



# **Pre-Budget Submission 2017**

**A submission by FLAC to the Department of Social Protection**

**FLAC, July 2016**

## About FLAC

FLAC (Free Legal Advice Centres) is a non-governmental, voluntary organisation which exists to promote the fundamental human right of access to justice. As an organisation, FLAC focuses on the use of law as a tool for social change and on the right of equal access to justice for all. We work particularly on the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH.

In our work, we identify and make policy proposals on how the law excludes marginalised and disadvantaged people, principally around social welfare law, personal debt & credit law and civil legal aid. We advance the use of law in the public interest and we co-ordinate and support the delivery of basic legal information and advice to the public for free and in confidence.

## FLAC Policy

Towards achieving our 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

**Recommendation 1:** Review the adequacy of existing rates of social welfare payments in order to guarantee a basic level of income and an adequate standard of living for everyone.

**Recommendation 2:** Ensure that austerity measures are gradually phased out.

**Recommendation 3:** Ensure that all budgetary proposals advanced by the Department of Social Protection are human rights and equality proofed.

**Recommendation 4:** Human rights and equality impact assessments should include a meaningful and effective consultation with people experiencing poverty or groups who are likely to be impacted by proposed budgetary measures.

**Recommendation 5:** Restore a targeted use of the Mortgage Interest Supplement payment to assist people with a short-term mortgage arrears problem due to temporary illness or unemployment through their financial difficulties.

**Recommendation 6:** Reverse the cuts to social welfare payments to young people under the age of 26.

**Recommendation 7:** Ensure that Rent Supplement and Housing Assistance Payments reflect actual housing costs and meet people's basic housing needs.

**Recommendation 8:** Establish an anonymous, searchable database of appeals decisions, including appeals related to the Habitual Residence Condition.

**Recommendation 9:** Provide adequate resources to the Social Welfare Appeals Office in order to further improve efficiencies in processing times.

**Recommendation 10:** Invest greater resources in training and monitoring of decision-makers at first instance.

**Recommendation 11:** Place the Social Welfare Appeals Office on a statutorily independent footing.

**Recommendation 12:** Continue to progress the implementation of the recommendations contained in the *Person or Number? 2* report.

**Recommendation 13:** Ensure when recovering social welfare overpayments that a person's income is not reduced below a figure which would have a negative impact on their fundamental rights to an adequate standard of living and social security.

**Recommendation 14:** Review the Habitual Residence Condition so as to eliminate its discriminatory impact on access to social security benefits, particularly among vulnerable and marginalised individuals and groups.

**Recommendation 15:** Pending further reform of the system, increase the weekly allowance for asylum seekers living in Direct Provision to €38.74 for adults and to €29.80 for children in line with the recommendations of the McMahon report.

## Introduction

FLAC, the Free Legal Advice Centres, is a human rights organisation which exists 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 campaigns for social welfare law reform to improve the situation of different groups impacted by particular social welfare policies and to ensure that fundamental human rights are put at the heart of the welfare system.

It is in this capacity that FLAC makes this pre-Budget submission which it hopes will inform the debate on Budget 2017.

### I. Social Protection Floor

The Constitution has been invoked to protect socio-economic rights and recognises the dignity, worth and right to equality of all persons. Thus, budgetary decisions may have constitutional implications for the State, which are immediately legally binding and enforceable. Furthermore, as a State Party to the International Covenant on Economic, Social and Cultural Rights, Ireland has an immediate minimum core obligation to guarantee, at the very least, basic essential levels of all economic, social and cultural rights, including the right to social security.<sup>1</sup>

The policy of austerity implemented by the Government has not afforded due consideration to the State's legal obligations under international human rights law. As FLAC has stated in previous Pre-Budget submissions, human rights obligations are particularly relevant and no less binding in times of recession. Limited resources cannot be used as an argument to counter the State's human rights commitments, including to maintain its minimum core obligations, or in other words to provide a basic level of subsistence to enable people to live in dignity.

Research undertaken by the Vincentian Partnership for Social Justice on minimum income standards demonstrates that current rates of social welfare payments do not provide an adequate income for most family types.<sup>2</sup> Of the 214 urban cases examined in 2016, social welfare payments do not provide an adequate income for 183. In particular, social welfare payments provide an inadequate income for each of the family household compositions with children analysed as well as working age households without children.<sup>3</sup> Thus, some social welfare payments neither provide a basic minimum income nor ensure an adequate standard of living for the people they are supposed to support.

In March 2015, the UN Human Rights Council adopted a landmark resolution on the question of the realisation in all countries of economic, social and cultural rights, with a specific focus on the issue of social protection floors.<sup>4</sup> Social protection floors are basic minimum income standards which aim to alleviate poverty and social exclusion.<sup>5</sup> The resolution encourages states to put in place social protection floors as part of comprehensive social protection systems in order to contribute to the

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<sup>1</sup> Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.8.

<sup>2</sup> Vincentian Partnership for Social Justice (2016) *Minimum Essential Standard of Living 2016*, Dublin: VPSJ.

<sup>3</sup> Vincentian Partnership for Social Justice (2016) *Minimum Essential Standard of Living 2016*, Dublin: VPSJ, p.11.

<sup>4</sup> Human Rights Council resolution 28/12 – Question of the realization in all countries of economic, social and cultural rights.

<sup>5</sup> General Assembly resolution 67/164 – Human rights and extreme poverty.

enjoyment and realisation of human rights. Ireland co-sponsored this resolution, indicating its support for the text as adopted.

Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights specifically called on Ireland to “identify the minimum core content of the Covenant rights or a social protection floor and ensure the protection of this core content at all times”.<sup>6</sup> Moreover, the former UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, has stated that even during times of severe resource constraints, the State must demonstrate that every effort has been made to use all resources that are at its disposal, in an effort to satisfy minimum essential levels of human rights.<sup>7</sup>

**Recommendation 1: Review the adequacy of existing rates of social welfare payments in order to guarantee a basic level of income and an adequate standard of living for everyone.**

## II. Austerity Measures

The most recent annual report from the Department of Social Protection shows that, in 2014, there were almost 1.44 million recipients who received a social welfare payment which benefitted a total of 2.3 million people.<sup>8</sup> However, since 2010, the budget allocation for the Department of Social Protection has decreased from €21.1 billion to €19.45 billion in 2015 as a result of austerity measures introduced in the wake of the economic crisis.

As detailed by the UN Committee on Economic, Social and Cultural Rights, austerity measures continue to have a significant adverse impact on the entire population, and particularly on disadvantaged individuals and groups.<sup>9</sup> This is evidenced most clearly by current poverty levels in Irish society. The latest available data from the Central Statistics Office indicates that in 2014 the at-risk-of-poverty rate was 16.3% even after social transfers were considered.<sup>10</sup> Furthermore, the rate of consistent poverty in 2014 was 8%, almost double the 2008 rate of 4.2%.<sup>11</sup>

In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the increase in the number of people living in consistent poverty, particularly among children, single-parent families, older persons, persons with disabilities, migrants, Travellers and Roma.<sup>12</sup> For instance, single-parent families have the highest consistent poverty rate of any family type at 22.1%. In addition, 128,000 children (11.2%) are currently living in consistent poverty.

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<sup>6</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

<sup>7</sup> Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.8.

<sup>8</sup> Department of Social Protection (2015) *Annual Report 2014*, Dublin: Government of Ireland, p.11.

<sup>9</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

<sup>10</sup> Central Statistics Office (2015) *Survey on Income and Living Conditions 2014*, available at <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2014/> [accessed 27 June 2016].

<sup>11</sup> Central Statistics Office (2015) *Survey on Income and Living Conditions 2014*, available at <http://www.cso.ie/en/releasesandpublications/er/silc/surveyonincomeandlivingconditions2014/> [accessed 27 June 2016].

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.24.

More generally, the UN Committee on Economic, Social and Cultural Rights has also called on Ireland to ensure that austerity measures are gradually phased out.<sup>13</sup> In its open letter of 16 May 2012 on economic, social and cultural rights in the context of the economic and financial crisis, the UN Committee stressed that austerity policies must be temporary, covering only the period of the crisis.<sup>14</sup>

**Recommendation 2: Ensure that austerity measures are gradually phased out.**

### III. Human Rights and Equality Proofing of Budgetary Proposals

As documented by the UN Committee on Economic, Social and Cultural Rights, austerity measures have had, and continue to have, a significant adverse impact on the whole population.<sup>15</sup> The UN Committee noted that many of these regressive measures were adopted without thorough prior assessment of their impact, particularly on vulnerable and marginalised groups.<sup>16</sup> While the Department of Social Protection does carry out a post-hoc social impact assessment of measures relevant to it, such assessments do not incorporate a human rights and equality analysis.

FLAC, together with PILA (the Public Interest Law Alliance), has long advocated for a human rights and equality based approach to budgetary decision-making. Such assessments would provide an important mechanism for embedding human rights and equality considerations into the budgeting processes. It would also provide officials with a clearer picture as to who is disproportionately impacted by particular budgetary measures, and who is experiencing inequality or violations of their human rights as a result of specific measures.<sup>17</sup> FLAC's research among civil society bodies has shown that the vast majority see these assessments as key to reducing discrimination, protecting vulnerable and marginalised groups and maximising the use of resources.<sup>18</sup>

FLAC is pleased to note that the new Programme for a Partnership Government contains a commitment to equality and gender proof budget proposals and to draw on the expertise of the Irish Human Rights and Equality Commission to support the proofing process.<sup>19</sup> According to the Programme, the aim of such proofing is to advance equality, reduce poverty and strengthen economic and social rights.<sup>20</sup> However, while welcoming the measures announced, FLAC considers that a human rights framework must also be explicitly applied to budgetary decision-making and processes.

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<sup>13</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

<sup>14</sup> Office of the UN High Commissioner for Human Rights (2012) *Open letter of 16 May 2012 to States parties on economic, social and cultural rights in the context of the economic and financial crisis*, Geneva: OHCHR.

<sup>15</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

<sup>16</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

<sup>17</sup> See for more information FLAC's briefing note on Human Rights Approach to Budgeting (Oct 2014) available at <http://bit.ly/FLACHRB2014>.

<sup>18</sup> FLAC (2014) *Fairer Budget, Fairer Society: A Human Rights Analysis of Budget 2015 from Irish civil society*, Dublin: FLAC, available at <http://bit.ly/1rq5O8p>.

<sup>19</sup> Government of Ireland (2016) *Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.15.

<sup>20</sup> Government of Ireland (2016) *Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.15.

Under international human rights law, there are specific obligations on the State. For example, the Government must respect, protect and fulfil basic rights such as health, housing, education and social security throughout the budgetary process in all budget-related decisions, legislation, policy and practice. Furthermore, the Government must use the maximum available resources to progressively realise socio-economic rights, guarantee minimum levels of protection for such rights and ensure fundamental rights are adequate, accessible and affordable.

Human rights impact assessments have been proposed by human rights bodies and experts. In 2011, then UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, called on Ireland to undertake human rights reviews of all budgetary policies.<sup>21</sup> In its 2015 Concluding Observations, the UN Committee on Economic, Social and Cultural Rights recommended that Ireland “consider instituting human rights impact assessments in its policy-making process, particularly relating to Covenant rights”.<sup>22</sup>

Furthermore, at the core of the human rights framework is an overarching requirement that states take into consideration the principles of participation, transparency and accountability in the design, implementation and evaluation of policies. With this in mind, the Department of Social Protection should, when carrying out proofing of budgetary measures, meaningfully and effectively consult with those who are likely to be impacted by proposed budgetary measures.<sup>23</sup>

The former UN Independent Expert on Extreme Poverty and Human Rights noted the importance of including people experiencing poverty in the decision-making process:

*When the participation of people living in poverty is not actively sought and facilitated, they are not able to participate in decision-making and their needs and interests are not taken into account when policy is designed and implemented. This exacerbates their exclusion and often perpetuates the privilege of elites who are able to influence policy directly, or of groups such as the middle class who have a considerable voice in the media or other public spaces. Lack of participation in decision-making and in civil, social and cultural life is thus recognized by the international community as a defining feature and cause of poverty, rather than just its consequence.*<sup>24</sup>

**Recommendation 3: Ensure that all budgetary proposals advanced by the Department of Social Protection are human rights and equality proofed.**

**Recommendation 4: Human rights and equality impact assessments should include a meaningful and effective consultation with people experiencing poverty or groups who are likely to be impacted by proposed budgetary measures.**

<sup>21</sup> Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.7.

<sup>22</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.11.

<sup>23</sup> During its recent examination under the Universal Periodic Review process, Ireland received a recommendation from Poland to strengthen consultations on economic, social and cultural rights. Office of the High Commissioner for Human Rights (2016) *Draft Report of the Working Group on the Universal Periodic Review: Ireland*, Geneva: OHCHR, p.11.

<sup>24</sup> Office of the UN High Commissioner for Human Rights (2013) *Report of the Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona*, Geneva: OHCHR, p.5.

#### IV. Mortgage Interest Supplement

The Mortgage Interest Supplement scheme provides short-term income support to borrowers who are unable to meet their mortgage interest repayments. The Supplement assists with the interest portion of the mortgage repayment but does not help with payment of the capital portion of the loan.

The basic purpose of Mortgage Interest Supplement is to ensure that a person who suffers a temporary loss of income will not have their family home repossessed due to an inability to meet mortgage interest repayments. In effect therefore, the Supplement provides a safety net for people struggling with mortgage repayments, particularly those who are unemployed or ill.

However, since 1 January 2014, the Mortgage Interest Supplement scheme has been closed to new entrants and the scheme is being wound down over a four-year period (by the end of 2017) for the 9768 claimants who were still in receipt of the Supplement at the start of 2014. The closure of the scheme to new claimants means that people experiencing short-term income difficulties cannot access social welfare assistance to meet mortgage interest repayments.

During the economic crisis, a number of expert and inter-departmental groups were established, tasked with examining the issue of mortgage arrears. While sharing the view that Mortgage Interest Supplement should be a time-bound support, each emphasised the importance of the scheme to borrowers experiencing short-term financial difficulties.<sup>25</sup> Abolition of the Supplement was not recommended.

While the Department of Social Protection believes that the most appropriate way in which customers experiencing short-term mortgage difficulties can be supported is through engagement with their lender under the Mortgage Arrears Resolution Process, the Oireachtas Committee on Housing and Homelessness has adopted a completely different stance. In light of the continuing threat of homelessness due to mortgage arrears, the Oireachtas Committee has recommended that a targeted use of Mortgage Interest Supplement be restored to assist people with a short-term mortgage arrears problem.<sup>26</sup>

FLAC is of the view that this is a positive step which might help prevent temporary financial problems due to illness or unemployment from leading into insolvency, with the attendant social and economic consequences that may follow for the households involved and for society generally.

**Recommendation 5: Restore a targeted use of the Mortgage Interest Supplement payment to assist people with a short-term mortgage arrears problem due to temporary illness or unemployment through their financial difficulties.**

#### V. Reduced Rates of Social Welfare for Young People under the age of 26

At the moment, people under the age of 26 years who are eligible for a social security payment receive a lesser amount than those aged over 26. This means that eligible individuals aged 26 and over receive a basic weekly payment of €188, claimants aged between 18 and 24 years with no

<sup>25</sup> These included the Inter-Departmental Working Group on Mortgage Arrears, the Working Group on the Review of the Mortgage Interest Supplement and the Expert Group on Mortgage Arrears and Personal Debt.

<sup>26</sup> Oireachtas Committee on Housing and Homelessness (2016) *Report of the Committee on Housing and Homelessness*, Dublin: Oireachtas Committee on Housing and Homelessness, p.76.



dependent children receive €100, while claimants aged 25 years receive €144. These lower payments fall below the basic minimum income standard of €186 set by the Government. The Minister for Social Protection has argued that this is not a discriminatory measure, but a targeted one aimed at protecting young people from welfare dependency by incentivising them to avail of education and training opportunities.<sup>27</sup>

There appears to be an assumption by the State that adults below the age of 26 are able to live with parents or family members; this assumption has led to a generalised measure, not specific to the circumstances or realities of each young person in receipt of social welfare. It is to be questioned whether reduced payments based solely on the age of the claimant is in compliance with the constitutional guarantee of equality pursuant to Article 40.1.

Concerns abound that these age-related social welfare cuts increase the vulnerability of people under the age of 26 to homelessness, particularly those who are already disadvantaged and without family supports such as LGBTI persons, migrants, victims of domestic violence, Travellers and Roma.<sup>28</sup> Focus Ireland has reported that over 570 people under the age of 25 were living in emergency homeless accommodation in July 2015.<sup>29</sup> FLAC is concerned that young people who end up homeless are finding it extremely difficult to leave homeless services and break the cycle of homelessness as they are priced out of the private rental market due to reduced social welfare payments.

In June 2016, the Oireachtas Committee on Housing and Homelessness expressed concern at “[t]he high level” of youth homelessness and called for preventative measures to be established at an early age in order to divert young members of society away from homelessness.<sup>30</sup> Separately, the Committee also recommended that the rate of Jobseekers Allowance for homeless persons aged under 26 be increased to the full adult rate.<sup>31</sup>

The Department of Social Protection estimates that the cost of increasing the rate of Jobseeker’s Allowance paid to those under 26 years of age to €188 per week would be €148.4 million per year.<sup>32</sup>

**Recommendation 6: Reverse the cuts to social welfare payments to young people under the age of 26.**

<sup>27</sup> Minister for Social Protection, Leo Varadkar TD, Parliamentary Questions: Written Answers, [11806/16], 25 May 2016.

<sup>28</sup> The UN Special Rapporteur on the right to adequate housing has found that homelessness disproportionately affects particular groups, including women, young people, children, indigenous peoples, people with disabilities, migrants and refugees, the working poor, and LGBT people. Office of the High Commissioner for Human Rights (2015) *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*, Geneva: OHCHR, p.21.

<sup>29</sup> Focus Ireland (2016) *Pre-Budget Submission 2016*, Dublin: Focus, p.8.

<sup>30</sup> Oireachtas Committee on Housing and Homelessness (2016) *Report of the Committee on Housing and Homelessness*, Dublin: Oireachtas Committee on Housing and Homelessness, p.131.

<sup>31</sup> Oireachtas Committee on Housing and Homelessness (2016) *Report of the Committee on Housing and Homelessness*, Dublin: Oireachtas Committee on Housing and Homelessness, p.115.

<sup>32</sup> Minister for Social Protection, Leo Varadkar TD, Parliamentary Questions: Written Answers, [13402/16], 31 May 2016.

## VI. Rent Supplement and Housing Assistance Payment levels

In recent years maximum Rent Supplement and Housing Assistance Payment (HAP) payment levels have not been sufficient and have not been increased to keep pace with the increasing cost of rented property, especially in urban areas. This has resulted in situations where people have fallen into debt and rent arrears.

Furthermore, the gap between actual rents and the limited Rent Supplement rates has resulted in some tenants being forced by necessity to make undeclared and unlawful “top-up payments” to their landlords in order to secure a place to live.

In 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the “overall difficult housing situation” in Ireland and in particular, the “[i]ncreased costs of rental housing and reduced family incomes” as well as “[i]neffective social support programmes, such as the Rent Supplement and the Housing Assistance Payments, which do not reflect rent increases”.<sup>33</sup> The UN Committee also drew attention to the “[g]rowing number of families and children that are homeless or are at risk of being homeless as a result of...inadequate levels of rent supplement”.<sup>34</sup>

The UN Committee called on Ireland to consider increasing rent supplement levels, and to take all necessary measures to meet the critical needs of those who are homeless or who are at risk of being homeless.<sup>35</sup>

In a welcome move, the Government very recently increased Rent Supplement and HAP limits, with increases “reflecting the pressures on rental properties in each particular location”.<sup>36</sup> These changes came into effect on July 1<sup>st</sup>. However, while these increases may ameliorate the situation to some extent, concerns exist that the new limits will still not meet actual housing costs. In June 2016, the Oireachtas Committee on Housing and Homelessness called for Rent Supplement and Housing Assistance Payments to be increased to reflect current market rates.<sup>37</sup>

**Recommendation 7: Ensure that Rent Supplement and Housing Assistance Payments reflect actual housing costs and meet people’s basic housing needs.**

## VII. Recommendations of the European Commission against Racism and Intolerance

In March 2016, the European Commission against Racism and Intolerance (ECRI), a human rights body of the Council of Europe which monitors issues related to racism, discrimination and

<sup>33</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.26.

<sup>34</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.26.

<sup>35</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.27.

<sup>36</sup> Department of Social Protection, ‘Varadkar & Coveney announce higher Rent Supplement limits to help with rising rents’, [press release], 29 June 2016.

<sup>37</sup> Oireachtas Committee on Housing and Homelessness (2016) *Report of the Committee on Housing and Homelessness*, Dublin: Oireachtas Committee on Housing and Homelessness, p.6.

xenophobia, published its conclusions on the implementation of recommendations received by Ireland in its fourth country report in 2013.<sup>38</sup>

In its 2016 follow-up conclusions, the ECRI noted that the Irish authorities had only published a very low number of social welfare appeals cases related to the Habitual Residence Condition and that no consistency in publishing such decisions could be observed. The ECRI reiterated its 2013 call to publish appeals decisions related to the Habitual Residence Condition (HRC) in order to ensure a “sufficient level of predictability” in decision-making.

The Social Welfare Appeals Office does not currently maintain a database of previous decisions. At present, only a limited number of cases are published each year in its annual reports, usually on a thematic basis. The lack of such a database presents all individuals taking social welfare appeals with practical difficulties, especially those taking appeals related to the HRC. In the absence of a database, individuals taking appeals are forced to prepare their cases within a vacuum of information. For example, they may be unclear as to how legislation is applied and interpreted. Furthermore, without a database, appeals staff must make decisions in isolation, resulting in inconsistencies in decision-making.

Human rights bodies have long emphasised the need for consistency in social welfare appeals decision-making and the adverse impact of failing to provide a database for appellants. In 2012, the former Independent Expert on Extreme Poverty and Human Rights called for decisions of the Appeals Office to be published in a form which allows for broad dissemination and understanding among existing and potential beneficiaries.<sup>39</sup> Similarly, the UN Committee on Economic, Social and Cultural Rights has urged that decisions on appeals be made in a consistent and transparent manner.<sup>40</sup>

**Recommendation 8: Establish an anonymous, searchable database of appeals decisions, including appeals related to the Habitual Residence Condition.**

## VIII. Social Welfare Appeals Process

The Social Welfare Appeals Office published its 2015 annual report in May 2016.<sup>41</sup> The report documents welcome progress on efficiencies, with average processing times falling from 24.2 weeks in 2014 to 20.9 weeks in 2015. However, further progress is needed in addressing delays in processing appeals. FLAC is particularly concerned by the average processing time of 18 weeks for appeals on Supplementary Welfare Allowance, a payment designed as a safety net for those with no other income.

FLAC urges the Department to provide adequate human and financial resources to the Appeals Office in Budget 2017 to ensure further reductions in processing times and timely access to essential payments.

<sup>38</sup> European Commission against Racism and Intolerance (2016) *ECRI conclusions on the implementation of the recommendations in respect of Ireland subject to interim follow-up*, Strasbourg: ECRI.

<sup>39</sup> Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.12.

<sup>40</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.20.

<sup>41</sup> Social Welfare Appeals Office (2016) *Annual Report 2015*, Dublin: SWAO.

FLAC is also concerned by the high number of initial decisions which are being overturned on appeal. Almost 59% of the total 25,406 appeals decided in 2015 were successful which indicates a potential problem with decision-making on initial applications. This budget should be taken as an opportunity to review supports and training available to decision-makers at first instance and ensure that they are adequate.

In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the large number of appeals filed with the Appeals Office “owing to the lack of clear understanding and consistent application of the eligibility criteria”, as well as the “considerable number” of successful appeals. To address the latter issue, the UN Committee recommended that appropriate training be provided to decision-makers at first instance. Enhanced training for decision-makers at first instance would lead to fairer and more robust initial decisions.

In October 2012, FLAC published a landmark report on the social welfare appeals system, “*Not Fair Enough*”.<sup>42</sup> It made the case for thorough reform of the social welfare appeals system based on international human rights standards of transparency, fairness and the right to an effective remedy. One of the key proposals advanced was to place the Social Welfare Appeals Office on a statutorily independent footing. While the Appeals Office is classified as “independent”, the necessary safeguards are not in place to ensure its actual and perceived independence. For example, Appeals Officers are appointed by the Minister for Social Protection and employed by the Department of Social Protection, and appeals decisions are influenced by policy directions from the Department of Social Protection.

**Recommendation 9: Provide adequate resources to the Social Welfare Appeals Office in order to further improve efficiencies in processing times.**

**Recommendation 10: Invest greater resources in training and monitoring of decision-makers at first instance.**

**Recommendation 11: Place the Social Welfare Appeals Office on a statutorily independent footing.**

## IX. Access to Social Security for Migrants

FLAC is a member of the Migrant Consultative Forum, which comprises representatives of NGOs and the Department of Social Protection. In January 2015, FLAC, together with Crosscare, Doras Luimní, Dublin City Centre Citizens Information Service and Nasc, published *Persons or Number? 2*, which identified and examined issues faced by migrants in accessing social protection.<sup>43</sup> The report covers a range of issues including cases of poor customer service, wrongful refusals of Emergency Needs Payments, delays in receipt of arrears payments, misapplication of the Habitual Residence Condition and incidents of racism.

Since the publication of the report, migrant stakeholders have been working closely with representatives of the Department of Social Protection to address issues raised in the report. The Department has demonstrated a genuine commitment to improving its engagement with migrant

<sup>42</sup> Free Legal Advice Centres (2012) *Not Fair Enough*, Dublin: FLAC.

<sup>43</sup> Crosscare, Doras Luimní, FLAC, Dublin City Centre Citizens Information Service (DCCCIS) and Nasc (2015) *Person or Number? 2*, Limerick: Crosscare, Doras Luimní, FLAC, Dublin City Centre Citizens Information Service (DCCCIS) and Nasc.

customers and has undertaken a significant amount of work to achieve this. However, much work remains to be done in ensuring that migrants can effectively access their social security rights.

**Recommendation 12: Continue to progress the implementation of the recommendations contained in the *Person or Number? 2* report.**

## **X. Social Welfare Overpayments**

Section 13 of the Social Welfare and Pensions Act 2012 affords 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% from a social welfare payment without need for the claimant's consent. This may reduce a person's payment to below the State's own designated basic minimum income of €186, the rate of Supplementary Welfare Allowance. Previously, the Department could not recover an amount which would result in a person receiving less than the basic Supplementary Welfare Allowance rate.

The former UN Independent Expert on Extreme Poverty and Human Rights has stressed that a state's obligation to provide "minimum essential levels of non-contributory social protection" are a legal obligation rather than a policy option.<sup>44</sup>

Nevertheless, even if a deduction does not reduce a person's income below subsistence level, any form of reduction risks leaving claimants and their families in severe financial hardship. Research conducted by the Vincentian Partnership for Social Justice on the cost of a "Minimum Essential Standard of Living" reveals that rates of social welfare payments are not adequate and do not meet the basic needs of a variety of households.<sup>45</sup> It is relevant to note that while the Insolvency Service of Ireland bases its budgeting model on the "Minimum Essential Standard of Living" model developed by the Vincentian Partnership for Social Justice, the Department of Social Protection does not.<sup>46</sup>

Similarly, the European Committee of Social Rights found in 2013, and before in 2009, that Ireland's minimum levels of sickness, unemployment, survivors, employment injury and invalidity benefits are inadequate to meet a person's needs.<sup>47</sup>

**Recommendation 13: Ensure when recovering social welfare overpayments that a person's income is not reduced below a figure which would have a negative impact on their fundamental rights to an adequate standard of living and social security.**

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<sup>44</sup> Sepúlveda and Nyst, *The Human Rights Approach to Social Protection*, available at <http://www.ohchr.org/Documents/Issues/EPoverty/HumanRightsApproachToSocialProtection.pdf> [accessed 27 June 2016].

<sup>45</sup> Vincentian Partnership for Social Justice (2016) *Minimum Essential Standard of Living 2016*, Dublin: VPSJ, p.11.

<sup>46</sup> See for example the Insolvency Service of Ireland (2013) *Guidelines on a reasonable standard of living and reasonable living expenses*, Dublin: ISI.

<sup>47</sup> European Committee of Social Rights, 2013 Conclusions on Ireland – Article 12-1, Document no. 2013/def/IRL/12/1/EN.

## XI. Habitual Residence Condition

Despite repeated calls from regional and international human rights bodies and experts, the Government has refused to initiate a review of the Habitual Residence Condition and its discriminatory impact on vulnerable groups accessing social welfare payments. In its application, the Habitual Residence Condition disproportionately affects vulnerable groups such as migrants, Travellers and Roma which experience considerable challenges in terms of establishing a connection to Ireland.

During her 2011 visit to Ireland, the former UN Independent Expert on Extreme Poverty and Human Rights noted with “utmost concern” that the Habitual Residence Condition represents a considerable obstacle for vulnerable groups to access services to which they are entitled.<sup>48</sup>

In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the discriminatory effect of the Habitual Residence Condition on disadvantaged and marginalised individuals and groups in accessing social security benefits. The Committee recommended that Ireland review the Habitual Residence Condition so as to eliminate its discriminatory impact on access to social security benefits.<sup>49</sup>

In January 2016, the UN Committee on the Rights of the Child called on Ireland to make child benefit a universal payment that is not contingent on the fulfilment of the Habitual Residence Condition.<sup>50</sup>

**Recommendation 14: Review the Habitual Residence Condition so as to eliminate its discriminatory impact on access to social security benefits, particularly among vulnerable and marginalised individuals and groups.**

## XII. Social Welfare Payments for Asylum Seekers living in Direct Provision

Asylum seekers living in Direct Provision receive a weekly allowance of €19.10 per adult and €15.60 per child. While the child rate of payment was increased by €6 to €15.60 in January 2016, the adult rate has remained unchanged since it was first introduced in 2000. These rates of payment are not adequate and do not meet the basic needs of asylum seekers to ensure an adequate standard of living.<sup>51</sup>

There have been frequent calls to increase the Direct Provision allowance over the past number of years. In June 2015, the final report of the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, commonly referred to as the McMahon report, recommended that the Direct Provision weekly

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<sup>48</sup> Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.11.

<sup>49</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

<sup>50</sup> UN Committee on the Rights of the Child (2016) *Concluding observations on the combined third and fourth report of Ireland*, Geneva: OHCHR, para.70.

<sup>51</sup> See Free Legal Advice Centres (2009) *One Size Doesn't Fit All*, Dublin: FLAC.

allowance for adults be increased to €38.74 and to €29.80 for children.<sup>52</sup> According to the Working Group:

*“The implementation of the proposed increase to the weekly allowance would bring tangible benefits to residents in their daily lives that would allow them to live with greater dignity. In addition to facilitating residents in meeting the needs of themselves and their families, it would provide a greater degree of control and decision-making power.”<sup>53</sup>*

Additionally, in July 2015, the UN Committee on Economic, Social and Cultural Rights voiced concerns regarding restrictions asylum seekers face in accessing social security benefits.<sup>54</sup> More recently, in January 2016, the UN Committee on the Rights of the Child noted that the child allowance provided to asylum seekers has not kept pace with the rise in the cost of living and inflation in Ireland and recommended that the child allowance provided to asylum seekers be proportionately increased to ensure that it correlates with the cost of living.<sup>55</sup>

It is estimated that the cost of increasing the weekly allowance for asylum seekers living in Direct Provision to €38.74 for adults and to €29.80 for children would be €3.876 million per annum.<sup>56</sup>

**Recommendation 15: Pending further reform of the system, increase the weekly allowance for asylum seekers living in Direct Provision to €38.74 for adults and to €29.80 for children in line with the recommendations of the McMahon report.**

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<sup>52</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (2015) *Final Report*, Dublin: Working Group on the Protection Process, p.208.

<sup>53</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers (2015) *Final Report*, Dublin: Working Group on the Protection Process, p.208.

<sup>54</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.14.

<sup>55</sup> UN Committee on the Rights of the Child (2016) *Concluding observations on the combined third and fourth report of Ireland*, Geneva: OHCHR, para.66.

<sup>56</sup> Minister of State for Employment, Community and Social Support, Kevin Humphreys TD, Parliamentary Questions: Written Answers, [2192/16], 19 January 2016.