

# **Submission to UN Special Rapporteur on Extreme Poverty and Human Rights: Access to Justice Issues**

**FLAC**

**July 2012**

## 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 is an independent human rights organisation dedicated to the realisation of equal access to justice for all. FLAC was established in 1969 by law students to provide legal information, advice and representation to people who could not afford to pay for legal services and to campaign for a state civil legal aid system. Today FLAC has a full-time head office in Dublin and works for law reform for the benefit of disadvantaged and marginalised people in four key priority areas:

- ★ Civil Legal Aid
- ★ Debt and credit law
- ★ Social welfare law
- ★ Public Interest Law

In pursuit of the goal of promoting access to justice, FLAC works in a number of ways. It operates a telephone information line and supports a network of 93 legal advice centres in over 80 locations where more than 700 volunteer solicitors and barristers impart first-stop legal advice. Through these services FLAC keeps statistics on legal queries received and conducts research on people's ability to access justice around the country. In 2011, there were 12,923 calls to the FLAC telephone information line and 12,656 callers to FLAC centres.

The organisation also generates publications and guides on legal topics aimed at informing the public about their rights and promoting access to justice. FLAC campaigns on core issues, carrying out strategic litigation and conducting research into areas of law and policy where it can bring about positive social change.

### **1. State Infrastructure to enable access to Justice**

Fundamental human rights are not expendable and cannot be disregarded in times of economic uncertainty. Even where resources are limited, the rights of the people living in Ireland must be maintained to the best extent possible.

Since the beginning of the economic downturn in 2008, the State's human rights and equality framework has been subject to drastic cuts which has impaired access to justice for some of the most vulnerable groups in society. Both the budgets of the Equality Authority and the Irish Human Rights Commission (IHRC) were significantly reduced in 2008 and the decision to dismantle and abolish both the National Consultative Committee on Racism and Interculturalism (NCCRI) and the Combat Poverty Agency was also made in Budget 2009.

The Combat Poverty Agency was established in 1986 and for over 20 years it influenced and informed anti-poverty and social inclusion policies in Ireland as well as providing independent and critical voice for those affected by government measures. The Agency was abolished in July 2009 and its functions were

integrated into the Department of Social and Family Affairs, now the Department of Social Protection but it is not clear to what extent the Social Inclusion Division can provide an adequate, necessary and independent critique of government policy.

The NCCRI was established in 1998 as an independent expert body focusing on racism and Interculturalism, providing advice, training, technical assistance and policy submissions and critiques to government and non-government organisations and other groups. Due to Government cutbacks the NCCRI was closed in December 2008 without any prior warning and no similar body has since taken over its responsibilities.

Following on from the cuts to the IHRC and the Equality Authority, a Government decision was made in 2011 to merge the IHRC and the Equality Authority and create a “new and enhanced” Commission. A Working Group appointed by the Minister for Justice and Equality reported in April 2012 with proposals for a strong and effective new body. The Heads of Bill for the new Human Rights and Equality Commission were published in May 2012.<sup>1</sup> The proposed legislation provides that the new body should have all the powers of the existing Human Rights Commission and Equality Authority and that there should be a new statutory duty on public bodies to have regard to equality and human rights in making decisions. In this context, the proposals that the new Commission should report directly to the Oireachtas (the Irish parliament) and that its members should be selected by an independent committee are welcome but there are concerns that under these proposals the new body will still be linked to the Department of Justice and Equality and that it will not be able to directly appoint its first Director. In order that the new body can carry out its work effectively, funding should be secured through a distinct, multi-annual budget line; crucially, the new body must be adequately resourced if it is to perform its functions.

It is welcome that the proposed legislation will allow the new body to provide legal assistance and representation to a person in cases where there may have been an infringement of his or her human rights or where discrimination is alleged. Nevertheless, there are also serious concerns about the proposed merging of the existing Equality Tribunal into the proposed new Workplace Relations Commission. The “Blueprint” for this body contains no reference to the role of the Equality Tribunal in dealing with claims of discrimination in the supply of goods and services and it is unclear how the new body will deal with employment equality cases.

***Recommendations: The new Irish Human Rights and Equality Commission should be a robust, independent and effective body which should be able to provide representation for individuals or organisations in appropriate cases, bring legal proceedings if necessary and intervene as amicus curiae in relevant cases.***

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<sup>1</sup> The Heads of the Irish Human Rights and Equality Commission Bill 2012 are available online at: <http://www.justice.ie/en/JELR/20120605HeadsOfIHRECBill.pdf/Files/20120605HeadsOfIHRECBill.pdf>.

***The new body should include the mandate of the Combat Poverty Agency and the NCCRI as well as protecting the rights incorporated in the Equality Acts.***

***Adequate resources should be provided for the effective working of the new body.***

***The new body should be independent in how it appoints its members and staff. It should report directly to the Oireachtas rather than a government department in accordance with the Paris Principles.***

## **2. Civil Legal Aid**

The State-run civil legal aid scheme is administered by the Legal Aid Board (LAB). The scheme was established in 1979 on an administrative basis and was placed on a statutory footing in 1995. There are 29 law centres operating in different locations which are staffed by salaried solicitors or in some cases solicitors in private practice are nominated by a Law Centre to provide the service. However, it is not an entirely free service and is subject to a number of restrictions which limit the scope of the scheme.

To qualify for legal aid, a person must satisfy the Legal Aid Board's means test or financial eligibility requirements and must also satisfy the Legal Aid Board that his or her case has merit, or a reasonable chance of success. Every person who wishes to avail of legal aid must pay a contribution which is calculated on the basis of his or her income.

The legal aid scheme is subject to a number of exclusions in relation to housing rights, representation before quasi-judicial tribunals including the Social Welfare Appeals Office, the Equality Tribunal and the Employment Appeals Tribunal, and defamation. These areas of law can have a major impact on already vulnerable people and exclusion from the legal aid scheme may deny people on lower incomes access to the legal system. The only exception to the exclusion of representation at tribunals is representation provided by one part of the LAB, the Refugee Legal Service, which provides legal aid to people seeking asylum and will represent clients at the Refugee Appeals Tribunal. The Special Rapporteur on Extreme Poverty and Human Rights has already recommended that the Government consider including these tribunals in the legal aid scheme but to date there has been no indication that this will be considered.

The number of applications for legal aid has risen in recent years by 84 per cent from 2007 to 2011 for non-asylum related matters.<sup>2</sup> While the 2012 budget for the LAB remained at 2011 levels the LAB took over the administration of the Family Mediation Service in November 2011 without any increase in financial resources for the service. Previously the general budget of the LAB suffered a six per cent cut in 2009/2010 while the Refugee Legal Service (RLS) was subject to a 21 per cent cut in funding for 2011 on

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<sup>2</sup> Response by the Minister for Justice to a Parliamentary Question on 21 March 2012 available online at: <http://debates.oireachtas.ie/dail/2012/03/21/00317.asp>.

top of a total combined decrease of ten per cent for 2009 and 2010. The Minister for Justice highlighted the strain on resources when he stated in 2011:

At this time when an increasing number of people are using the civil legal aid system there are decreasing resources. For example, the board's grant-in-aid, which accounts for the vast majority of its funding, other than in regard to asylum, has been as follows since 2008 - €26,988,000 in 2008; €26,310,000 in 2009; €24,225,000 in 2010; and €24,125,000 in 2011, based on the funding provided in budget 2010...<sup>3</sup>

In a case decided in 2004,<sup>4</sup> the Legal Aid Board had itself set a target of two to four months for the provision of a legal service. This exceeded the time by which a private law client might be expected to wait, but took into account the exigencies of a state funded service. That length of waiting time is now exceeded in 23 of the State's 29 Legal Aid Board Law Centres with almost 5000 people waiting for civil legal aid. The LAB has introduced a 'triage' system in order to reduce the amount of time a person has to wait for a first appointment with a solicitor. This system is currently in place in five of the 29 law centres.<sup>5</sup>

In addition to the increase in waiting times as well as the reduction in resources, there is a proposal that the LAB will also administer the criminal legal aid scheme, mental health representation and the Attorney General's scheme which provides free representation in certain cases but it is not clear if additional resources will be made available, for these additional services.

The underfunding of the scheme and the number of excluded areas are undermining the right of access to justice for a group of people who may already be susceptible to marginalisation.

***Recommendation: The State must take steps to ensure that all those in need of civil legal aid will be able to gain access to the appropriate legal information and representation in a timely fashion. Legal services should be treated as frontline services so that the current minimum service would be maintained. Nobody should be excluded from accessing legal aid simply because of the area of law for which he or she requires it.***

### 3. Debt and Credit

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<sup>3</sup> Response by the Minister for Justice to a Parliamentary Question on 23 June 2011 available online at: <http://debates.oireachtas.ie/dail/2011/06/23/00010.asp>.

<sup>4</sup> *O'Donoghue v Legal Aid Board, the Minister for Justice Equality and Law Reform, Ireland and the AG* (2004) IEHC 413, 21 December 2004, Kelly J.

<sup>5</sup> Response by the Minister for Justice to a Parliamentary Question on 10 May 2012 available online at: <http://debates.oireachtas.ie/dail/2012/05/10/00113.asp>.

In 2011, FLAC was involved in a High Court appeal on behalf of a client who had a Hire Purchase (HP) arrangement, a form of credit used to finance the eventual purchase of a vehicle. In the *Gabriel* case<sup>6</sup>, Ms Gabriel had obtained a car on HP from GE Money in 2008 but sought to end the agreement and return the car in 2009 when she ran into financial difficulty. The Consumer Credit Act 1995 included a provision for early termination of HP arrangements where the consumer notified the HP company in writing and paid the difference between the money already paid and half of the total HP price. However, the company interpreted the law differently and insisted that she could not return the car until she had paid half of the HP price. The Financial Services Ombudsman supported the HP company's interpretation of the legislation on appeal. The only way this decision could be appealed was in the High Court which can be a costly exercise for the consumer. After consultation with Ms Gabriel, FLAC initiated High Court proceedings to overturn this decision and clarify the law. The High court ruled that the Financial Services Ombudsman had made a 'significant error' in his interpretation of the legislation. The judge clarified that the vehicle could be returned before half of the HP price was paid.<sup>7</sup> FLAC considers that there is much to be done in order to reform Irish consumer credit law to ensure the adequate protection of consumers.

The ongoing mortgage arrears crisis has been a key focus of FLAC's work for a number of years as it is an important issue which impacts on over-indebted people trying to access the legal system. Civil legal aid is not usually available in relation to eviction proceedings or where the matter relates to a right or interest over property. While legal aid should be available in relation to instalment order proceedings, the merit test is usually applied and claimants may find it difficult to obtain legal aid.

On 29 June 2012, the Government published the long-awaited Personal Insolvency Bill 2012 which provides for a non-judicial debt settlement scheme which it is hoped will be a more affordable and simpler procedure for those who need to avail of it. However, some of the options may prove to have high fees and costs as they will need to be monitored by a Personal Insolvency Practitioner. The Bill as it currently stands does not impose a legally binding obligation on lenders to accept reasonable applications from customers in arrears. There is also no right of appeal for debtors to appeal a creditor's decision in relation to any of the outlined options which may mean that the only option available to borrowers where an arrangement is refused by the lender is to apply for bankruptcy.<sup>8</sup>

***Recommendation: All of the proposed options on mortgage debt including new legislation, bank cooperation, debtor information and support, and social housing must have monitors and checks built-in to ensure the plan is working for debtors.***

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<sup>6</sup>*Gabriel &Anor -v- Financial Services Ombudsman*[2011] IEHC 318 available online at: [http://www.courts.ie/\\_80256F2B00356A6B.nsf/0/F81F8FE402995F1F8025790200484B69?Open&Highlight=0,gabriel,~language\\_en~](http://www.courts.ie/_80256F2B00356A6B.nsf/0/F81F8FE402995F1F8025790200484B69?Open&Highlight=0,gabriel,~language_en~).

<sup>7</sup> For more information on the *Gabriel* case and the rules regulating Hire Purchase see: [http://bit.ly/FLAC\\_terminatingHP](http://bit.ly/FLAC_terminatingHP).

<sup>8</sup> For FLAC's submission on the draft Personal Insolvency Scheme see: <http://www.flac.ie/publications/draft-personal-insolvency-scheme-2012-submission/>. FLAC's initial response to the published Bill is available at: <http://www.flac.ie/news/2012/06/29/relief-at-insolvency-law-reform-wary-on-bank-veto-debtor-supports/>.

#### 4. Social Protection

In FLAC's previous briefing to the Special Rapporteur at the time of her country visit to Ireland, the lack of transparency within the social protection system was highlighted. In her subsequent report on her visit, the Special Rapporteur noted her concern at the "lack of standard implementation of eligibility criteria in the social protection system" resulting in a high number of decisions overturned on appeal by the Social Welfare Appeals Office. While the 2011 annual report is not yet available, the 2010 report reflected the trend of a high success rate on appeal with 48 per cent of all appeals being favourable to the appellant. In 26 per cent of the appeals in 2010, the original decision-maker revised his or her decision after an appeal was lodged.<sup>9</sup> The number of appeals received in 2011 remained high at 31,241 while almost 10,000 new appeals were received in the first quarter of 2012.<sup>10</sup>

In relation to maladministration by the Department of Social Protection, the Office of the Ombudsman's 2011 annual report indicated that almost a third of all complaints about public bodies related to the Department of Social Protection.<sup>11</sup> Launching the report Emily O'Reilly, the Ombudsman, criticised the use of discretion to restrict access to welfare supports and stated, "[p]ublic bodies may have less money and fewer human resources, but basic standards cannot be sacrificed".<sup>12</sup>

The Special Rapporteur also recommended in her country visit report that the Social Welfare Appeals Office publish its decisions "in a form which allows for broad dissemination and understanding among existing and potential beneficiaries". However, in a High Court decision in October 2011,<sup>13</sup> Judge Hedigan rejected an application by a FLAC client who sought access to previous decisions of the Appeals Office that would have been relevant to her social welfare appeal. FLAC called for the Social Welfare Appeals Office to maintain a database of decisions and publicise any decisions which established or clarified an important point of policy or law. However, the judge held that appellants had no right to access copies of previous decisions stating:

...the maintenance of such an anonymized database would be very expensive. This must be balanced against the somewhat doubtful benefit that might accrue from the ability of applicants

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<sup>9</sup> Social Welfare Appeals Office Annual Report 2010 available online at:  
<http://www.socialwelfareappeals.ie/pubs/annreps/annrep10.pdf>.

<sup>10</sup> Response by the Minister for Social Protection on 12 June 2012 available online at:  
<http://debates.oireachtas.ie/dail/2012/06/12/00008.asp>.

<sup>11</sup> Available online at: <http://www.ombudsman.gov.ie/en/Reports/AnnualReports/AnnualReport2011/index.html>.

<sup>12</sup> See Irish Times, *Surge in complaints over public services*, 27 June 2012 available online at:  
<http://www.irishtimes.com/newspaper/ireland/2012/0627/1224318805344.html>.

<sup>13</sup> *Jama v Minister for Social Protection* [2011] IEHC 379 available online at:  
<http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/017e49d7b51264a580257949005362e4?OpenDocument>.

for social welfare entitlement to access such information. Public policy in this regard, notably in these straitened times, must surely outweigh a right of access to such information.<sup>14</sup>

However, in a presentation to the Joint Oireachtas Committee on Jobs, Social Protection and Education in March 2012, the Chief Appeals Officer outlined the establishment of an internal database but stated that there were no plans to make it publicly available:

It takes a lot of work to make a file anonymous so that nobody, not even a family member, could recognise the case when we publish the reports in the annual report. It is a huge task given the numbers involved.... This year I intend to put another 100 cases on the website but they will not cover all of the schemes. We will target contentious matters that we get a lot of queries on and which people may need to know about such as domiciliary care allowance appeals and decisions on the habitual residence condition.<sup>15</sup>

This is despite the fact that the Minister for Jobs, Innovation and Enterprise has set up the Workplace Commission in which he was very clear about the need for a public, searchable database of decisions recognising the importance of transparency and accessibility for tribunal decisions. The Chief Appeals Officer has stated that she will examine this system in more detail.

The concept of fair procedures as enshrined in Article 14 of the UN International Covenant on Civil and Political Rights states that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law”. The Social Welfare Appeals Office is described as an “office” of the Department of Social Protection<sup>16</sup> and is staffed by civil servants transferred from another part of the Department of Social Protection. The former Chief Appeals Officer recognised the importance of the perception of independence of the Appeals Office stating in his annual report for 2006 that the public:

... must have confidence in its independence and its ability to carry out its role independently of those responsible for the decision being appealed. If that confidence is not there, the role of the appeals service is diminished and weakened.<sup>17</sup>

While Appeals Officers are statutorily appointed by the Minister, the office itself is not a statutorily independent body.

The fact that appellants cannot access legal aid for representation at the Social Welfare Appeals Office means that often people do not know where to turn for assistance when dealing with complex issues of

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<sup>14</sup> Paragraph 6.7 of the judgment.

<sup>15</sup> See report of the meeting of the Joint Oireachtas Committee on Jobs, Social Protection and Education on 21 March 2012 available online at: <http://debates.oireachtas.ie/FAJ/2012/03/21/00003.asp>.

<sup>16</sup> Department of Social Protection Annual Report 2010 available online at: <http://www.welfare.ie/EN/Policy/ResearchSurveysAndStatistics/Documents/2010stats.pdf>.

<sup>17</sup> Social Welfare Appeals Office Annual Report 2006 available online at: <http://www.socialwelfareappeals.ie/pubs/annreps/annrep06.pdf>.

law and policy. Some assistance is available through Citizens Information Centres and NGOs working on social welfare issues but many lawyers do not have expertise or experience in practising social welfare law. Furthermore, the Social Welfare Appeals Office does not keep statistics on the number of people represented at the tribunal by lay advocates, lawyers or NGO workers which would be useful to determine the need for such representation.

Another issue of concern in relation to social welfare appeals is the current delays to process an appeal. In the first quarter of 2012, it took 22 weeks on average to decide an appeal summarily (on the written evidence only) or 41 weeks when an oral hearing was granted. In order to clear the backlog of appeals there is also a greater emphasis on deciding appeals on the written evidence only despite the fact that the success rate has been consistently higher in cases where the appellant has an oral hearing; in 2010, 45 per cent of appeals decided after oral hearings were successful in comparison to 19 per cent where only written evidence was considered. The Minister for Social Protection explained the rationale stating:

...more emphasis is now placed on dealing with appeals on a summary basis so as to increase productivity. As a result, the number of appeals dealt with by way of oral hearing was reduced from 59% to 31.5% in 2010.<sup>18</sup>

However, it is important that the social welfare appeals system operates as an effective remedy for those seeking to access their social welfare entitlements. Due to the delays some people may wait more than a year for a decision on an appeal and while this may be backdated, it may be difficult to make ends meet while awaiting the decision. In many cases Supplementary Welfare Allowance (SWA) is available when an appeal is pending. However, when the appeal is against a refusal based on the Habitual Residence Condition (HRC), this 'safety net' payment may not be payable as it is also subject to the Condition. This means that some of the most vulnerable groups such as Travellers, victims of domestic violence, undocumented migrants and returning Irish emigrants may not have access to any payment. A person may apply for an Exceptional or Urgent Needs Payment which is not subject to the Condition but these payments are considered to be once-off payments and if refused are not appealable to the Social Welfare Appeals Office and of their nature are occasional and infrequent.

***Recommendations: The social welfare system should be administered in a fair and transparent way where claimants are aware of their entitlements and are able to access them in a timely way.***

***The Social Welfare Appeals Office should be made a statutorily independent body to ensure that appellants have confidence in its perceived and actual independence.***

***Legal Aid should be made available for assistance and representation at social welfare appeals. Appellants should be informed that they can request an oral hearing and a hearing should be granted in all cases where there is conflicting evidence.***

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<sup>18</sup> Response by Minister for Social Protection to a Parliamentary Question on 10 May 2011 available online at: <http://www.kildarestreet.com/wrans/?id=2011-05-10.522.0&s=burton+emphasis+on+summary#g528.0.r>.

*Decisions of the Social Welfare Appeals Office which clarify points of law, policy or practice should be made available to the public.*

*The impact of the Habitual Residence Condition should be assessed to ensure that it is proportionate and consistently applied and claimants should be able to access Supplementary Welfare Allowance or an interim payment while awaiting the decision of a Social Welfare Appeals Officer.*

## 5. Public Interest Law

### 5.1 Access to Justice for Transgender Persons

FLAC has been involved in a lengthy case about legal recognition of transgender people in Irish law. Dr Lydia Foy began her legal battle for gender recognition in 1993 when the General Register Office refused her application for a birth certificate in her acquired female gender. FLAC issued proceedings in 1997 against the Registrar General and the case was heard in 2000. In 2002, the case was rejected as the High Court found that neither the Constitution nor Irish law allowed for recognition of gender change. Dr Foy then appealed to the Supreme Court but in the meantime the European Convention on Human Rights (ECHR) was incorporated into Irish law and following another refusal by the Registrar General to issue a birth certificate, new proceedings were issued in the High Court under the ECHR Act 2003. In 2007 the High Court held that the State's failure to recognise Dr Foy's gender was a breach of the ECHR and a declaration was made that Irish law was incompatible with the European Convention on Human Rights. The Government then established a working group to examine how gender recognition could be provided for. Despite the fact that a government appointed Gender Recognition Advisory Group published its report in July 2011, legislation has still not been introduced and transgender people cannot obtain birth certificates in their acquired gender.<sup>19</sup> The group also proposed that married transgender persons will be required to divorce before being eligible for legal recognition of their gender and rejected FLAC's call to include gender identity as another ground on which discrimination can be challenged under the Equality Acts.

***Recommendation: Gender Recognition legislation should be introduced as a matter of urgency. The legislation should not force married transgender persons to divorce their spouses before gaining legal recognition of their acquired gender.***

***Gender identity should be included as one of the groups protected by the Equality Acts.***

### 5.2 The Legal Services Regulation Bill 2011<sup>20</sup>

The Government introduced the Legal Services Regulation Bill in 2011 to reform the regulation of the legal professions, to provide for new structures for the conduct of legal business and to reform the manner in which legal costs are charged and assessed.

FLAC welcomes proposals in the draft legislation to provide more information and greater clarity as to how fees are charged. Many of the queries FLAC receives relate to legal fees, quality of service or

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<sup>19</sup> For FLAC's response to the Gender Recognition Advisory Group's Report see: <http://www.flac.ie/publications/recognising-transgender-persons-in-ireland/>.

<sup>20</sup>For FLAC's response to the Legal Services Regulation Bill see: <http://www.flac.ie/download/pdf/20120220130320.pdf>

complaints about the handling of a case. Concerns raised about lawyers will often question the quality of the service received, including the length of time it took to provide the service. Even in these cases, the concern will often be that the cost of the service was too high, given the quality of the service received. The new legislation should help members of the public to understand why they are being charged the costs quoted but unfortunately, the legislation as initiated fails to take steps that could actually reduce costs and increase access to justice for those who cannot afford legal services. Thus there are no provisions regarding protective or capped costs in public interest law cases and there are no provisions to permit class or multi-party actions. This means that there is no limited cost mechanism to allow a person to challenge injustice in test cases in the public interest and those who seek to make such a challenge risk enormous legal bills if their challenge fails as inevitably some challenges will.

This Bill has not taken this unique opportunity to remove barriers to the courts for poor applicants for housing law cases and other issues currently excluded from the civil legal aid scheme (see section 2 above). FLAC has also suggested that currently complex, time consuming and expensive appeals to the High Court from administrative procedures such as the Financial Services Ombudsman be simplified to reduce cost and complexity.

In Ireland as elsewhere, legal professionals already adhere to specified standards of ethics and principles. Nonetheless, it is useful that such principles are examined and explicitly specified in this piece of essentially regulatory and reforming legislation. The Bill lists the professional principles to be adopted.<sup>21</sup> While these include duties of independence and integrity, putting the best interests of the client at the heart of their work, the draft principles suggested are less comprehensive than those set out in the UN *Basic Principles on the Role of Lawyers*.<sup>22</sup>

In particular, the provision whereby lawyers protecting the rights of their clients, and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law shall at all times act freely and diligently in accordance with the law and recognised standards and ethics of the legal profession is not included.

***Recommendations: FLAC recommends that reform of Legal Services regulation and costs should include provision for protective costs orders in public interest cases and for class actions. In addition, existing barriers to accessing the legal system – including matters excluded from legal aid and overly complex appeal mechanisms be reformed.***

***To accord with best international practice, FLAC recommends that the entire professional principles outlined in the UN's Basic Principles on the Role of Lawyers be incorporated into the new legislation.***

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<sup>21</sup> See s.9(5) of the Legal Services Regulation Bill as initiated.

<sup>22</sup> UN *Basic Principles on the Role of Lawyers*, 12 -15.