

# FLAC Election Briefing 2016: Ensuring access to justice for all



## What is FLAC and what do we do?

FLAC (Free Legal Advice Centres) is a legal rights organisation that promotes the basic human right of equal access to justice for everyone. Using research, advocacy, litigation and dissemination of legal knowledge, we work for fairer and more equal systems in Irish society with a particular focus on civil legal aid, consumer credit, personal debt and social welfare, as well as to develop the use of law in the public interest.

## How do we work for access to justice?

FLAC provides direct legal information and advice to the public, with no means test and in confidence: we produce legal information guides to download, we operate a daytime telephone helpline at lo-call 1890 350 250 and, in partnership with the Citizens Information Services Network, evening advice centres are available countrywide where volunteer lawyers offer guidance on the law to the public for free.

We also deliver legal support and training to the national Money Advice and Budgeting Services (MABS) and Citizens Information Services networks. FLAC runs the Public Interest Law Alliance (PILA) which works to develop the public interest law environment in Ireland through, amongst other activities, a Pro Bono Referral Scheme that matches the unmet legal need of social justice NGOs with private lawyers and law firms willing to give their services for free.



Finally, we undertake strategic case work which has a wider effect for society rather than just the individual client concerned and that has the potential to change unjust or unfair law or practices.

### How FLAC helped people in 2014

- ★ **FLAC Telephone Information Line: 15,005 callers**
- ★ **FLAC Centres – volunteer lawyers countrywide: 13,384 callers**
- ★ **FLAC information downloads: 4,251**



#### FLAC's Public Interest Law Alliance

- ★ **PILA brings together 110 social justice NGOs, community organisations and independent law centres, 20 law firms and 3 in-house legal teams, 270 individual lawyers, mostly barristers and 15 universities and law schools.**
- ★ **In 2015 PILA made more than 60 advice & litigation referrals, ran 10 Law Reform Working Groups and organised 10 public interest law seminars & roundtables.**

## What can the next Oireachtas do to advance access to justice for people in Ireland?

In its work, FLAC encounters many people who do not have equal access to justice in Ireland because of poverty and inequality. The period of austerity which prioritised the stability of the economic system over the needs of society has not ended. Today, many remain unable to access their fundamental human rights. State systems remain opaque and over-stretched; they continue to deny people a voice in decisions affecting them. People struggling with debt or trying to use the legal system frequently cannot get the legal support they need to obtain fair decisions. People dependent on social welfare face significant hurdles in securing fair outcomes on decisions. There is little evidence that the state is systematically considering even the most basic rights in its day-to-day decision-making, despite legal obligations to do so and, perhaps more importantly, even though it would ensure the people of Ireland are better served by the state.

FLAC is asking candidates for Election 2016 to consider the following issues that would help achieve better access to justice for people in Ireland and include them in their own election manifestos.

### 1. Addressing the current housing/homelessness crisis:

Homelessness is growing, spanning social groups and housing types. In particular, FLAC highlights the danger of homelessness arising from the number of mortgage accounts in deep arrears. Thousands of properties are currently at risk of repossession; this includes both principal private dwellings and the 'buy-to-let' properties in the hands of receivers which are also homes for those who rent them.

The long-promised full suite of measures to tackle the arrears crisis has still to be delivered, so that 7 years on troubled borrowers still lack sufficient supports. The list is long: the only legal option open to borrowers in arrears trying to avoid repossession and/or insolvency is the Code of Conduct on Mortgage Arrears; FLAC believes this mechanism does not serve borrowers well, with its lack of accountability for bank decisions on loan sustainability and lack of appeals mechanism; the Code has, in any event, been found by the Supreme Court to be largely inadmissible in repossession proceedings. There is a new and very limited independent appeals mechanism in place for insolvency decisions, no Public Insolvency Practitioners for those who cannot afford one privately and no fully rolled-out countrywide Mortgage-to-Rent scheme for those whose mortgages are truly unsustainable. The following measures could bring some clarity and balance to a very uneven playing field for borrowers in Ireland:

- ★ Access to legal advice and representation for all who need it in their dealings with creditors, both during negotiations on sustainable and affordable restructures and in repossession proceedings.
- ★ Ensure more timely & effective review by the courts of insolvency arrangements that are rejected by creditors.
- ★ Access to free legal advice and representation for people petitioning for their own bankruptcy.

#### Repossessions & arrears from Jan 2014 to end June 2015

- ▶ Family home mortgages in arrears over 90 days fell from 96,474 to 70,299 accounts.
- ▶ However, 38,041 of these have now been in arrears for over two years, up from 35% to 54% of the total - average arrears on these accounts is €53,500.
- ▶ 16,745 new applications to repossess family homes were brought in the same 18 months.
- ▶ 1,953 Possession Orders granted on family homes (968 in 2014, a further 985 in first half of 2015).
- ▶ 670 family homes repossessed by execution of a Possession Order (313 in 2014, a further 357 in Q.1-2 of 2015).
- ▶ 1,414 family homes were voluntarily surrendered or abandoned (998 in 2014, a further 416 in Q.1-2 of 2015).

- ★ Review the Code of Conduct on Mortgage Arrears to ensure people in mortgage arrears have access to a fair appeal on decisions made by the lenders.
- ★ Introduce a scheme of Public Insolvency Practitioners for people who cannot afford a private PIP.
- ★ Expand the mortgage-to-rent scheme country-wide in order to enable owner-occupiers with manifestly unsustainable mortgages to become tenants of their local authority/housing association.

## 2. Fair support for those in receipt of social welfare payments:

### Social welfare appeals – waiting lists in 2015:

During 2014, the average time taken to process all appeals was 24.2 weeks. As of January 1<sup>st</sup> 2015, some 9,628 appeals were pending before the Social Welfare Appeals Office.

Social welfare payments are designed to give people a minimum income to meet reasonable expenses; often, this may fall far short of an adequate income. FLAC has identified a lack of effective, timely and fair processes within the social welfare system which put people at risk of poverty. In some circumstances, people may find that payments are delayed, reduced or denied in ways that leave them without the minimum income required to maintain their life in dignity. For example, the state's justifiable focus on eliminating welfare fraud has had an unfortunate side-effect of denying payment to some people who are innocent of wrong-doing and who must enter the

labyrinthine, slow-moving appeals system to seek justice. Younger people are struggling to survive on a lower rate of social welfare. The current Direct Provision system, discredited by FLAC's 'One Size Doesn't Fit All' report in 2009 and pronounced in need of thorough reform by the recent government-appointed Working Group, remains unchanged. FLAC urges candidates to commit to:

- ★ Ensuring that fair procedures are in place when seeking to recover overpayments and that a person's income is not reduced below the basic minimum rate set to ensure an adequate standard of living in making deductions from social welfare payments or from wages.
- ★ Ending discrimination on the grounds of age by restoring full social welfare payments for under 26s.
- ★ Allocating sufficient resources to the Social Welfare Appeals Office to ensure that appeals against refusals of benefit or assistance are heard quickly, fully and fairly and people are not denied rightful payments for extended periods.
- ★ Implementing within a specified, stipulated timeframe the recommendations of the Working Group report on Direct Provision (which operates as a parallel social welfare system) so that conditions recognised as entirely inadequate are ended without delay.

## 3. Equal access to the legal system:

Ensuring everyone has access to the courts and to the legal supports necessary to achieve equal access to justice is a core priority for FLAC. While funding for civil legal aid services has increased slightly in recent years, people desperately in need of legal help still face significant delays and long waiting lists for accessing services. Other barriers to accessing the legal system include prohibitive costs, restrictive eligibility criteria for civil legal aid and the narrow remit of the Legal Aid Board. FLAC urges candidates to commit to:

- ★ Recognising that legal aid is an essential part of the fundamental human right of access to justice and ensure that

### Legal Aid Board waiting lists in 2015:

As of September 2015, the maximum waiting time for a first consultation with a solicitor in Athlone was 28 weeks. The average waiting time in Law Centres for a first consultation was over 13 weeks. The maximum waiting time for a second consultation in Nenagh was 50 weeks.

all individuals who need legal representation in judicial or quasi-judicial proceedings can effectively access this right.

- ★ Allocating sufficient funds to the Legal Aid Board to ensure the provision of an efficient, accessible and sustainable civil legal aid scheme.
- ★ Ensuring timely enforcement of court decisions to minimise delay in the protection of rights and administration of justice.
- ★ Making provision for courts to limit the costs charged against litigants who seek to take cases in the public interest against the State and other powerful institutions.
- ★ Committing to a speedy consideration of Law Reform Commission recommendations on the introduction of multi-party litigation or a class actions procedure.

#### 4. A human rights based approach to government:

Ireland is obliged to meet clear international human rights standards, set by international treaties, in many important areas of life – standards which, if fully implemented, will guarantee that people can live a life of basic dignity. Yet at UN examinations, the State continues to fall short of required benchmarks in areas like housing, social security, health care and education. There is no adequate domestic system to measure the state’s compliance with its international obligations. Indeed, while Ireland readily and loudly champions human rights standards and mechanisms abroad, at home those organisations which admit to promoting human rights as their primary aim are precluded, by law, from qualifying for charitable status. We continue to deny people in Ireland access to mechanisms such as the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights which would allow them to enforce basic human rights, such as health, housing, social security and education.

FLAC urges candidates to commit to:

- ★ Amend the Charities Act 2009 to recognise that the promotion of human rights is beneficial to the community in the same way that promotion of civic responsibility and the relief of poverty are already recognised, thus allowing charities to have this as their main purpose.
- ★ Establish systems to allow the Oireachtas to monitor Irish state commitments for the protection and promotion of human rights under treaties Ireland has ratified.
- ★ Ratify the Optional Protocol to ICESCR to enable individuals to enforce basic human rights.
- ★ Take account of the effect on human rights of decisions on public spending, policy or services that affect the lives of people – particularly poor and marginalised groups - through systematic impact assessment.
- ★ Consult regularly with civil society and relevant stakeholders on policy-making, including through establishing an effective consultation mechanism.
- ★ Conduct a review of all austerity measures as soon as possible and ensure that they are phased out, with services restored in line with post-crisis economic recovery.

#### UN Economic, Social and Cultural Rights Committee recommendations to Ireland in 2015:

- Take all necessary measures to meet the critical needs of those who are homeless or at risk of homelessness.
- Consider instituting human rights impact assessments in policy-making processes.
- Ensure that the rights of disadvantaged individuals and groups are not disproportionately affected by austerity measures.