

PILN Bulletin, 10 July 2009

This Bulletin on Public Interest Law is issued by FLAC. If you wish to have an item included please contact piln@flac.ie

Please feel free to distribute it as widely as you wish.

In this Bulletin:

- 1. Introducing the Public Interest Law Alliance team;**
- 2. Irish Traveller Movement Law Centre opens;**
- 3. FLAC launches new report on the debt enforcement system, 6 July 2009;**
- 4. Key Decision on Habitual Residence Condition;**
- 5. Department drops demand for documents;**
- 6. Combat Poverty Agency closes its doors;**
- 7. Respond! opens call for applications for Bachelor of Social Studies in Housing and Community Studies at UCD;**
- 8. Seminar on immigration and the social welfare state, Maastricht, 21-22 September 2009.**

1. Introducing the Public Interest Law Alliance team

At FLAC's 40th birthday celebrations in April, FLAC took the opportunity to launch the Public Interest Law Alliance (PILA). This exciting new project builds on the work FLAC and others have undertaken in recent years to bring together all strands of Public Interest Law already underway and so foster a more vibrant culture and practice of working with the law to benefit marginalised and disadvantaged people. A key objective of the Alliance is to develop a more coordinated infrastructure for Public Interest Law Ireland. This will be done across four strands, law reform, legal education, community legal education and public interest litigation. PILA will facilitate exchange of information and will be a vehicle for ideas and initiatives and will have a range of stakeholders including solicitors, barristers, statutory bodies, law firms, law centres, NGOs, educators and other interested parties. Individuals and organisations are invited to become members of the Alliance which is intended to be a vibrant and dynamic community who quickly become aware of the work, agendas and resources of each other and work to maximum common effect.

PILA is based at FLAC and managed by Tony O'Riordan. FLAC's Legal Research Officer Edel Quinn has joined the team to take up the role of PILA Legal Information Officer. Two new PILA staff members took up position in mid June and the team are currently consulting with

a range of stakeholder and are in the process of preparing a strategic work plan. The two new members of the PIAL team are Lianne Murphy and Jo Kenny.

- *Lianne Murphy – Project Officer*

Lianne has a BA in History and Politics from UCD and a LLM in International Human Rights Law from the Irish Centre for Human Rights, NUI Galway. On completing the LLM Lianne interned in Human Rights Law Network in Delhi, India where she wrote a research piece on fair trial rights in the Indian criminal justice system and worked with the Women's Rights unit. She then completed an internship in FLAC where she worked on FLAC's campaign to restore universal child benefit and also worked as an assistant to the Director. Prior to taking the role in PIAL Lianne was Advocacy Officer in Amnesty International Ireland, working on lobbying and researching areas in Amnesty's advocacy programme on domestic issues, including trafficking in human beings, violence against women, refugee rights, and children's rights. She also worked on Amnesty's human rights based approach initiative.

- *Jo Kenny – Legal Officer*

Jo qualified as a barrister in England. She worked as a legal advisor to the Department for Work and Pensions for 3 years, where she advised on domestic and international litigation and the ECHR aspects of policy proposals and legislation. Jo has an LLM in International Law and has worked as a researcher on textbooks on international law and human rights. Jo has also volunteered as a Citizens' Advice Bureau advisor. On returning to Dublin Jo worked as an associate at Arthur Cox for 2 years and co-authored the pensions chapter in "Employment Law" (Tottels). She has volunteered with FLAC as a law centre advisor and researcher. Prior to her appointment to PIAL, Jo undertook a professional placement at the Irish Human Rights Commission.

[Back to top](#)

2. Irish Traveller Movement Law Centre opens

The Irish Traveller Movement Law Centre (ITMLC), a Specialist Law Centre for Travellers, opened its doors on 2nd June 2009. It will provide a specialist legal service to Travellers in Ireland, including taking strategic test cases, providing legal education and undertaking research and policy work. Siobhán Cummiskey has been appointed as the solicitor for the new Law Centre. The ITMLC is part of FLAC's Public Interest Law Alliance. The ITM Law Centre may be contacted at itmlawcentre@gmail.com.

[Back to top](#)

3. FLAC launches new report on the debt enforcement system, 6 July 2009

A new report detailing what FLAC director Noeline Blackwell called "the devastating and largely pointless human cost of the debt enforcement system in Ireland" was launched on 6 July 2009 in by blues singer Mary Coughlan on behalf of FLAC.

Entitled *To No-One's Credit*, the report examines the most commonly used system of debt enforcement, punctuated with the voices of people who have actually been through the process. The report calls for urgent reform of laws in the area, dating from 1926 and 1940, which put 276 people in prison for non-payment of debt in 2008. Under current rules, judges may make instalment orders for payment without knowing the current income or circumstances of the debtor and without the debtor ever attending court.

Launching the report, Mary Coughlan recalled how she lost her house but avoided jail only through a last-minute intervention. "For some people, advice and help comes way too late - we need to make sure this doesn't happen," said Ms Coughlan.

"The whole process of debt enforcement in Ireland almost seems designed to exclude the debtor from both understanding and fully taking part in it," according to FLAC Senior Policy Researcher Paul Joyce. "FLAC is proposing a raft of measures which will bring debtors into the procedure and, we believe, will save time and money on legal action. Apart from the risk of individual human rights violations involved, which has been noted by the UN, our penal system does not in any way actually improve the debt problem in Ireland."

Measures suggested include an alternative debt enforcement system, appropriate financial and legal information and advice to be available to debtors as early as possible in the process, debt enforcement to be dealt with in private and better recording of data by the Courts Service to allow suitable legislative and policy responses to debt issues.

FLAC's report and executive summary can be downloaded at <http://www.flac.ie/publications/index/1246865667179128.html> and in paperback from the FLAC office.

[Back to top](#)

4. Key Decision on Habitual Residence Condition

The Chief Social Welfare Appeals Officer has rejected a bid by the Department of Social and Family Affairs (the Department) to exclude all asylum-seekers and people seeking leave to remain or protection in Ireland from social welfare benefits other than direct provision. This decision has major implications for anyone in the asylum/protection system.

In February 2008 a Social Welfare Appeals Officer allowed a Child Benefit claim by Ms B, an African woman who was seeking leave to remain/protection in Ireland. The Department immediately asked the Chief Appeals Officer to review this decision. It claimed that no-one in the asylum/leave to remain/protection process could satisfy the Habitual Residence Condition, which is a pre-condition for receiving social welfare benefits.

The Department quoted a Supreme Court decision in the case of *Goncescu v Minister for Justice, Equality & Law Reform* in 2003, claiming that it established that asylum-seekers could not be regarded as 'resident' in the State unless they had been granted refugee status or leave to remain. The Department also relied on legal advice from the Attorney General's office that time spent in the asylum process could not be counted for the purpose of satisfying the Habitual Residence Condition.

The Department subsequently asked for reviews of a number of other successful appeals on the same grounds and then began to rely on the *Goncescu* decision in ordinary appeal hearings as well. If the Department's view had been upheld by the Chief Appeals Officer, then all asylum-seekers would have been restricted to direct provision in hostels or camps like Mosney with a maximum cash payment of €19.10 per adult and €9.60 per child per week.

FLAC represented Ms. B and seven other applicants in the reviews sought by the Department and the first decision on any of the reviews was given in Ms B's case on 12th

June last. FLAC had argued that the *Goncescu* judgment was not relevant to these cases because it did not deal with social welfare issues and was decided a year before the Habitual Residence Condition had been introduced. FLAC also pointed out that when the Habitual Residence Condition had been put on a statutory footing in 2005 (amended in 2007), the Oireachtas had made no attempt to exclude all asylum-seekers from qualifying, but had instead set out a series of specific criteria which had to be met in order to qualify.

FLAC also noted that another version of the legal advice from the Attorney General's office which had been relied on by the Department actually said that although time spent in the asylum process should not be counted towards meeting the Habitual Residence Condition, developments during that time, such as the asylum-seeker putting down roots in this country, could be counted.

The Chief Appeals Officer said in his decision that he doubted the relevance of the *Goncescu* judgment to Ms B's case because it pre-dated the introduction of the Habitual Residence Condition and was not concerned with social welfare issues. He remarked as well that the amended version of the Attorney General's legal advice did not support a blanket ban on asylum-seekers qualifying under the Habitual Residence Condition and commented rather pointedly that the amended version of the advice had not been made available to Ms B.

In a key passage the Chief Appeals Officer said: "I do not believe there was any intention in framing the legislation to exclude a particular category such as asylum/protection seekers from access to social welfare benefits. If there was any such intention, the relevant legislative provisions would have reflected that intention and removed any doubt on the issue". He upheld the decision of the Appeals Officer.

This decision has put paid to the Department's attempt to exclude all asylum/protection seekers from receiving any social welfare benefits outside the minimalist direct provision scheme. It leaves the Habitual Residence Condition in place, but asylum/protection seekers will now at least have a chance to show that they meet the various HRC criteria, rather than being totally excluded from doing so.

Decisions are still awaited in the other seven FLAC cases being reviewed by the Chief Appeals Officer. They may clarify the situation further but hopefully we have heard the last of the *Goncescu* decision in this context.

[Back to top](#)

5. Department drops demand for documents

The Department of Social and Family Affairs (DSFA) has dropped its insistence that a young woman from a war-torn African country produce official certificates that she cannot get before it will pay Guardians Payment for her. She had already been recognised as a refugee.

The DSFA had refused to pay Guardians Payment for the young woman, who was given refugee status when she fled her home country after one parent was killed and she had lost contact with the rest of her family. The DSFA was insisting that the young woman produce a death certificate for her deceased parent, although her guardian in this country had sworn an Affidavit about her circumstances and affirming that it was impossible to obtain an official certificate because the civil administration had collapsed in her home country.

The DSFA relied upon legal advice given by the Attorney General's office in 2003 saying that they were entitled to insist on official certificates and that Affidavits were not sufficient.

In a submission to the DSFA, FLAC had argued that the Attorney General's advice had been given in connection with evidence of births and deaths occurring in this country and could not be applied to other countries where, as a result of armed conflict or civil war, the civil administration did not function and official certificates could not be obtained.

FLAC also argued that where the Minister for Justice, Equality and Law Reform had accepted the young woman's account of events and had recognised her as a refugee, it was unreasonable for the DSFA to refuse to accept it and demand more evidence, especially where it was not possible to obtain it.

In a welcome development, the DSFA has reconsidered the position and has accepted these arguments. It has agreed to pay Guardians Payment for the young woman and to backdate it. It is hoped that a similar approach will now be taken in other cases where people have been required to produce documents that are unobtainable because of the situation in their home countries.

[Back to top](#)

6. Combat Poverty Agency closes its doors

As of July 1 2009, the Combat Poverty Agency (CPA) no longer exists as an independent agency. It has been subsumed into a new division in the Department of Social and Family Affairs called the Office for Social Inclusion. CPA was a state advisory agency which worked to develop and promote evidence-based proposals and measures to combat poverty in Ireland. In 2009, 5% of the population experience basic deprivation and over 10% are at risk of poverty.

Over the twenty-three years of its work, the CPA represented a repository of knowledge and expertise on poverty and related issues in Ireland and it regularly contributed to both national and international debate on policy and poverty as well as submitting to international policy reviews. It has been involved in the interpretation of the impact of programmes and policies highlighting new approaches and possibilities on combating poverty and played a central role in placing a spotlight on the issue of poverty in Ireland.

Combat Poverty will remain at its offices in Islandbridge until the end of September 2009 and all contact details will remain the same. From October 2009 the location will be Gandon House, Amiens Street, Dublin 1. Combat Poverty's administrative records from 1986 to 2004 inclusive have been donated to the National Archives and may be consulted there.

[Back to top](#)

7. Respond! opens call for applications for Bachelor of Social Studies in Housing and Community Studies at UCD

Respond! is Ireland's largest Housing Association. The work of Respond! involves providing access to education, childcare, community development programmes, housing & other supports. Respond! Education is committed to the development of Education and Training

that strengthens the community and housing sectors. Respond! is calling for applicants for the Bachelor of Social Studies in Housing and Community Studies which is delivered by University College Dublin, in partnership with Respond!

The BSS degree is a four-year, part-time programme designed for mature students, (23 years and above). The principal aim of the BSS is to provide students with an understanding of the issues of: community development, housing, management & social policy. It employs a multidisciplinary approach to the analysis of these issues, based on participative learning, which promotes both academic and professional/personal skills development.

You do not need any formal qualifications to apply for the BSS programme. You do need to be over 23 years of age and interested in housing, community development and social policy.

The closing date for applications is 17th July 2009.

For further information please contact:

Declan Markey, Respond!, High Park, Grace Park Road, Drumcondra, Dublin 9

By email: bsscourse@respond.ie; tel: 0818 – 357901; website: www.respond.ie.

[Back to top](#)

8. Seminar on immigration and the social welfare state, Maastricht, 21-22 September 2009

The European Institute of Public Administration will host a seminar on the theme: *Immigration and the Social Welfare State: Implications for Policy-Making*. It will take place at the EIPA in Maastricht, the Netherlands in late September 2009.

This seminar, to be conducted in English, will look into the social effects of migration from a comparative approach. After examining migratory patterns and causes, the seminar will analyse States' incentives for attracting migrant workers and address key aspects of viable European policies for social inclusion and protection. In view of the demographic developments, the implications of international migration for the national social systems will be assessed. Participants will be offered practical guidance regarding the portability of social security benefits for migrants internationally, as well as methods to quantify and address the negative consequences of migration for State institutions and social systems.

Further and up-to-date information on this seminar can also be found on EIPA's website:

<http://www.eipa.eu/en/home/> click on *Training and Research*) or use the following link:

<http://www.eipa.eu/en/activities/show/&tid=3353>

For further information on the practical organisation of the seminar, please contact Ms Nicolette Brouwers (tel.: +31.43.3296.245; fax: +31.43.3296.296; e-mail: n.brouwers@eipa.eu).

[Back to top](#)

PILN Bulletin Issued on 10 July 2009

**Public Interest Law Network Ireland - PILN
FLAC (Free Legal Advice Centres Ltd.)**

13 Lr Dorset Street, Dublin 1

Tel: 01-872 8048 Fax: 01-874 5320

LoCall: 1850-350 250 Web: <http://www.flac.ie>

Free Legal Advice Centres Ltd is a company limited by guarantee not having a share capital, registered in Dublin, Ireland. Company registration number 49413. Directors: Don Crewe, Iseult O'Malley, Peter Ward, Róisín Webb, Liam Thornton.

NB: The information in this e-mail may be confidential and may be legally privileged. It is intended for the listed addressee(s). Access to this e-mail by anyone else is unauthorised. If you are not the intended recipient, any distribution, copying, or other actions taken in reliance on it are prohibited and may be unlawful. The opinions and advice contained in this e-mail may not be those of FLAC.
