

Pre-budget submission 2015

A submission by FLAC to the Department of Social Protection

FLAC

June 2014

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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OVERVIEW OF RECOMMENDATIONS IN THIS SUBMISSION

Recommendation 1: In making decisions about cuts, all government departments and in particular the Departments of Finance, of Public Expenditure & Reform and of Social Protection should ensure that there is a 'social protection floor' in place that will guarantee every person can live a life of dignity, free of severe financial hardship.

Recommendation 2: The Government should seek information and advice on the budgetary impact of its policies and austerity measures on groups susceptible to poverty from the National Human Rights Structures including the Irish Human Rights and Equality Commission designate and those dealing with the protection of human rights of vulnerable groups.

Recommendation 3: All proposed budgetary measures should be tested against their impact on human rights and equality. These assessments should be publicly available and disseminated and should be discussed by the Oireachtas.

Recommendation 4: Social Welfare and Pensions legislation should be published with adequate explanations and in sufficient time to allow reasonable opportunity for debate.

Recommendation 5: Arrange for re-statement of the Social Welfare legislation through the Law Reform Commission programme and meanwhile, publish an up-to-date version of the legislation on line.

Recommendation 6: Training for all levels of development staff on the frontline should become compulsory. Training courses should be accredited and necessary for progression within Department roles.

Recommendation 7: The Social Welfare Appeals Office should establish a database of decisions, recommended by the UN Special Rapporteur on Extreme Poverty and Human Rights in January 2011 where appellants and their representatives should have access to previous decisions which may be relevant to their case.

Recommendation 8: No attempt to recover monies from a person should result in the reduction of a person's income below the minimum subsistence level set by the State.

Recommendation 9: The Department of Social Protection should ensure that there is a minimum income standard in place to ensure that every person can live a life of dignity free of financial hardship.

Recommendation 10: A robust appeal procedure must be implemented and guidelines provided on how a person's circumstances are considered in his/her capacity to repay an overpayment.

Recommendation 11: The Department of Social Protection should include the Lough Credit Union Repayment Scheme under the definition of a specified body under Section 290 (3) (b) of the Social Welfare Consolidation Act 2005.

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FLAC, the Free Legal Advice Centres, is a human rights organisation which was established to promote equal access to justice for all. One of FLAC's key aims is to achieve greater fairness, consistency and transparency in the administration of the social welfare system. FLAC seeks to advance social welfare law, policies and administration that will improve the situation of those who are currently adversely impacted and seeks to ensure that fundamental human rights are at the heart of the welfare and protection system.

It is with these objectives in mind that FLAC presents this submission which we hope will inform debate around Budget 2015.

Impacts of Austerity on Human Rights

The Survey for Income and Living Standards (SILC) report 2012 reveals a continued dis-improvement in the situations of poor households in Ireland. The at-risk-of-poverty rate has increased year on year since 2008, standing at 16.5% in 2012, and the consistent poverty rate is 7.7%. The Department of Social Protection's social impact assessment 2014, published after the budget last year, revealed that families and unemployed single people were most affected by the budget cuts in 2014.

As identified by the United Nations and as adopted by Ireland and the EU as well as others in 2013, social protection systems are important in respecting, protecting and promoting fundamental rights as they "make a critical contribution to the realization of human rights for all, in particular for those who are in vulnerable or marginalized situations and are trapped in poverty and subject to discrimination".¹ The resolution also noted the "important contribution" a social protection floor (minimum income standard) can make to addressing poverty and social exclusion. The UN Special Rapporteur on Extreme Poverty and Human Rights in a 2012 report entitled *The Human Rights Approach to Social Protection* spelled this out more concretely when she recommended that

States must ensure, at the very least, minimum essential levels of non-contributory social protection – not as a policy option, but rather as a legal obligation under international human rights law.²

The austerity budgets that Irish society has experienced for the past six years were particularly felt by the most vulnerable and those dependent on the State for support. The objective of all budgets during the recession - and it would appear the main proposed objective of the coming budget - is to reduce State spending. In doing this, however, there is an obligation to ensure that spending cuts do not reduce people living in this State, and in particular vulnerable sections of the population, to a life of destitution and degradation. This is not just a moral obligation. It is a legal obligation to which Ireland has committed itself when it signed and ratified a number of international conventions, including the International Covenant on Economic, Social and Cultural Rights. An

¹ Resolution 67/164 on Human rights and extreme poverty adopted by the General Assembly in March 2013 available online at: <http://www.refworld.org/docid/51e673b84.html>

² See Sepúlveda and Nyst, *Human Rights Approach to Social Protection*, available online at: <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf>. This publication was published by the Ministry of Foreign Affairs of Finland.

information sheet produced by FLAC outlines these obligations and duties in some detail³. For the purpose of informing the Budget 2015 preparations FLAC would like to draw attention to some duties in particular.

The state must:

- Provide every person in the land with at **least the basic level of subsistence necessary to live in dignity**, while taking into consideration resource constraints. Research from the Vincentian Partnership for Social Justice on minimum income standards could be relied on here.⁴ Where the government seeks to cite lack of resources for any inaction, it must show that every effort has been made to use all resources at its disposal in trying to satisfy, as a matter of priority, those minimum obligations. This duty applies across all government departments, including the Departments of Finance, Public Expenditure and Reform, which should not seek cuts in budgets if these would result in harm to the fundamental rights of vulnerable sectors of the community. In order to assess whether cuts are harmful to human rights, there is a need across all departments for impact assessments which are informed by human rights standards and which are carried out in advance of budget decision-making.
- Continue to **respect, protect and promote existing rights** and to take into account the real and immediate duty on the State to continually move towards the goal of **full realisation of economic, social & cultural rights, even in recession**. This obviously involves those who are preparing budgets. However it also involves the scrutiny and holding to account of the government as to how it is using the budget to protect and promote such rights by the Oireachtas in its chambers and committees, by hearing from those in civil society working with people who risk breaches of their fundamental human rights as well as by the contributions of expert bodies such the Irish Human Rights and Equality Commission designate.
- Linked to the previous point, **fully respect the principles of accountability, transparency and participation** of interested groups in how it formulates and implements its policies, programmes and strategies so as to meet obligations under international human rights instruments.
- Be consistent, proportionate and fair in the application of the law and in providing public services that focus on individuals' needs. This is mentioned at a later stage of this submission.

Recommendations:

Recommendation 1: In making decisions about cuts, all government departments and in particular the Departments of Finance, of Public Expenditure & Reform and of Social Protection should ensure that there is a 'social protection floor' in place that will guarantee every person can live a life of dignity, free of severe financial hardship.

³ http://www.flac.ie/download/pdf/maintaining_rights_in_a_recession_final_27_july_2011.pdf?issuusl=ignore

⁴ See VPSJ study, "A Minimum income standard for Ireland: A consensual budget standards study examining household types across the lifecycle", *Studies in Public Policy*: 27, The Policy Institute Trinity College Dublin, 2012.

Recommendation 2: The Government should seek information and advice on the budgetary impact of its policies and austerity measures on groups susceptible to poverty from the National Human Rights Structures including the Irish Human Rights and Equality Commission designate and those dealing with the protection of human rights of vulnerable groups.

Recommendation 3: All proposed budgetary measures should be tested against their impact on human rights and equality. These assessments should be publicly available and disseminated and should be discussed by the Oireachtas.

Social Welfare and Pensions Legislation

In recent years, debate on draft social welfare legislation, post-budget and during the year, has been rushed through the houses of the Oireachtas without adequate time to discuss important provisions that change the law in significant ways, contrary to the requirements for transparency crucial to democratic debate and participation. The most recent example has been the Social Welfare and Pensions Bill 2014. This was published on 28 May and debated in haste for one half-day in the Dáil and another day at a select Sub-Committee. This leaves very limited time to digest the bill let alone debate any suggested changes.

Additionally, the proposals in the Bill referred to above and in many post-budget Bills are not urgent. However, they are highly technical and they are definitely not fully explained. While it is acknowledged that critical customs and excise changes and other fiscal measures may need to be announced and implemented immediately following the publication of the annual Budget, all other proposed measures could be published well in advance to allow for a reasonable timeframe for understanding and debate.

It is also extremely difficult for directly affected groups to understand social welfare law. The Social Welfare legislation was last consolidated in the Social Welfare Consolidation Act 2005. Since then the Act has been amended at least twice a year, with amendments upon amendments reaching back to that 2005 Act. This process has resulted in an eminently unreadable piece of law. Let us remember also that this is the primary piece of legislation relied on by deciding officers, designated persons and appeals officers to make decisions on social welfare entitlements. The frequency of changes also means it is difficult to ensure you have the most up-to-date version of the law. This should be addressed through the Law Reform Commission's Statute Re-statement Project. In the meantime, the Department of Social Protection could publish its 'unofficial' and generally unavailable version of the up to date legislation on its website. There are precedents within Refugee law and Immigration law areas for such a move.

Recommendation 4: Social Welfare and Pensions legislation should be published with adequate explanations and in sufficient time to allow reasonable opportunity for debate.

Recommendation 5: Arrange for re-statement of the Social Welfare legislation through the Law Reform Commission programme and meanwhile, publish an up-to-date version of the legislation on line.

Social Welfare Appeals Office

The European Committee of Social Rights examined Ireland's compliance with the European Social Charter in January 2014. It concluded that Ireland had not established effective or equal access to the social welfare system and that the quality of the service did not meet the users' needs.⁵ Budget 2015 should be used as an opportunity to improve this situation. In particular, the system operating in the Social Welfare Appeals Office remains a serious concern.

FLAC welcomes the progress on processing times in the Social Welfare Appeals Office, reduced from 27.8 weeks and 39.5 in summary decisions and oral hearings respectively in 2012 to 25.8 weeks and 33.9 weeks in 2013. Further progress is evidenced already this year and FLAC hopes that Budget 2015 will continue to adequately resource the Social Welfare Appeals Office to ensure further reductions in delay on appeals. Anecdotal evidence however suggests that requests for oral hearings are being refused more frequently. Speed of decision-making must not be prioritised over a fair system.

The number of appeals reaching the Social Welfare Appeals Office and being overturned on appeal is still very high, signifying a poor standard of first-instance decisions by Deciding Officers in the Department of Social Protection.⁶ This budget should be taken as an opportunity to review supports available to decision-makers at first instance and ensure that they are adequate.

It is worth noting that Deciding Officers are not obliged to undertake training when they move into this role. Nor must they update their skills and knowledge when the law changes. As an example, only 400 of 2,500 deciding officers have attended training on the complex area of habitual residence, all of whom volunteered for this training rather than being required to do so. From a financial perspective, it is clear that if more correct decisions were made at first instance, there would be much less need for appeals, which would yield efficiencies in time and money spent on each case.

To further ensure consistency of decision making, the Social Welfare Appeals Office should publish a sufficient number of decisions by Appeals Officers. These would include decisions that illustrate how the law is applied and how the system works. Other state bodies such as the Refugee Appeals Tribunal have opted to publish decisions and make them available to interested parties. The publication of decisions would make solid information available to those who take appeals. It would increase transparency and likely strengthen confidence in the Appeals Office from a public perspective.

Recommendation 6: Training for all levels of development staff on the frontline should become compulsory. Training courses should be accredited and necessary for progression within Department roles.

⁵ See Article 14.1 in the European Committee of Social Rights Conclusions 2012
http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ireland2013_en.pdf

⁶ In 2012 50.4% of all appeals were overturned or revised in favour of the appellant, see Social Welfare Appeals Office Annual Report 2012 <http://www.socialwelfareappeals.ie/pubs/annreps/annrep12.pdf>

Recommendation 7: The Social Welfare Appeals Office should establish a database of decisions, recommended by the UN Special Rapporteur on Extreme Poverty and Human Rights in January 2011 where appellants and their representatives should have access to previous decisions which may be relevant to their case.

Overpayments & the right to a life of dignity and adequate standard of living

Section 13 of Social Welfare and Pensions Act 2012 gave the Department of Social Protection the power to recover overpayments, whether they arose through the fault of the administration or of the claimant, by deducting up to 15% of a social welfare payment without need of the claimant's consent. It would appear that the normal practice of the Department of Social Protection in such cases is to automatically propose to deduct or to actually deduct the full 15% as a default. At the time of the bill's publication, FLAC pointed out that this new recovery capacity could reduce a person's payment to below the State's own designated basic minimum income of €186, the rate of supplementary welfare allowance. The European Committee of Social Rights mentioned above found in 2013, and before in 2009, that Ireland's minimum levels of sickness, unemployment, survivors, employment injury and invalidity benefits are already inadequate to meet a person's needs.⁷ This is supported by the Vincentian Partnership for Social Justice whose research concluded that social welfare payments do not meet the basic needs of a variety of households.⁸ Thus even if a deduction does not reduce a person's income below subsistence level, it risks leaving claimants and their families in severe financial hardship.

There is a lack of transparency around how the Department takes into account a person's circumstances in assessing his or her ability to repay the overpayment; we do not know what weight is given to the information provided by the actual person from whom the deduction is being sought.

Northside Community Law and Mediation Centre (NCLMC) held a roundtable on Section 13 of the Social Welfare Act 2012 and produced a submission outlining some of the key human rights concerns with the recovery powers.⁹ These include concerns about incompatibility with the International Covenant on Economic, Social and Cultural Rights, Article 40.3.2 under the Constitution on a right to personhood and Article 3 of the European Convention on Human Rights relating to protection from inhuman and degrading treatment. In addition to the actual deduction, there are serious deficiencies in the procedures for recovery of an overpayment. Chief amongst them is the failure to specify a clear right to appeal. A right to appeal is a fundamental part of the right to an effective remedy and access to justice.

Recommendation 8: No attempt to recover monies from a person should result in the reduction of a person's income below the minimum subsistence level set by the State.

⁷ See Article 12.1 in the European Committee of Social Rights Conclusions 2012

http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Ireland2013_en.pdf

⁸ See VPSJ study, "A Minimum income standard for Ireland: A consensual budget standards study examining households types across the lifecycle", *Studies in Public Policy*: 27, The Policy Institute Trinity College Dublin, 2012.

⁹ See NCLMC Submission to the Department of Social Protection following on from the Roundtable on Social Welfare Law which examined Section 13 of the Social Welfare Act 2012, December 2013.

Recommendation 9: The Department of Social Protection should ensure that there is a minimum income standard in place to ensure that every person can live a life of dignity free of financial hardship.

Recommendation 10: A robust appeal procedure must be implemented and guidelines provided on how a person's circumstances are considered in his/her capacity to repay an overpayment.

Household Budgeting Scheme & Lough Repayment Scheme.

By law, there is provision under the Department of Social Protection's Household Budgeting Scheme to deduct payments for local authority rent and utilities from a person's social welfare payment at source, with the consent of the person entitled. In many cases, this ensures that no matter what else happens, a person's housing and basic utilities expenses are met regularly. There is provision in the legislation to designate other entities as a "specified body" to whom payments could be made.¹⁰

By administrative practice, an arrangement used to exist between a particular credit union catering particularly to the Travelling Community, the Lough Credit Union, and some MABS companies whereby payments were made to the credit union directly from social welfare. This then would allow a person who otherwise would have no access to banking facilities to build up savings with the credit union or allow it to extend credit. This might cover payment of fines, payments for trailers on traveller halting sites, repayment of urgent debt, payment of private rent for someone with a disability and rent deposits where the saver was homeless. The scheme was limited and mediated through MABS. This administrative practice is now to cease since the commencement of Section 15 of the Social Welfare Act 2012 in January 2014. However no adequate alternative scheme exists, thus depriving financially vulnerable people of any independent access to financial services. FLAC believes the abolition of this scheme achieves no social good whatsoever and will only serve to further marginalise people who already number among the most marginalised groups.

While this could be dealt with immediately by designating credit unions as a specified body by way of regulation, FLAC is using its pre-Budget submission to highlight this further blow to those who are most disadvantaged. We are seeking either its validation through regulation or immediate effective alternative access to the financial services now being withdrawn.

Recommendation 11: The Department of Social Protection should include the Lough Credit Union Repayment Scheme under the definition of a specified body under Section 290 (3) (b) of the Social Welfare Consolidation Act 2005.

¹⁰ Section 290 of Social Welfare Consolidation Act 2005.