

Submission on Child and Family Income Supports

**A submission by FLAC to the Advisory Group on Tax and
Social Welfare**

FLAC

September 2011

About FLAC

FLAC (Free Legal Advice Centres) 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.

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FLAC Policy Document: Submission to Advisory Group on Tax and Social Welfare on Child and Family Income Supports (September 2011)

Introduction

FLAC, the Free Legal Advice Centres is an independent human rights organisation dedicated to the realisation of equal access to justice for all. Access to justice includes access by a person to the relevant information relating to the laws and policy that affect them. It also includes access to effective redress systems and it involves the vindication of the rights of those whose rights are not being respected. This submission focuses on the need to uphold the rights of children and families to the social assistance supports necessary to alleviate the poverty that particularly vulnerable groups may suffer.

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.

Proposal 1: The State should take into account all of its human rights obligations when making proposals to change any of its child or family income social welfare payments. While the Advisory Group is concerned with cost-neutral or cost-reducing proposals, it is paramount that any steps taken do not result in the State taking retrogressive measures in terms of its respect for, protection of and promotion of human rights.

The Irish Constitution recognises the right to family life in Article 41 which considers the family as the “natural, primary and fundamental unit group of Society” and establishes that the State “guarantees to protect the Family”. The previous *National Children’s Strategy 2000-2010* also reflects this guarantee, stating that

The Government is committed to protecting the family through political, economic, social and other measures, which will support the stability of the family.

The Irish State has made a number of international commitments to uphold the rights of all children living within its borders. Ireland is a signatory to the UN Convention on the Rights of the Child (CRC) which clearly states in Article 3 that “in all actions concerning children, whether undertaken by public or private institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”. When making any changes to social protection policies or payments, this provision should form the basis for any decision. Furthermore, Article 2 of the UN CRC prohibits any form of discrimination against children present in the State including discrimination based on their parents’ status.

Article 26 of the UN CRC recognises the right of a child to benefit from social security and decision-makers should take “into account the resources and the circumstances of the child and persons

having responsibility for the maintenance of the child”. In addition, Article 27 of the Convention recognises the right to an adequate standard of living for the child and obliges that States,

...in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

It is also important to note that the EU Charter of Fundamental Rights which is legally binding on EU Member States including Ireland contains articles specific to both the rights of the family and children. These provisions include Article 7 which protects the right to family life and Article 24 which contains the rights of the child. Article 24 affords children “the right to such protection and care as is necessary for their well-being” as well as ensuring that their best interests are a “primary consideration” in relation to all actions relating to them.

Proposal 2: All staff of the Department of Social Protection, and all those carrying out actions on its behalf, should be fully aware of their obligations under the ECHR Act 2003 to act in a manner compatible with the ECHR and to ensure that they carry out their duties to the public reflecting these obligations.

The European Convention on Human Rights (ECHR), incorporated into Irish law by the ECHR Act 2003, obliges every “organ of the State”, including government departments, to act in a manner compatible with the Convention. Therefore in the context of child and family-related payments and supports, the State is obliged to promote and protect the right to privacy and family life guaranteed by Article 8 and to ensure that none of its actions contravene this right. While FLAC recognises that the State must make difficult decisions in light of the current economic situation, it must make sure that measures recommended by the Advisory Group are fair and balanced and not impact disproportionately on particularly vulnerable groups.

Fair and consistent decision-making in accordance with Article 6 of the ECHR, which ensures the right to fair procedures, would not only ensure that people receive their full social welfare entitlements but it would also contribute to achieving one of the Department’s key outcomes identified in the *Interim Statement of Strategy*, which is to “deliver seamless customer service in a more pro-active, efficient and effective manner”.¹ Such an approach would result in more efficiency, a better use of resources and unnecessary appeals which in turn would save money.

¹ Department of Social Protection (DSP), *Briefing Material for the Minister 2011* at page 4 available online at: http://www.welfare.ie/EN/AboutUs/Minister/Documents/Minister_Brief_2011.pdf.

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FLAC notes that the Department has forecast to save €11 million in its budget from “efficiencies in administration”.²

Proposal 3: The Advisory Group should carry out a poverty impact assessment of any proposed changes to child or family income supports before publishing its recommendations. The results of the poverty impact assessment should be included in the final report.

FLAC welcomes this opportunity to make a submission to the Advisory Group as the first step in a poverty impact assessment. The human rights standards outlined above can be used as one step in evaluating objectively whether any proposed changes will have a negative outcome for already vulnerable groups. The Office of Social Inclusion’s guidelines on poverty impact assessment circulated in May 2008³ provide a useful template for carrying out such an assessment, following seven steps:

1. Consultation;
2. Define policy aims and target groups;
3. Identify available data and research;
4. Assess impacts;
5. Make decision and arrange monitoring;
6. Publish results; and
7. Return summary sheet.⁴

The guidelines emphasise that:

Poverty impact assessment should not be considered as something to be performed after a decision has been made but rather as an inherent part of the policy development process.

Children, women, lone parents, large families and migrants are all groups which may be identified as vulnerable. The poverty impact assessment should examine any potential consequences of changes or reductions to child and family related payments before making any decisions.

Proposal 4: Every child living in Ireland should be able to avail of the Child Benefit payment regardless of the immigration status of his or her parent(s). To reduce child poverty, the payment should be restored to a truly universal payment.

² Department of Social Protection (DSP), *Briefing Material for the Minister 2011* at page 8 available online at: http://www.welfare.ie/EN/AboutUs/Minister/Documents/Minister_Brief_2011.pdf.

³ Office of Social Inclusion (2008) *Guidelines for Poverty Impact Assessment* available online at: http://www.socialinclusion.ie/documents/PIAGuidelineswithnewEU-SILCfigures_000.pdf.

⁴ Office of Social Inclusion (2008) *Guidelines for Poverty Impact Assessment* at page 13 available online at: http://www.socialinclusion.ie/documents/PIAGuidelineswithnewEU-SILCfigures_000.pdf.

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While Child Benefit is classified as a universal payment, implying that every child living in Ireland benefits from the payment, this is no longer the case since the introduction of the Habitual Residence Condition (HRC) in 2004. Article 2 of the UN CRC clearly states that a child within the jurisdiction of the State Party should not be discriminated against on the basis of his or her parents' status which includes immigration status. However, in terms of the application of the HRC to the parents of asylum seeking children, the parents' immigration status prevents the parents from accessing Child Benefit.

The Department of Social Protection itself recognises that the HRC "has given rise to issues" due to "inconsistency of decisions", in relation to Child Benefit.⁵ FLAC has been involved in a series of cases where the Chief Social Welfare Appeals Officer held that a person within the protection process could be found habitually resident if he or she satisfied the five criteria laid down in the Social Welfare and Pensions Act 2007. However, in December 2009 legislation was introduced that prevents a person within the protection process from being able to be habitually resident. This has created an inequality between children living in Ireland.

As outlined above, the State is bound by the human rights obligations contained in the ECHR which recognises the applicability of Articles 8 and 14 in relation to Child Benefit. In a case entitled *Niedzwiecki v Germany*⁶ the European Court of Human Rights found:

By granting child benefits, States are able to demonstrate their respect for family life within the meaning of Article 8 of the Convention; the benefits therefore come within the scope of that provision... It follows that Article 14 – taken together with Article 8 – is applicable (§ 31).

There are less than 2100 children living in direct provision accommodation in Ireland⁷ although some of these children are already in receipt of Child Benefit; if their parents were already in receipt of the payment before the introduction of the HRC in 2004 as they continue to receive it. There are also others who have won appeals before the law was changed in 2010 to completely exclude people in the protection process from being able to satisfy the HRC. The cost of extending Child Benefit to this small group would be approximately €3.5 million per year - or less, given that some of the parents in direct provision are already in receipt of the payment. These children are at particular risk of impoverishment given that their parents are legally prohibited from taking up work.

⁵ Department of Social Protection (DSP), *Briefing Material for the Minister 2011* at page 32 available online at: http://www.welfare.ie/EN/AboutUs/Minister/Documents/Minister_Brief_2011.pdf.

⁶ Case no. 58453/00 [2006] 42 E.H.R.R. 33.

⁷ Department of Justice and Equality (DJE), *Reception and Integration Agency Statistics for June 2011* available at: [http://www.ria.gov.ie/en/RIA/RIAJune\(A4\)2011.pdf/Files/RIAJune\(A4\)2011.pdf](http://www.ria.gov.ie/en/RIA/RIAJune(A4)2011.pdf/Files/RIAJune(A4)2011.pdf).

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Conclusion

FLAC accepts that the Advisory Group will have to assess budgetary issues but as outlined above this has to be undertaken in accordance with fundamental human rights standards and through appropriate poverty impact assessments. It is in this context that we make these proposals:

- Proposal 1:** The State should take into account its human rights obligations when making proposals to change any of its child or family income social welfare payments. While the Advisory Group is concerned with cost-neutral or cost-reducing proposals, it is paramount that any steps taken do not result in the State taking retrogressive measures in terms of its respect for, protection of and promotion of human rights.
- Proposal 2:** All staff of the Department of Social Protection, and all those carrying out actions on its behalf, should be fully aware of their obligations under the ECHR Act 2003 to act in a manner compatible with the ECHR and to ensure that they carry out their duties to the public reflecting these obligations.
- Proposal 3:** The Advisory Group should carry out a poverty impact assessment of any proposed changes to child or family income supports before publishing its recommendations. The results of the poverty impact assessment should be included in the final report.
- Proposal 4:** Every child living in Ireland should be able to avail of the Child Benefit payment regardless of the immigration status of his or her parent(s). To reduce child poverty, the payment should be restored to a truly universal payment.