –v– Dunne and Irish Life and Permanent Plc –v– Dunphy [2015] IESC 46.

<sup>2</sup> Stepstone Mortgage Funding Ltd -v- Hughes & anor [2015] IEHC 487 (21 July 2015).

<sup>3</sup> For written answer, 5 May 2016



The solicitor consultation service is intended in principle to provide a single appointment with a private solicitor contracted by the LAB to check the borrower's legal position. It may extend to conducting negotiations for the settlement of repossession proceedings and a second consultation in those circumstances. It may also inform the person who does not have a legal defence to repossession, but who might benefit from accompaniment to Court, of the existence of the duty solicitor service. Finally, if a person may have a good defence capable of meeting the merits criteria under section 24 and 28 of the Civil Legal Aid Act, 1995, she or he may be advised to make an application for civil legal aid to defend the proceedings.

Duty solicitors will be in attendance at the court to provide general assistance to persons who have been served with proceedings for repossession of their home and who do not otherwise have legal representation. Persons who have been served with a Civil Bill for Possession of their home which is listed for hearing before the County Registrar and who have been given a legal advice voucher, may avail of the Duty Solicitor Service. These vouchers will be provided through the gateway of the Money Advice and Budgeting Service (MABS).

The Personal Insolvency Arrangement Review Service may be available to appeals to the Circuit Court or High Court where

- a debtor has proposed a Personal Insolvency Arrangement (PIA) to his or her creditors with the assistance of a Personal Insolvency Practitioner (PIP), but
- the creditors (or a class of creditors) have not approved the arrangement, and
- the insolvent debtor wishes to request that the Court overrules the objections of creditors, and
- the PIP believes there are good grounds for doing so.

Finally, this scheme will also comprise an element of access to financial advice for insolvent borrowers in mortgage arrears, again via a voucher system to be administered through MABS. This will involve access to free consultations with either a Personal Insolvency Practitioner or an accountant.

## **2.5 – Recommended reforms**

FLAC has long called for comprehensive legal and financial advice for borrowers in arrears and the developments described above are therefore welcome. However, we suggest that this proposed service may be already somewhat compromised before it begins for two reasons.

- The rate of appearance of defendant borrowers at repossession proceedings, despite the generally helpful approach of County Registrars, is very low and may not exceed 10%. The reasons for this are various. Many are simply frightened and worn down by a decade of functional insolvency. Some have never engaged with their lender; some have engaged and then disengaged having found the process unsympathetic, overly complex and even intimidating. Some have completely engaged but have nonetheless found the lender unwilling to compromise with them.

(17 May 2016)

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- The Supreme Court's decision in *Dunne and Dunphy*, which effectively declares the CCMA inadmissible in repossession cases in the Courts, seems to deprive a defendant borrower of the only potential defence that might have been available – since changed financial circumstances resulting in inability to pay is not a defence. It is questionable then how useful access to legal advice and even representation will be at that point.

The mortgage arrears problem is more clearly defined than ever. New cases of arrears are less common and, as shown above, the proportion of hard cases – those in arrears over two years particularly – forms an ever increasing percentage of the overall total. This presents an opportunity for a new government to tackle this problem for once and for all.

The following reforms are therefore broadly suggested, though finer detail would clearly be required:

- 1) The CCMA with its MARP process should continue to be the template for lender/borrower negotiations on rescheduling mortgage arrears, with access to assistance from MABS money advisors becoming mandatory for borrowers.
- 2) The CCMA should become a ministerial regulation expressly admissible in any legal proceedings before an adjudicating body.
- 3) The option for an insolvent debtor to instead have a Personal Insolvency Arrangement (PIA) proposal made on his or her behalf by a Personal Insolvency Practitioner under the Personal Insolvency Act 2012 that would include proposals on the family home should continue.
- 4) A **mortgage rescheduling tribunal** should be put on a statutory footing to hear appeals from borrowers unhappy with the outcome of the MARP process. The tribunal would have the power to impose its own decision on the parties, including write-down where appropriate. Either party would have the option of an appeal into the courts against this decision.
- 5) Borrowers should have access to the requisite financial and legal advice and representation to make out their case to this Tribunal and into the courts if it proved necessary.
- 6) These proceedings should be heard *in camera*, i.e. in private, to encourage full participation.
- 7) For those whose mortgages are declared unsustainable on financial grounds (and there are unfortunately a sizeable number of such cases), access to an expanded Mortgage-to-Rent scheme should be promoted. The existing scheme should be immediately overhauled with a focus on problem areas such as the required state investment, lender co-operation, income thresholds, property valuations, the mortgage shortfall (in negative equity cases) and the problem of judgment mortgages registered against the property.
- 8) Above all, any new legislative initiative needs to be comprehensively publicised and promoted by the government, with a high level policy statement explaining its rationale and the intention to take a leadership approach to finally repairing the damage done to so many households by the personal debt crisis.

At the time of writing (11 May), we note that some proposals resembling some of the above have been included in the latest 'Programme for Government' at pages 30-31.<sup>4</sup>

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<sup>4</sup> 'A Programme for Partnership Government' May 2016

- 9) It is also apparent that a number of tenants who are not in arrears of rent are being evicted as a result of commercial events outside their control and this may be likely to increase as a result of the purchase of impaired loans secured on properties by investment or 'vulture' funds. The imposition of a moratorium on the sale of such assets and the resulting eviction of the tenant/s involving (temporary) amendment to the residential tenancies legislation should be examined.

### **3. Social Welfare and other issues**

#### **3.1 - Mortgage Interest Supplement (MIS) scheme**

The Mortgage Interest Supplement scheme provides short-term income support to eligible people who are unable to meet their mortgage interest repayments in respect of a house which is their sole place of residence. The supplement assists with the interest portion of the mortgage repayment but does not help with payment of the capital portion of the loan or with house insurance.

The basic purpose of Mortgage Interest Supplement is to ensure that a person who suffers a short-term loss of income will not have their family home repossessed due to an inability to meet their mortgage interest repayments. In effect therefore, Mortgage Interest Supplement provides a safety net for people struggling with mortgage repayments, in particular those who are unemployed or sick.

However, from 1 January 2014, the Mortgage Interest Supplement scheme has been closed to new entrants. In addition, the scheme is being wound down over a four-year period (by the end of 2017) for the 9768 claimants who were in receipt of the supplement at the start of 2014. The closure of the Mortgage Interest Supplement scheme to new claimants means that people experiencing short-term income difficulties cannot access social welfare assistance to pay their mortgage interest payments.

During the economic crisis, a number of expert, review and inter-departmental groups were established, tasked with examining the issue of mortgage arrears. While sharing the view that Mortgage Interest Supplement should be a time-bound support, each emphasised the importance of the scheme to borrowers experiencing short-term financial difficulties and abolition was not recommended.<sup>5</sup>

Nonetheless, the Department of Social Protection is now firmly of the opinion that the most appropriate way in which customers experiencing short-term mortgage difficulties can be supported is through engagement with their lender under the Mortgage Arrears Resolution Process.

It is recommended to restore a targeted use of the MIS payment to assist people with a short-term mortgage arrears problem through their financial difficulties. This might help to prevent temporary financial problems multiplying into insolvency, with the attendant social and economic consequences that may follow for the households involved and for society generally.

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<sup>5</sup> These included the Inter-Departmental Working Group on Mortgage Arrears, the Working Group on the Review of Mortgage Interest Supplement and the Expert Group on Mortgage Arrears and Personal Debt.

### 3.2 - Rent Supplement and Housing Assistance Payment caps

The maximum Rent Supplement and Housing Assistance Payment (HAP) payment levels are not sufficient and have not been increased to keep pace with the increasing cost of rented property, especially in urban areas. Despite the welcome introduction of some rent certainty measures, Rent Supplement and Housing Assistance Payment levels have not been increased to reflect market rates. This has resulted in situations where people have fallen into debt and rent arrears. Others have simply been unable to access private rented accommodation due to unaffordable costs.

Furthermore, the gap between actual rents and the limited Rent Supplement rates has resulted in some tenants making undeclared and unlawful “top-up payments” to their landlord in order to secure a place to live.

In 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the “overall difficult housing situation” in Ireland and in particular, the “[i]ncreased costs of rental housing and reduced family incomes” as well as “[i]neffective social support programmes, such as the Rent Supplement and the Housing Assistance Payments, which do not reflect rent increases”.<sup>6</sup> The UN Committee also drew attention to the “[g]rowing number of families and children that are homeless or are at risk of being homeless as a result of...inadequate levels of rent supplement”.

The UN Committee called on Ireland to consider increasing rent supplement levels, and to take all necessary measures to meet the critical needs of those who are homeless or who are at risk of being homeless.<sup>7</sup> These concerns should be reflected in changes in payment levels and practices.

### 3.3 - Reduced social welfare rates for people under the age of 26

At the moment, people under the age of 26 years who are eligible for a social security payment receive a lesser amount than those aged over 26. This means that eligible individuals aged 26 and over receive a basic weekly payment of €188, claimants aged between 18 and 24 years with no dependent children receive €100, while claimants aged 25 years receive €144. These lower payments fall below the basic minimum income standard of €186 set by the Government.

There appears to be an assumption by the State that adults below the age of 26 are able to live with parents or family members, which is not always the case; consequently, concerns abound that these age-related social welfare cuts increase the vulnerability of people under the age of 26 to homelessness, particularly those who are already disadvantaged and without family supports such as LGBTI persons, migrants, persons with disabilities, victims of domestic violence, Travellers and Roma.

Focus Ireland has reported that over 570 people under the age of 25 were living in emergency homeless accommodation in July 2015.<sup>8</sup> FLAC is concerned that young people who end up homeless find it extremely difficult to leave homeless services and break the cycle of homelessness as they are priced out of the private rental market due to limited social welfare payments.

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<sup>6</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.26.

<sup>7</sup> Para.27.

<sup>8</sup> Focus Ireland (2016) *Pre-Budget Submission 2016*, Dublin: Focus, p.8.

The limited social welfare payments received by the under 26's amounts to institutionalised age discrimination and should be reversed.

### 3.4 - Right to Housing

There is no express right to housing in Irish law, despite a recommendation from the Constitutional Convention in 2014 to include housing as a specific right in the Constitution.<sup>9</sup> In addition, the UN Committee on Economic, Social and Cultural Rights has recommended that Ireland incorporate the International Covenant on Economic, Social and Cultural Rights, which provides for the right to adequate housing, into domestic law.<sup>10</sup>

FLAC supports the justiciability of economic, social and cultural rights, and backs the call for the right to housing to be incorporated into domestic law.<sup>11</sup> Incorporation of the right to housing in domestic law would ensure that courts could review governmental and local authority decisions concerning housing and assess whether these decisions are proportionate.

### 3.5 - Legal aid for local authority tenants facing eviction

The Civil Legal Aid Act 1995 provides that legal aid shall not be granted in respect of “disputes concerning rights and interests in or over land”.<sup>12</sup> This means that, generally, individuals cannot obtain legal aid for a housing matter as the Legal Aid Board interprets cases involving a home as a dispute concerning rights and interests in or over land. An issue which has arisen in FLAC’s campaigning work on civil legal aid is that local authority tenants facing eviction proceedings in court are not entitled to legal representation.

In 2014, the procedure for eviction of local authority tenants was fundamentally changed. Section 18(2) of the Housing (Miscellaneous Provisions) Act 2014, commenced in April 2015, gave the District Court the power to consider the reasonableness of the decision to evict. Despite this fundamental change, civil legal aid is not available for individuals involved in eviction proceedings from social housing.

Eviction proceedings are of enormous consequences. Eviction from social housing can result in homelessness and exclusion from local authority housing lists. However, due to the high costs of private legal representation and the exclusion of social housing issues from the civil legal aid scheme, many people involved in such proceedings are left unrepresented. Statistics from 2015 show that 48 families were forcibly evicted from local authority houses.<sup>13</sup>

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<sup>9</sup> In February 2014, 84% of the Constitutional Convention supported the inclusion of a right to housing in the Constitution. Constitutional Convention (2014) *Eighth Report of the Convention on the Constitution*, Dublin: Constitutional Convention, p.6.

<sup>10</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.7. Ireland also “partially accepted” a recommendation during its first Universal Periodic Review examination to consider incorporating the right to housing into domestic law. Office of the High Commissioner for Human Rights (2011) *Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR, p.18.

<sup>11</sup> For more information see Mercy Law Resource Centre (2016) *The Right to Housing in Ireland*, Dublin: MLRC. See also Amnesty International (2014) *Bringing ESC Rights Home: The case for legal protection of economic, social and cultural rights in Ireland*, Dublin: Amnesty.

<sup>12</sup> Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995.

<sup>13</sup> <http://www.environ.ie/sites/default/files/attachments/c1-repossess-by-yr.xlsx>

It is relevant to note that in 2015 the UN Committee on Economic, Social and Cultural Rights expressed concern regarding the lack of civil aid services in Ireland, “particularly in the areas of housing and forced evictions”.<sup>14</sup> Thereafter, the UN Committee recommended that the civil legal aid scheme be expanded.<sup>15</sup>

Similarly, the former UN Independent Expert on extreme poverty and human rights, Magdalena Sepúlveda Carmona, expressed concern that “several areas of law that are particularly relevant for people living in poverty, such as eviction proceedings and local authority housing issues are not included in the [Civil Legal Aid] Act [1995]” and called for the scheme to be broadened.<sup>16</sup>

#### 4. Conclusion

In 2011, FLAC co-ordinated a series of meetings of a number of organisations including Threshold, Focus Ireland, New Beginning, Society of Saint Vincent de Paul, Northside Community Law Centre (now Community Law and Mediation), Ballymun Community Law Centre and Respond! Housing Association, as well as a number of individual researchers. With a strong collective track record of working and campaigning on anti-poverty issues including debt and credit, social housing, social welfare, homelessness and tenant’s rights, this group issued a document agreeing on nine key principles to overcome the personal debt crisis.

Five years down the road, although there has been some progress on personal debt, FLAC maintains that we still lack a properly co-ordinated approach to coherently resolving multi-faceted urgent problems. The housing and homelessness crisis is proving to be an even more acute example of this. It is perhaps worth quoting from the conclusion to the brief ‘Nine Principles’ document here.

*The social and economic costs of the minimal policy intervention we are currently experiencing will, in all likelihood over time, outweigh the costs of responding comprehensively now. We therefore urgently call for a national strategy to be put in place to resolve over-indebtedness and to foster a responsible credit market that would prevent a similar crisis from occurring for future generations.*

Following his recent nomination on 6 May, the Taoiseach said that the new Minister for Housing, Planning and Local Government will begin immediate preparations for the development of an action plan for housing taking into account the views and suggestions of Government, the Oireachtas and civil society. Given the scale of the housing and homelessness problem, we question whether a temporary Joint Oireachtas Committee suffices.

In FLAC’s view, a Committee established on a permanent or semi-permanent basis to monitor progress in this critical area is required, especially given the appointment of a Senior Minister with specific responsibility for housing.

Thank you for considering our views.

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<sup>14</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.8.

<sup>15</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.8.

<sup>16</sup> Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.4.

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## List of recommendations:

FLAC recommends that the government:

- 1) Ensure that the Code of Conduct on Mortgage Arrears with its MARP process continue to be the template for lender/borrower negotiations on rescheduling mortgage arrears, with access to assistance from MABS money advisors becoming mandatory for borrowers.
- 2) Make the Code of Conduct on Mortgage Arrears a ministerial regulation expressly admissible in any legal proceedings before an adjudicating body.
- 3) Continue the option for an insolvent debtor to instead have a Personal Insolvency Arrangement (PIA) proposal made on his or her behalf by a Personal Insolvency Practitioner under the Personal Insolvency Act 2012 that would include proposals on the family home.
- 4) Establish a **mortgage rescheduling tribunal** on a statutory footing to hear appeals from borrowers unhappy with the outcome of the MARP process.
- 5) Give borrowers the requisite financial and legal advice and representation to make out their case to this Tribunal and into the courts if it proved necessary.
- 6) Ensure that such proceedings are heard *in camera*, i.e. in private, to encourage full participation.
- 7) For those whose mortgages are declared unsustainable on financial grounds, promote access to an expanded Mortgage-to-Rent scheme should be promoted, and the existing scheme should be immediately overhauled.
- 8) Comprehensive publicise and promote any new legislative initiative.
- 9) Examine the possibility of imposing a moratorium on the evictions of the tenant/s via (temporary) amendment to the residential tenancies legislation, where the property in which they live has been sold to a 'vulture fund'.
- 10) Restore a targeted use of the MIS payment to assist people with a short-term mortgage arrears problem through their financial difficulties.
- 11) Adjust Rent Supplement and Housing Assistance Payments to reflect actual housing costs and meet people's basic housing needs.
- 12) Reverse the cuts to social welfare payments to people under 26.
- 13) Expressly include the right to housing in Irish domestic law.
- 14) Broaden the remit of the Civil Legal Aid scheme to include applicants facing eviction from both private and rented accommodation, including local authority accommodation.
- 15) Establish the Housing & Homelessness Committee on a permanent or semi-permanent basis to monitor progress in this critical area.