

**Submission on the Social Welfare and Pensions Bill 2013**

**FLAC and Northside Community Law Centre**



**October 2013**

## **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>

## **About Northside Community Law Centre**

Established in 1975, the Northside Community Law Centre (NCLC) provides free legal information and advice to the residents of North Dublin (specifically those in the electoral constituencies of Dublin North-Central and Dublin North-East). The NCLC aims to protect socio-economic rights, create a more just society and empower the local community through its campaign work, research and education programmes.

## **NCLC Policy**

You can download/read NCLC's law reform submissions at <http://www.nclc.ie/publications/default.asp>

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### **Introduction.**

This short submission will mainly examine the proposed changes to the Mortgage Interest Supplement (MIS) and the recovery of certain benefits and assistance by the Department of Social Protection (DSP) outlined in the Social Welfare and Pensions Bill 2013.

FLAC and NCLC want to draw attention firstly to the lack of proper time for consideration and debate on matters of fundamental importance to people who were not consulted in the lead up to the budget.

While it might be said that the initial sections setting out changes in rates could not be published before the budget was agreed, the same is not the case for the complex and complicated provisions at s.13 and 14 dealing with recovery of payments in personal injury actions nor with the changes in relation to the Pensions Acts. These could have been promulgated in advance without any loss of state secrets. Further, these could have been debated as well in advance, with the changes to benefit sections being added later.

At a time when Oireachtas reform is on the agenda, it is disappointing to see that the Autumn Social Welfare Bill coming after the budget, which traditionally only contained rate or age changes, is now being used over the past few years to introduce substantial amendments to the social welfare code which are not going to be debated within the time allocated.

As it now stands, the later sections, introducing significant adjustments to the way personal injuries claims work, may increase the cost of personal injury claims which will in turn cause an increase in premiums. These matters and others cannot be considered in sufficient detail within the time allocated for debate.

**Section 4 and Section 7.** The extension of period when illness benefit and injury benefit are not payable from 3 days to 6 days means effectively that people will have to try to maintain a float of one week's wages to cover them at a time when both NCLC and FLAC know that many people are barely surviving week to week. This measure will disproportionately affect the poorest and those most vulnerable in the labour market who receive no sick pay from their employer.

**Recommendation: That the proposal to require people to wait a full week before applying for benefit be removed.**

### **Section 9 and 10.**

Jobseeker's Allowance and SWA. We note other submissions made on this already recognising that this will impact harshly on many young people. It is happening at a time that training expenses are also being reduced – noted from the submission of the INOU. This provision is discriminatory on the grounds

of age and would be in breach of the Equal Status Acts except for the exemption provided under Section 14 of the Equal Status Act. .

### **Discontinuance of Mortgage Interest Supplement-Section 11 of Social Welfare & Pensions Bill 2013**

The Government's Programme for Work 2011-2016 notes that:

*"[m]aking greater use of Mortgage Interest Supplement to support families who cannot meet their mortgage payments... is a better and cheaper option than paying rent supplement after a family loses their home".<sup>1</sup>*

The supplement had already been eroded in 2012 by restricting it only to people who could prove that they had been in an arrangement or arrangements with their banks for 12 months. In addition applicants had to prove it— in the view of the Minister – that they had complied with the arrangement. Although that restriction made paying a mortgage more difficult for many, it remained crucially important to some borrowers in keeping people in their own homes.

The abolition of Mortgage Interest Supplement is also contrary to stated government policy to try to work on solutions that will keep people in their homes. According to Minister Burton about 11,000 households are currently accessing Mortgage Interest Supplement<sup>2</sup>. The proposal to close the scheme to new applicants from the beginning of January 2014, and to abolish it entirely by 2018, removes this essential housing support which has been part of the safety net in our social welfare code if people became ill or unemployed.

What is particularly disappointing is that this is being done when there is no evidence, let alone any guarantee that banks are positively encouraging solutions that will keep people in their own homes. The initial justification for reducing MIS was that it was only going to banks. However, that was not its purpose. It was and remains an important housing support. If MIS is lost, then people may not be able to support their mortgage, leading to unsustainable mortgages and ultimate repossession with the risk of further costs to the state in rent supplement and social housing costs.

**Recommendation: That Mortgage Interest Supplement be retained at least until the Central Bank can produce satisfactory evidence that lenders have sustainable strategies to maintain people in their homes without the need for the supplement.**

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<sup>1</sup> Pg 43

[http://www.taoiseach.gov.ie/eng/Work\\_of\\_the\\_Department/Programme\\_for\\_Government/Programme\\_for\\_Government\\_2011-2016.pdf](http://www.taoiseach.gov.ie/eng/Work_of_the_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf)

<sup>2</sup> <http://www.kildarestreet.com/wrans/?id=2013-10-15a.318> 15 October 2013. Minister Burton in response to Deputy McClelland PQ

**Section 13 and 14. Recovery of payments on foot of personal injury actions.**

There is a concern over the Appeals.

This is the first occasion on which a social welfare recipient is denied to right to make an appeal at the time of the making of a decision. It is hard to see why such a delay is required. This is particularly unfortunate when inevitably procedural details be delegated to regulation where there will be no debate whatsoever and no opportunity to test the regulation in advance for compliance with fair hearing standards.

When the statement of recoverable benefits is issued, a copy (but not an original) is sent to the person receiving the benefit but the original goes to the compensator. So does the compensator have the first right of appeal? Or is the first right of appeal to the social welfare recipient?

The denial of the right to appeal until the Minister has been fully paid is in breach of rights to fair procedures. Cases may arise where there will be mistakes in a statement – for example if the Department states that a person was on a benefit for 4 years and they were only on it for 2. Such a certificate arising from a mistake cannot be appealed until the Minister has been paid the money.

s. 343V provides that if and Appeals Officer decides that the Department has underestimated the sum due on the statement of recoverable benefits – the compensator is liable for the difference. They are unlikely to want to bear this loss, so are they going to go after the social welfare applicant for the balance? This does not seem practical as this all happens after the financial settlement or order has been paid out.

On the other hand, if the Minister has over-claimed and money has to be handed back to the compensator, is the compensator to pass this money on to the social welfare recipient/ injured party? It would seem in justice that they should, but the Bill does not make provision for this.

**Recommendation: These sections are unclear as to what happens if there is an Appeal and the Appeals Officer decides that the statement of recoverable benefits in correct. In both the case of an over-payment or an under-payment to the Minister, there is a lack of clarity about the impact on the injured party/ social welfare recipient.**

343N – speaks of when the injured party first ‘becomes entitled’. In the context of a personal injury claim, it would be better to say ‘receives’ as the dates may differ and an injured party might lose out if a compensator argued that they should have claimed on a different date.

343P. The Bill proposes a time frame for the Minister to issue a statement of recoverable benefits to the compensator and the injured party (4 weeks) after application. However there is no comparable time scale for the compensator to refund the Minister. Such a time frame should be included as the injured person cannot receive the funds to which they are entitled in the claim until that payment has been made.

General point. If we understand the proposal behind these sections, it is intended that if an injured party claims in a personal injury action, they must also claim the amount of benefit received so that this can be refunded to the Department. Currently in personal injury actions, while the amount of benefit paid is taken into account by a compensator, they will normally not have to give a refund to the Department but rather will just pay the injured party their loss of earnings less the benefits received from the State. This then switches the cost so that the cost of insurance claims is likely to rise and this may affect premiums.

Further, many personal injury claims are settled or awards are made on the basis that an overall lump sum is paid to incorporate the loss of wages an injured party suffers and there is no special category for 'loss of earnings' as the Bill seems to assume. Ultimately it is the injured party that will have their payment on foot of an injury reduced.

It also seems to be the case that if liability is apportioned between the claimant and the compensator, the Minister might still look for full recovery of the social welfare benefit paid even if only a partial judgment is obtained or a partial settlement received by the claimant/ injured party. This could substantially erode an award to a claimant well beyond the loss of earnings part of their claim.

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