

FLAC

ACCESS *to* **JUSTICE** *for* **ALL**

The History of the
Free Legal Advice Centres
1969-2003

By **Padraig O'Morain**

with contributions from FLAC staff



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FLAC – Free Legal Advice Centres
13 Lower Dorset Street, Dublin 1

Tel +353-1-874 5690
Fax +353-1-874 5320
Email info@flac.ie
Website www.flac.ie

Design and Printing
Printwell Co-operative
10-11 North Richmond Street
Dublin 1.
Tél: 01 855 0873

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FLAC remembers...

Three champions of legal aid passed away in recent years, all of whom feature in this publication.

David Molony, Solicitor and former Senator and TD, died on 4th September 2002 aged 52. David Molony was one of the founders of FLAC and acted as chairman of the organisation in the early 1970s. He led the organisation before the landmark decision in the Airey case, when there was a huge reliance on the services provided by FLAC in the absence of a state scheme of civil legal aid. David was acutely conscious of the underprivileged and campaigned on a wide number of issues, including the introduction of legal aid and the reform of matrimonial and family law.

Josie Airey died on 26th August 2002, aged 70. Josie was undoubtedly the most influential figure in securing the introduction of a civil legal aid scheme in Ireland. In 1979, Josie won a historic victory against the state before the European Court of Human Rights, which upheld her complaint of lack of access to legal aid to secure a judicial separation from her husband. Josie Airey's legal battle had lasted some seven years.

Meliosa Dooge passed away in February 2000. She was a Barrister who specialised in family law. She was vice-chairperson of FLAC in 1979-1980.

INTRODUCTION

This publication charts the history of the Free Legal Advice Centres (FLAC) from 1969 to today. It tells the story of the organisation and its foundation in a society which had yet to address many fundamental social issues, some of which have since been confronted, although they remain as challenges.

FLAC has campaigned since its foundation for the introduction of a comprehensive legal aid scheme and to persuade the Government to expand the legal aid scheme and its scope. The enthusiasm, energy and drive of the early years of FLAC are tangible and it is fitting to note them in this document which charts the key events in FLAC's history and marks the end of an era as FLAC moves into a new phase of development.

This year FLAC moved into its own premises at 13 Lower Dorset Street, having leased the top floor at 49 South William Street for eighteen years. The organisation is also embarking on a new strategic direction which will see it broaden its activist and campaigning work.

FLAC aspires to have public interest litigation as the centre of its work as a mechanism for effecting social change. To realise this goal we work closely with organisations in the community and voluntary sector dealing daily with unmet legal need. Testing the justiciability of social and economic rights is also central to FLAC's work, as campaigning alone has not delivered sufficient results for marginalised groups. FLAC's core agenda is also to assist in the move to a rights-based society and to work in partnership with statutory bodies to realise this goal. Legislation such as the Equal Status Act 2000, the Employment Equality Act 1998 and the Human Rights Act 2002 provides scope for partnership between the voluntary sector and statutory agencies such as The Equality Authority and the Human Rights Commission.

Today, our funding is as secure as it has ever been. FLAC's staffing complement has gradually increased with the help of FÁS schemes and the generosity of the legal professions since 1987, when FLAC hired its first staff member after several years. It should also be noted that in 1992 a grant from the then Department of Justice averted the closure of the organisation and continues to assist us in providing our services.

None of our work could be achieved without the dedication of our volunteers and the generosity of our various funding bodies. We would like to thank all volunteers, funders, the voluntary and community groups with which we work, and our current and former directors and staff for their contribution to making FLAC the organisation that it is today.

Siobhán Phelan

Chairperson

FREE LEGAL ADVICE

Sir, — The Minister for Justice is reported in today's edition (July 26th) of this paper as saying *inter alia*, that this country cannot afford a State financed civil free legal aid scheme. He then makes mention of this organisation, which is having some measure of success in the provision of civil free legal aid.

If we are all that stands in the breach between the doing of justice in civil cases when the litigants cannot afford representation, and the denial of such justice, then I would appeal for greater assistance from both branches of the legal profession, and from the Department of Justice. If we can be quoted in an international speech by the Minister, then surely he can provide us with some limited grant, or some facilities in our work, none of which we receive at the present time.

What this organisation needs is finance for equipment, for some central premises, for office facilities. It would make the job of procuring representation for civil litigants much easier if needy litigants had a statutory exemption from court fees and stamp duties. In marriage cases especially there is need for such exemption. An example could be as follows:— There is stamp duty of £8.00 on every High Court summons issued. This is a crippling burden for a working-class wife needing a separation by the High Court. This is not a difficult piece of legislation: a precedent exists in section 25 of the Rent Restrictions Act, 1960. All this, and more, we ask from the Department of Justice.

From the professions we ask for continued co-operation. We have 70 solicitors on our rotas, covering five centres. Needless to say, more are welcome. As are more barristers. But we are getting on quite well! — Yours, etc.

BRIAN M. GALLAGHER,
Chairman.

Free Legal Advice Centres,
33 Mountjoy square,
Dublin 1.

Brian M. Gallagher, Irish Times, 27/7/1971

THE PURSUIT OF JUSTICE FOR ALL – FLAC IN FIVE DECADES

*If we fail, justice will continue to be available for some,
but not for all. We do not want that.*

Walter Walsh, FLAC activist, 1980.

The 1960s – The Beginning

To those who have observed or worked for FLAC over the years, the organisation has appeared perpetually young, probably because law students continued to play the key role in its establishment and development for most of its history. It comes as a surprise, therefore, to realise that FLAC has been present and at work since 1969.

FLAC was established in 1969, at the end of a decade of rapid change in Irish and European society. A largely rural populace was becoming industrialised. The Seventies, it was correctly assumed, would see major social changes.

But in the arena of social rights the old Ireland rather than the new Ireland still predominated. Single pregnant women had little option but to have their babies adopted, usually in secret. Until 1974, women were obliged to leave banks and civil service employment when they married. Contraception was banned until then. There was no divorce or judicial separation and, at the time, no prospect of their introduction. A married woman could not qualify for unemployment assistance unless her husband had a disability.

In this atmosphere of expectation of change vying with resistance to change, a conference on legal education was held in Trinity College Dublin in 1968. In the audience was a UCD undergraduate, David Byrne, now EU Commissioner for Health and Consumer Protection.

At that conference, he recalled later, “it was generally agreed that the lawyer, including the student, could benefit his community by using his specialised knowledge to help the underprivileged members of that community. It was emphasised that the law student should gain practical experience of the law as a social reality rather than a theoretical abstraction.”

He discussed the idea with fellow law students Denis McCullough, Vivian Lavan and Ian Candy and in April 1969, FLAC opened its doors at the premises of the Society of St Vincent de Paul in Mountjoy Square, Dublin. Other centres soon followed in the ISPCO offices in Molesworth Street and in Ballymun, Crumlin and Rialto. In parallel, a Free Legal Advisory Bureau – later to become FLAC (Cork) – was opened in Cork by a group of students from University College Cork.

The immediate aim of the new organisation was to use law students to give free legal advice to those who could not afford legal fees. Through this work it was hoped to advance the ultimate aim of FLAC – to persuade Government to establish a civil legal aid scheme.

Thus, the foundation of FLAC had another dimension. Previously, most groups operating in the field of social services were entirely oriented towards providing services. FLAC’s primary purpose was to establish and vindicate rights, in particular the right to civil legal aid. In this sense FLAC can be seen as initiating a new movement in the development of social services.

There is little doubt that the social and legal landscape have benefited immeasurably from the work of the law students who set up that first free legal advice centre in Mountjoy Square in 1969.



At the Free Legal Advice Centres news conference in 1972 which called for State funding for divorce and other radical changes in matrimonial law. From left to right: David Molony, chairman; Anne Colley, secretary and Alan Shatter, director.

The 1970s – The Pringle Committee and the Airey Case

A further decade was to pass before a limited scheme of civil legal aid was introduced by the State. The groundwork, however, was done in the 1970s.

The 1970s was a decade in which the reality of social inequity was unveiled to a somewhat complacent society at an official level and many groups set about addressing this inequity, with varying degrees of success.

That a significant proportion of the population lived in poverty was ‘rediscovered’ in the early 1970s and this promoted a widespread expansion of social services.

Many of these services were based on the concept of helping ‘those less fortunate than ourselves’ but the notion of people having rights to services began to gain ground too. Official recognition of a rights-based approach came with the establishment of the National Committee on Pilot Schemes to Combat Poverty in 1974. The 1970s also saw the emergence of rights-based voluntary organisations such as the AIM Group for Family Law Reform, Cherish and Women’s Aid which provided services and campaigned for change.

Meanwhile, the law students who staffed FLAC’s advice centres – initially open one night a week – found themselves coping with a heavy demand for their services. By the time FLAC published its first annual report in 1972, it had handled 2,437 files. This had risen to more than 8,000 files by the time the second annual report was published in 1974. Almost one-third (31 per cent) of these files concerned family law, followed by crime (18 per cent, due largely to a strike by lawyers operating the State legal aid scheme for criminal cases) and landlord and tenant (14 per cent). In that year, 60 students were running a total of eight centres with the help of a panel of 50 solicitors and 40 barristers. In Cork, by contrast, landlord and tenant issues tended to be the main source of inquiries to FLAC.

A workload of this size was demanding for the organisation and diverted energy from the campaign for an official civil legal aid scheme, but it ultimately served the wider objective. A threat by FLAC to close down not only secured State funding – which was used to fund the establishment of Coolock Community Law Centre (now the Northside Community Law Centre) – but led to a government decision to set up a working party on legal aid.

The committee, under the chairmanship of Mr Justice Denis Pringle, included Brian Gallagher, nominated by FLAC. The Pringle Report, issued in 1977, reflected the views of FLAC in recommending that civil legal aid be provided by a combination of private lawyers and salaried lawyers working in community law centres and legal advice centres. Crucially, it recommended that law centres should set out to make the public aware of their rights and should identify necessary law reforms.

The Pringle Committee had accepted not only the necessity for legal assistance based on ability to pay. It also recognised the psychological barrier which prevents those unaccustomed to using solicitors from approaching them for assistance; the cultural gap between lawyers and people on low incomes and the fact that many private solicitors have little or no knowledge or experience in the areas of law affecting people experiencing poverty – employment rights, social welfare law and family law.

Two years later, the European Court of Human Rights found Ireland to be in breach of the European Convention on Human Rights because it had failed to provide legal assistance to Mrs Josie Airey (represented at the European Court of Human Rights by Mary Robinson) in her attempt to obtain a judicial separation.



Josie Airey.
(© Derek Speirs)

The Government was forced to act and produced a “Scheme for Civil Legal Aid and Advice”. As we outline elsewhere in the publication, the scheme was limited to providing a legal service in certain areas of law to people who met financial and merits criteria. The strategic element of creating a more informed public and identifying necessary reforms was not addressed.

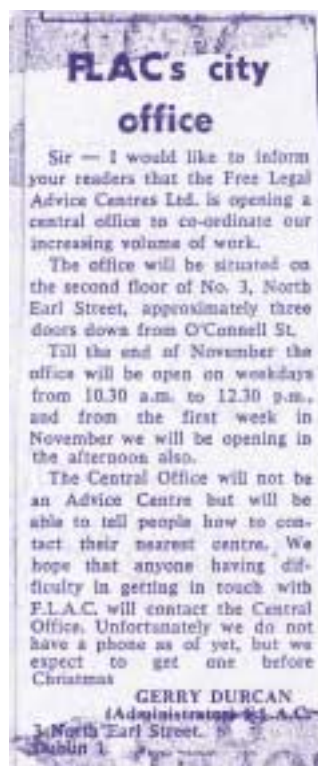
FLAC, meanwhile, had established Coolock Community Law Centre in 1975. CCLC was designed to act as both a service and strategic resource in its community. It would also, it was hoped, be a model for future community law centres set up by the State. In 1974, the same year the Pringle Committee was established, FLAC was incorporated as a limited company. It organised a seminar on legal aid in the UK that year and made a detailed submission to the Pringle Committee.

Cases were initiated on welfare and employment law before the courts (relying on sympathetic solicitors and barristers). It expanded its centres in Dublin and opened centres in Bray, Galway and Limerick. It organised a seminar on *Access to Justice* in 1977.

In 1978 FLAC received a Department of Justice grant of £15,000, opened a central office in North Earl Street and appointed a full-time administrator, Gerry Durcan.

By the end of 1979, FLAC had made an impact. It had provided the impetus for the establishment of the Pringle Committee. FLAC's blueprint for the development of civil legal aid in Ireland had been accepted by the Committee, though not by the Government. With other organisations (such as the National Social Service Council, now Comhairle, established in 1970) it was moving the concept of rights for disadvantaged people out of the shadows. Finally, it was directly providing legal advice in an expanded number of centres.

However, it was about to enter the most challenging decade of its existence.



Gerry Durcan, Irish Independent, 20/10/1978

The 1980s – Disappointment and Achievement

The 1980s was a decade of cutbacks and economic recession. These were difficult times, both for FLAC and for those on low incomes whom it mostly served.

In 1980, FLAC's funding was discontinued on the grounds that there was now an official Scheme of Civil Legal Aid and Advice in existence. Its full-time administrator resigned and finding money to pay for the head office in North Earl Street was a constant worry.

FLAC decided to close its centres in 1980 on the basis that a Scheme of Civil Legal Aid and Advice had been introduced. It did, however, help to establish and service a network of legal advice centres in conjunction with other organisations providing social services. FLAC in Cork decided to remain open and operated three centres in the city.



Irish Independent, 30/6/1980



Irish Times, 30/6/1980

FLAC now began to change focus. Prior to the establishment of the official Scheme of Civil Legal Aid and Advice, most of FLAC's legal work had been in the area of family law. This work was now taken up by the State Scheme.

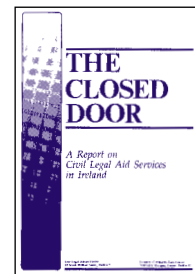
However, among the limitations of the State Scheme was the exclusion of tribunal work such as the majority of employment law and welfare cases. Indeed, the State Scheme very quickly arrived at its current position where the demand for advice and representation in family law cases is so huge, it has chosen to focus almost exclusively on that area.

FLAC decided to fill, as best it could, the gap in the Legal Aid Board's remit. Its method was to establish a series of welfare rights centres. The first welfare rights centre was in St John's Lane, beside Christchurch Cathedral, and five other centres were established shortly afterwards. At a time of high unemployment and job insecurity there was heavy demand for the expertise FLAC was now developing in the welfare and employment rights fields. However, it proved impossible to confine the welfare rights centres to these two areas of law as they responded to public demand for legal advice across a range of issues. The organisation took cases to the courts, mainly on welfare issues, and won back payments (in *Cotter and McDermott -v- Minister for Social Welfare and Attorney General*) of welfare arrears for tens of thousands of women in a lengthy legal process which came to fruition in the 1990s.

In 1985 FLAC signed a 35-year lease on the top floor of 49 South William Street where it remained for 18 years.

In the second half of the 1980s, FLAC's finances were boosted from a number of sources – the Bar Council and the Law Society organised donations from lawyers and funding also came from People in Need, the Ireland Fund, Combat Poverty and the Inner City Development Fund. FLAC was able to employ a full-time administrator again in 1987.

Throughout this time, FLAC remained sharply critical of the limitations – in terms of both its scope and its funding – of the restricted State Scheme of Civil Legal Aid and Advice. These limitations which were examined in *The Closed Door: A Report on Civil Legal Aid Services in Ireland*, published in conjunction with Coolock Community Law Centre in 1987.



The 1990s – New Directions

In the early 1990s FLAC faced closure again because of a shortage of funds. However during the 1990s it found itself moving to a position of some financial stability and campaigning strongly on a range of issues.

The campaign for a comprehensive, properly funded civil legal aid system was intensified. “Few people would disagree with the constitutional principle that all persons should be held equal before the law,” wrote FLAC chairperson Iseult O’Malley in the *Irish Times* on 11 May 1995. “We take for granted the notion that anyone appearing in a court of law is entitled to an even-handed application of the law without regard to personal status or wealth. In practice, we should accept that this principle also requires equality of access to the law and, by extension, equality of access to effective legal assistance.”



Civil Legal Aid Alliance launch, October 1992:
Roisin McDermott, Women’s Aid; Eugene
Davy, family law solicitor.

FLAC complained to the European Commission about Ireland’s failure to implement such a system. It published a study on legal aid in other countries, made submissions on proposed legislation to the Oireachtas and joined with other organisations, including Coolock Community Law Centre, in applying pressure on Government. These efforts included the establishment, with 11 other organisations, of the Civil Legal Aid Alliance in 1992.

Finally, the State Scheme for Civil Legal Aid and Advice was given statutory footing by the Civil Legal Aid Act, 1995. However, the new scheme was as restrictive as the old and did not implement the report of the Pringle Committee. Neither did it provide for the representation of bodies such as FLAC or the Coolock Community Law Centre on the Legal Aid Board itself.

FLAC was also active on the social welfare front and undertook a study of a social welfare benefit take-up campaign in Clondalkin in 1990 and 1991. A 50-page report



Iseult O’Malley, *Irish Times*, 21/5/1991

evaluating the campaign was written by researchers Mel Cousins and Brian Charleton.

FLAC also produced publications on social welfare law:

- ▼ A Guide to Unemployment Payments and Employment Schemes. -1993
- ▼ A Guide to Supplementary Welfare Allowance -1991
- ▼ A Guide to Pensions for the Elderly – 1994
- ▼ A Guide to Social Welfare Claims and Appeals -1991;1992
- ▼ A Guide to Social Welfare Payments for Families – 1992
- ▼ A Guide to Sickness and Disability Payments - 1997



Mel Cousins, speaking at the launch of the Disability Benefit Guide, 14 July 1997.

These publications were researched and written by Gerry Whyte and Mel Cousins.

In 1993 FLAC undertook research on consumer credit legislation in Ireland for the European Commission. At that time Ireland had yet to implement the consumer credit directives. FLAC's developing interest in the credit and debt area culminated in submissions being made on the Consumer Credit Bill.

FLAC also took a strong position on the issue of immigration and racism. Along with the Immigration Law Practitioners' Association, FLAC held a seminar on legal remedies for discrimination and racial attacks in 1993 – years before the sharp increase in immigration became a public issue. The following year, FLAC carried out a survey on behalf of the European Commission of legal measures to combat racism, a study which focused on the experience of Travellers. FLAC was later among the organisations which successfully called for a legal aid scheme for asylum seekers. It also campaigned, as it continues to campaign, against the harsh 'direct provision' regulations applied to asylum seekers by the State which have put them into a position of absolute economic dependency.

The campaign to have social welfare arrears paid to women who had been discriminated against in breach of EU law continued into the 1990s and was one of FLAC's significant achievements of the decade.

FLAC was also involved in the successful campaign for the removal of the constitutional ban on divorce in 1995. It continued to make submissions to Government on topics which included social welfare payments for one-parent families, the Courts Service, the law on cohabitation, unfair dismissal and the treatment of Travellers.

In the early 1990s it had campaigned for the establishment of community law centres in Clondalkin and Tallaght. State run law centres were instead set up in these areas with support from the Suitor's Fund. In the late 1990s, FLAC participated in the successful campaign to establish a community law centre in Ballymun.

Throughout this period FLAC continued to operate a number of legal advice centres both directly and in conjunction with Citizens' Information Centres.



Rachel Murphy, Solicitor

"I've volunteered with FLAC in Crumlin for about three years now and have found the experience to be very rewarding. On one particular occasion, FLAC was able to provide immediate and vital legal assistance to an individual who visited the advice centre in Crumlin with nowhere else to turn. It was great to be able to help in such a tangible way. FLAC liaised with the Legal Aid Board who managed to obtain a High Court order the following day in what turned out to be one of the first test cases of its type in Ireland."

Rachel Murphy, solicitor.

FLAC launched its quarterly newsletter FLAC News in 1990 and published booklets on social welfare (drawing on FLAC's detailed knowledge of the welfare system from the clients' viewpoint), maternity rights and the law relating to moneylending.

FLAC developed an international link in 1999 when it arranged its first Fellowship in International Public Interest Law in conjunction with the University of Washington, Seattle. This enables Irish law students to go to Seattle to gain a comparative insight into public interest law in the US, with a view to promoting innovative and alternative approaches in Ireland. Similarly, American law students spend time working on public interest projects in Ireland.



Laura McGowan, winner of the 2003 Thomas Addis Emmet Fellowship in International Public Interest Law, pictured with Mr Justice Donal Barrington, Chief Adjudicator of the competition (Photo © Collins Photo)



Picket outside the Department of Justice for statutory funding, January 1992.

On funding, the picture gradually brightened in the 1990's. Following a 12-year break, and with FLAC facing imminent closure, state funding was restored in 1992 with a grant of £40,000 and an assurance from the Minister for Justice, Ray Burke TD, that funding would continue in future. Though heavily underfunded, FLAC ended the 1990's with an impressive work record, with proven ability to adapt to change and with notable achievements.

FLAC had also developed a broader focus on human rights that would increase in the early years of the next decade, and a strategic vision involving a growing awareness of campaign work and public interest litigation.

Drawing on its experience of the needs of those who came to it for advice and on its own analysis, FLAC closed the decade with a number of important submissions. These included a submission to the Law Society's Family Law and Civil Legal Aid Committee which ultimately published its report on Civil Legal Aid in Ireland in 2000. FLAC was also represented on the Law Society's Pro Bono Task Force which reported in 2001. It made submissions on the Human Rights Commission Bill 2000 and the European Convention on Human Rights Bill 2001.

2000 + An Era of Expansion

FLAC entered the new millennium with certain themes well established.



An End Based on Means?
by Paul Joyce, published May 2003

It continues to be concerned with the State's continuing failure to reform the law on debt. In 2003, FLAC published its report, *An End Based On Means?* condemning existing legal procedures for dealing with debt as outdated and confrontational.

Of concern too is the treatment of asylum seekers in general and in particular the system of direct provision which requires asylum seekers to live in hostel-type accommodation around the country, provided by the State, while receiving reduced supplementary welfare allowance of €19.10 per week.

FLAC continues to pursue its central interest in the development of Civil Legal Aid in Ireland. At the end of 2003 the organisation intends to publish its major research report on Civil Legal Aid in Ireland with comprehensive recommendations that will set out FLAC's vision for a fully inclusive legal aid system.

FLAC sees public interest litigation as a significant mechanism for effecting social change. The taking of test cases is a continuing feature of FLAC's work, the most recent being that of Dr Lydia Foy who sought the right to be legally recognised as female on her birth certificate following gender reassignment surgery. The case was the first of its kind in the Irish courts and was brought by FLAC. Dr Foy's application was rejected but she is to appeal to the Supreme Court with the support of FLAC.

In *Cavanagh -v- The Legal Aid Board*, FLAC represented a client who had waited 18 months after she received her Legal Aid Certificate before she saw a solicitor. The case was lost in the High Court and is being appealed to the Supreme Court. The right to legal aid is an area which has not been much litigated to date.

A number of other public interest cases are in progress.



Direct Discrimination? An analysis of the scheme of Direct Provision in Ireland published in July 2003

FLAC continues to answer queries from the public through its information and referral line, its part-time advice centres in Dublin and Cork, and at advice centres around the country operated through Citizens' Information Centres. Last year, 5,700 queries were received at the helpline. Dominant topics were family law (31 per cent) and employment rights (12 per cent). FLAC directly operates 21 legal advice centres and a further 34 are operated through Citizens' Information Centres, very often with volunteer solicitors and barristers recruited by FLAC.

“I wish that I could say that the majority of those who come in the door don't need to go on and talk to a solicitor. The truth is that more than half do. There are few who need just practical pointers on what their options are, so in that sense my role can often involve more practical advice than legal advice. However there is a solid block of people, usually with the same or similar problems, who really do need the advice and care of a professional practitioner.”

Jonathan Whisker, solicitor.



Pictured here are Jonathan Whisker, FLAC volunteer and Stella O'Brien, Manager, Ballyfermot Citizens Information Centre.

FLAC has developed additional strategic centres. One centre of which the organisation is particularly proud is operated in conjunction with the National Association of Deaf People. This centre operates twice monthly and is staffed by volunteer lawyers and an interpreter provided by NADP.

FLAC provides a limited representation service at Rights Commissioner hearings, the Employment Appeals Tribunal and Social Welfare Appeals. The quarterly newsletter *FLAC News* which first appeared in 1990 monitors developments in anti-poverty law and keeps readers up-to-date on the work of FLAC. *FLAC News* was a successor to *FLAC File* which appeared for a time in the 1980s.

Researching the impact of the law on the disadvantaged and making submissions to bodies in a position to bring about change remain important to the work of the organisation.

FLAC continues to provide training courses on aspects of the law and legal and technical support for statutory and community bodies. Developing innovative approaches to the vindication of rights is a core part of the role of FLAC, in particular encouraging the use of mediation in legal disputes and in debt issues.

FLAC's financial position has continued to improve. The organisation receives an annual grant from the Department of Justice, Equality and Law Reform and operates a FÁS scheme. It has received once-off grants from the People in Need Trust, the Joseph Rowntree Charitable Trust and the Combat Poverty Agency. Almost 200 barristers and solicitors give voluntarily of their time to the part-time advice centres. FLAC also receives significant financial support from members of the Law Society and the Bar Council.

In February 2003, the organisation moved to new headquarters in Lower Dorset Street, from which it continues to campaign for equal access to justice for all and for a comprehensive, well-resourced, state scheme of Civil Legal Aid, including the establishment of community law centres.

JUSTICE DELAYED – THE STRUGGLE FOR CIVIL LEGAL AID

I must say that I find it very disappointing that, ten years after the publication of our Report, so few of the recommendations in that Report have in fact been implemented by the State, even allowing for the financial restrictions operating during these ten years.

Mr Justice Denis Pringle, *The Closed Door*, 1987

When FLAC was a very young organisation it looked as though the struggle for a comprehensive system of Civil Legal Aid and Advice could be won in a relatively short time. That has proved not to be the case.

FLAC had only been established for five years when the Pringle Committee was set up in 1974, under the chairmanship of Mr Justice Denis Pringle and including a representative of FLAC, Brian Gallagher.

The committee's report, issued in 1977, reflected much of the thinking put forward in FLAC's submission. FLAC had pointed out that many people did not make use of the courts or appeared without the benefit of representation. While this was due to a lack of means, to a significant extent, it was also due to people's lack of familiarity with the law and with lawyers, often compounded by the absence of any nearby solicitor's office. FLAC also pointed out that the people who approached the organisation for help often did so not to enforce their own rights, but because they found themselves facing legal proceedings.

For these reasons, FLAC believed that educating people on their legal rights should be a function of any state scheme of legal aid and that law centres should be located in communities they served and managed by representatives of community bodies. Moreover, community law centres should involve themselves in community development because the legal problems of people in communities often arose from issues which could be resolved only through the mobilisation of community forces.

The Pringle Committee, in its report, envisaged a scheme which would provide legal advice and representation on all legal problems to those who were eligible. This was to include assistance and representation where legal issues arose at employment, welfare and other tribunals.

The Legal Aid Board was to administer the scheme through panels of private lawyers and through salaried lawyers working at community law centres and legal advice

centres. Small towns and rural areas were to have part-time centres staffed on a sessional basis by private solicitors.

Finally, the role of the community law centres was to include that of making people aware of their rights and of identifying any need for law reform.

The scheme actually implemented by the Government in 1980 was restrictive and barely reflected these recommendations. In effect, the Government did the minimum necessary in response to the finding that year by the European Court of Human Rights in favour of Mrs Josie Airey, who had been unable to obtain legal assistance with her application for a judicial separation because she could not afford to pay. Essentially, the court found that Ireland was in breach of that part of the Convention which guarantees effective access to the courts. The court ruling obliged Government

to introduce a scheme of legal assistance – and yet another threat by FLAC to close its centres added to the pressure. The court did not, unfortunately, say what the features of this scheme should be.

Under the government scheme, legal aid and advice would be provided by salaried solicitors in law centres. No tribunal work would be done. There would be no educating people on their rights. There would be no identifying areas that needed reform. The means test for applicants was severe and the type of cases dealt with was limited, as was the number of law centres.

FLAC and many other organisations which had campaigned for a scheme of Civil Legal Aid boycotted the opening of the first Legal Aid Board Law Centre in Lower Gardiner Street, Dublin on 8 September 1980.



Des O'Sullivan, Cork Examiner, 9/9/1980

Within months, FLAC was picketing the Dáil because the Gardiner Street centre was able to take only urgent cases and the Aston Quay centre had had to stop taking new cases, because of demand.

The State Scheme was, FLAC chairperson Bill Shipsey told the *Irish Times*, collapsing.



Mr Justice Denis Pringle at the opening of the Gardiner Street Law Centre, 8 September 1980. (© Derek Speirs)



Bill Shipsey, Irish Times 23/8/1980



Mary O'Malley, Irish Times 6/2/1981

FLAC was very disappointed and published its criticisms of the scheme. It warned that the absence of a proposal to use private lawyers as well as law centres would leave law centres facing a demand which could not be met. It declared that bodies such as the Law Society, the Bar Council, the Irish Congress of Trade Unions and the Council for the Status of Women should be represented on the Legal Aid Board. It sought the creation of community law centres in some areas, with management committees drawn from the community. These criticisms and observations were ignored.

The organisation continued to fight, in a variety of ways, for a satisfactory Civil Legal Aid system. It highlighted the long waiting lists for the official legal aid centres. It complained to the Council of Europe, the European Commission and the European Parliament and it took a case to the High Court.

It also worked with other bodies such as the Catholic Social Service Conference and the Civil Legal Aid Alliance, which it had helped



Launch of the Civil Legal Aid Alliance, October 1992. Pictured are Amanda Jane Field B.L., Threshold; Gráinne O'Hara, FLAC; Mary O'Higgins, Threshold; Susan McKay, Coolock Community Law Centre; Eamon Carroll, FLAC Solicitor; Karen Armstrong, Women's Aid; and Róisín McDermott, Women's Aid.



to establish along with Coolock Community Law Centre, Threshold and eight other NGOs in 1992.

In 1987, FLAC and Coolock Community Law Centre published *The Closed Door: A Report on Civil Legal Aid Services in Ireland*. Notably, the report included a foreword by Mr Justice Denis Pringle who made clear his disappointment with the scope of the scheme of Civil Legal Aid instituted by the Government:

“The limitations and deficiencies of the Scheme of Civil Legal Aid and Advice established by the Minister in 1980 are all too clearly identified in this report and, although another seven years have since elapsed, it does not appear that any attempt has been made to improve the situation.”

What were these limitations and deficiencies? As noted above, the Legal Aid Board had no educational role and no role in recommending specific legal reforms, even though its work unquestionably qualifies it to make such recommendations. The importance of an educational role cannot be overestimated. As Gerry Whyte wrote in the 1987 Report, “Mrs Airey was denied access to the law, not because she was unaware of her rights, or because she was intimidated by the legal profession, but because she could not afford legal representation.”

Had Mrs Airey not known about her rights, the State may have been spared the embarrassment of losing a case on Civil Legal Aid at the Court of Human Rights. If information is power, then educating the poorest people on their legal rights could result in considerable inconvenience for the State.

The State Scheme also excludes many areas of the law. For instance, the Legal Aid Board cannot represent clients before the Employment Appeals Tribunal, social welfare, planning or other tribunals. In recent years, the term ‘tribunal’ has become synonymous in the public mind with inquiries into allegations of misdeeds on the part of empowered people. Ironically, witnesses to these tribunals can and do have the cost of being advised and represented by expensive teams of lawyers met by the State. Meanwhile, those who need representation before tribunals whose work concerns people of more modest means cannot get such assistance.

The original State Scheme also excluded the taking of class actions and test cases. Group actions, such as that taken by FLAC on behalf of married women denied equal treatment under the social welfare system, are vital to many people who would not have the means to employ lawyers privately. The importance of such cases, especially in a political culture apathetic to the development of social rights, has been demonstrated time and again, including, ironically, in the case of Mrs Airey.

A major disappointment has been that the scheme is run by a Legal Aid Board mainly employing salaried solicitors in its own law centres. Legal Aid Board law centre solicitors work on behalf of those clients who get to the top of the waiting list. They often get little credit for the work they do in the stressful field of family law. But had there been a supplementary use of panels of private solicitors – in much the same way that family doctor services are provided to medical card holders – from the start, waiting lists would have been far shorter and not such a feature of the present scheme. Supplementary panels would have enabled Legal Aid Board law centre solicitors to share their considerable expertise with the community, through education programmes, and through training those private solicitors who have relatively little experience of social welfare and employment cases.

While the original Scheme of Civil Legal Aid and Advice was too narrow in scope, an opportunity to redress the situation came in 1995 with the publication of the Civil Legal Aid Bill. However, the opportunity was ignored. “Little thought appears to have been given to the Scheme’s original shortcomings or to relevant developments in the law since then,” wrote FLAC chairperson Iseult O’Malley in the *Irish Times* following the publication of the Bill.

The new legislation provided that legal aid for eligible people appearing before employment, social welfare and income tax tribunals could be implemented at a future date by ministerial order. However, no such order has ever been issued.

Delays in getting an appointment with a solicitor in a Legal Aid Board law centre – except in certain priority cases – have been and remain a constant of the Scheme since the 1980s. In 2003, FLAC revealed that delays of up to 13 months were being experienced in some areas for appointments and the Board itself warned that longer waiting times could be on the way due to budgetary constraints.

The demand for the services of the Legal Aid Board has always outstripped its resources, even though its funding more than doubled between 1992 and 1996. The number of LAB law centres was expanded substantially and a pilot scheme was launched in the Dublin Metropolitan area under which private practitioners were retained by the LAB in some District Court cases. This was later expanded to centres outside Dublin. The scheme was abandoned in Dublin in February 2003 to save

€200,000 after the Legal Aid Board's funding was cut from €17.6 million in 2002 to €17.075 million (domestic violence matters excepted).

The expansion of the use of private practitioners, however, is too limited. With the cutbacks in the Dublin service, the LAB law centres have largely confined themselves to handling family law cases to the exclusion of all other legal issues. Even at that they have had to close their doors from time to time to handle a volume of work for which they have never been given sufficient staff. The advent of divorce added significantly to the workload of the LAB law centres from the second half of the 1990s but this was not met by a corresponding increase in resources.



Peter Ward speaking at a conference on *Clearing the Way for Divorce*, 27 May 1995.

Unfortunately, the most striking development in recent years has been the decision, taken in 1999, to transfer most of the Legal Aid Board's administrative functions to Cahirciveen, Co Kerry, in the constituency of the then Minister for Justice, Equality and Law Reform, a move which began to be implemented in 2001. This has fragmented the organisation and has further handicapped it by using up further resources of money, time and energy which would have been better used in its law centres on behalf of clients.

In the Annual Report of the Legal Aid Board for 1987, the then chairman of the Board, Nial Fennelly S.C., said he "deeply" shared the disappointment expressed by Mr Justice Pringle that so few of the recommendations in his report had been implemented. Referring to waiting lists for the services of law centre solicitors, he wrote "the well known adage is that justice delayed is justice denied. I can only regret that justice has to be denied in so many cases." Three years later he resigned in protest at the way in which the LAB was being starved of resources.

Almost two decades later Mr Fennelly's 1987 criticism remains valid.

NOT FOR THE PEOPLE BUT WITH THE PEOPLE – COOLOCK, BALLYMUN AND THE CONCEPT OF THE COMMUNITY LAW CENTRE

The service needs to have roots in the community it serves, it needs to be able to provide a comprehensive service to all potential users, individuals and community groups. It needs to be able to assist that community to achieve change where necessary.

Dave Ellis, Community Law Officer, Coolock Community Law Centre,
The Closed Door, 1987

This concept of the community law centre has been promoted by FLAC from its foundation and has just as consistently been ignored by successive Governments.

Neighbourhood law centres of this kind were established in the United States during the 'War on Poverty' of the 1960s instituted by the Johnson administration. Their job was to tackle inequality by educating poor people on their legal rights, helping them to fight for these rights in an organised way and lobbying for change. Community groups were represented on their management committees.

This model, or variations upon it, soon spread to other countries. However, because of the grudging approach of successive Irish governments to the provision of Civil Legal Aid and Advice, there has been little welcome for the concept here.



FLAC protest outside Dáil Éireann to mark the first anniversary of the Pringle Report, 14 December 1978. (© Derek Speirs)

FLAC, however, remains convinced that the community law centre is an indispensable component of any civil legal aid infrastructure. That is why it established Coolock Community Law Centre (now Northside Community Law Centre) and has taken part with other groups in the successful campaign to establish Ballymun Community Law Centre.

COOLOCK COMMUNITY LAW CENTRE

In 1974, a time of hope for the future of civil legal aid, FLAC decided that it could best make the case for community law centres by establishing such centres itself.

A year later, CCLC opened its doors at the Northside Shopping Centre in Coolock. Managed by a full-time solicitor, George Gill, it went to work despite a lack of secure funding. Máire Bates took over the management of the centre the following year. After two years, a community law officer was added to the team with funding from the National Committee to Combat Poverty – an organisation which was proving too radical for some and which would be abolished within a few years, though a successor, the Combat Poverty Agency, was later established.

The arrival of the Community Law Officer, Dave Ellis (who worked there for 20 years), allowed CCLC to make links with the community, research community needs and implement programmes of education in the area of rights. Links with community groups had been created before the centre was established but the pressure of casework meant that they had not been nurtured. Now the links were re-established, an essential component of implementing the planned community control over its work.

There was an immediate demand for the legal advice provided by the centre. In its first ten years, CCLC took on almost 4,000 new files, an extraordinary workload for a small team of people who also had to find the time to assist the management committee in its endless task of raising funds to keep the centre open. In many cases, the workload involved providing legal representation as well as advice. This caseload, in turn, reduced the amount of time and energy that could be given to more strategic community work.

These objectives of responding to individual demand for legal advice, acting as a more strategic resource in the community and raising the money needed to survive, became the three reference points for CCLC. Over the years, the centre had to gradually exclude certain areas of work in order to be able to carry out its strategic resource role. Ultimately, it focused on areas of law outside the State Legal Aid Scheme: employment and welfare rights, housing, discrimination and debt.

CCLC was seen as a trusted resource in the community. It represented the next-of-kin of those who died in the 1981 Stardust fire. While Máire Bates attended the

tribunal on behalf of CCLC, her work was taken on by a solicitor provided by the Legal Aid Board. The centre also involved itself in community issues. It took part, for instance, in a campaign for the return of a local Post Office and in the campaign against water charges. It was involved, with others, in setting up such bodies as the Dublin Welfare Rights Group and provided legal advice to many community groups in its catchment area.

Bodies seeking to better their own communities inevitably find themselves working for changes in national policy and CCLC took to this with energy and a remarkable capacity for work. It prepared reports and submissions on topics including barring orders, marriage breakdown, the training of Gardaí, redundancy, consumer debt, rights of lone parents and the social welfare appeals system. Along with FLAC, the centre published *The Closed Door* in 1987 exposing the failure of the State to implement a satisfactory system of Civil Legal Aid and Advice. Its oral submission on the Domestic Violence Bill 1995 to the Dáil Select Committee on Legislation and Security not only informed the legislation but made procedural history: this was the first ever oral submission by a group from outside the Oireachtas to an Oireachtas Committee processing legislation.

FLAC continued to campaign for its belief that community law centres should be managed by the community. A management committee representing local groups was set up in 1978. Accordingly, FLAC withdrew from the committee the following year. In 1979, CCLC launched a campaign for the introduction of divorce by organising a public meeting on the topic in Kilbarrack, followed by a bigger meeting in Liberty Hall. After that meeting the Divorce Action Group was set up. Its campaign ultimately led to the referendum in 1986 in which the removal of the ban on divorce was rejected. The subsequent campaign succeeded when there was a narrow majority in favour of divorce in a second referendum held in 1995. CCLC's role in initiating the campaign which led to the 1986 referendum was deeply disapproved of in the Department of Justice at the time.

CCLC also campaigned against the infamous 'Dirty Dozen' social welfare cuts introduced by the then Minister, Mr Charles McCreavy, in 1992. It has organised conferences on poverty, homelessness, local authority rent arrears (in partnership with the National Campaign for the Homeless) and many other issues, and published legal and welfare rights guides such as the *Guide to Maternity Rights* (in conjunction with FLAC).

Throughout these years, funding was a constant worry. As Gerry Whyte puts it in his book, *Social Inclusion and the Legal System – Public Interest Law in Ireland* (Institute of Public Administration, 2001) “no politician wished to be seen closing down the centre, but equally no politician ever felt under sufficient political pressure to provide adequate funding.”



FLAC picket Jury's Hotel, Ballsbridge where Gerry Collins TD, Minister for Justice was addressing the Dublin Chamber of Commerce. 25/11/1979
(© Derek Speirs)

Each year brought the possibility that funding would either not be renewed or would be renewed at an insufficient level to enable the centre to do its job. The management committee devoted much of its energy to the difficult task of fundraising and CCLC often seemed to stare closure in the face. The fees paid by the State for CCLC's work on behalf of next-of-kin of the Stardust victims stood between the centre and shutdown in 1981. At the end of 1991, funding came through only half an hour before the centre was due to close down.

Only in 1997 did the situation improve when the National Social Services Board (now Comhairle) took over the funding and the uncertainty was ended. In recent years the Centre has helped establish the country's second community law centre

in Ballymun. CCLC has also supported campaigns by FLAC to have community law centres established in Tallaght (1984) and Clondalkin (1993) and both campaigns resulted in the opening of State law centres there.

In 1998, with voluntary representatives more difficult to find (a common problem nationwide), the centre replaced its management committee with a board of directors drawn from the community. The following year it set up a Community Liaison Council, made up of representatives of local organisations, to act in an advisory capacity to the centre.

Now called Northside Community Law Centre, the service has moved from Northside Shopping Centre – its home for nearly 30 years – into the Civic Centre on Bunratty Road, Coolock.

BALLYMUN COMMUNITY LAW CENTRE

Ballymun Community Law Centre owes its existence to a locally-based campaign to ensure that legal services were provided to people in their own area. Remarkably, the area had no private solicitors. At the end of 2000, an action plan, based on research by Dave Ellis (by now an independent consultant) and including the ideas of more than 20 voluntary, community and statutory groups, was launched. The country's second community law centre, funded and supported by a range of statutory and non-governmental organisations, opened its doors in November 2002. In August 2003 it moved to new premises at a Dublin City Council flat at 34 Shangan Road from Stormanstown House, where it had had its base since the campaign days.

BCLC has a mutually co-operative relationship with the Legal Aid Board. This will hopefully act as a template for the future. Its manager, Frank Murphy, is seconded from the Board and his salary is reimbursed to it by the Joseph Rowntree Charitable Trust. The Board takes on any family law cases which local people bring to BCLC and a representative of the Legal Aid Board attends the centre every week for this purpose. This is an important facility because it means that clients with family law issues are not sent from pillar to post as the service is provided locally by the BCLC.

Ballymun Community Law Centre also carries out casework in areas not covered by the Legal Aid Board. It provides a legal support service for community groups and training in such areas as social welfare, employment law and family law. It also runs a community mediation service, Mediation Ballymun, which helps people to settle disputes without recourse to an adversarial legal system. The Centre hosts information clinics operated by Threshold (the housing advice organisation) and the Citizens Information Centre.

The achievements of the Coolock Community Law Centre (the model on which Ballymun CLC is largely based) have been remarkable and, in FLAC's view, they have made an unanswerable case for the establishment of community law centres throughout the country.

INDEPENDENT LAW CENTRES NETWORK

Late in 2002, the Independent Law Centres Network was established to further the development of the concept of the independent community law centre and to develop strategic partnerships with the Legal Aid Board and other relevant agencies. Members of the network include FLAC, the Irish Traveller Movement Legal Unit, Northside Community Law Centre, Ballymun Community Law Centre and the Immigrant Council.

This network gives the voluntary legal sector an opportunity to discuss issues pertinent to their work and to work on policy matters such as developing partnerships with the Legal Aid Board. A report on this work is currently in the process of being drafted.

In summary, the network's objectives are:

- ▼ An information and public awareness campaign around legal aid available to those of modest means
- ▼ Political lobbying at government level for statutory reform of eligibility criteria for legal aid

- ▼ Establishing a joint Research and Development Unit to investigate unmet legal need, quality of service, alternative models of service delivery and the empowerment of the citizen within the legal context
- ▼ Establishing an education unit to train and support staff development within the organisations and also to educate professionals and individuals outside the organisations
- ▼ Partnership between Independent Law Centres and the Legal Aid Board in the development of customer services
- ▼ Establishing a cross referral system
- ▼ Developing further partnerships within the community/voluntary and statutory sectors.

In May 2002 Ballymun CLC, Northside CLC and FLAC made an application to the Department of Social and Family Affairs for funding under their scheme, 'Training Supports for the Community and Voluntary Sector'. They learned in September 2003 that this application was successful and that funding of €35,000 per year for three years would be provided to establish a project in Ballymun and Dublin North East. The project will provide training and support to local community groups in the areas of employment law and company compliance.

THE ARRIVAL OF THE SPECIALIST LAW CENTRE

Although based in Dublin (at least initially), the Disability Legal Resource will be available to and will cater for the needs of people with disabilities wherever they are located.

Proposal for specialist law centre for people with disabilities, 2003.

As society increases in complexity, more flexible responses to problems become increasingly important. This is equally true of the legal arena. The development of specialist law centres is one such response. Specialist centres develop an expertise in particular areas of the law affecting particular groups of people, rather than concentrating on a number of areas of law within the context of a catchment area as a community law centre might.

The Immigrant Council of Ireland

The subject of immigration and the legal advice service recently introduced by the Immigrant Council of Ireland exemplify an area which can benefit from a specialist law centre.

Throughout most of the period of campaigning for a comprehensive, strategic Scheme of Civil Legal Aid and Advice, immigration was not a prominent issue. However, the increase in the late 1990s in numbers of immigrants generated a series of politico-legal responses, some of which adversely affected the human rights of those seeking asylum. Thus, there is now a great need to provide reliable information to immigrants. There is also a need for people with legal expertise to monitor their legal requirements. The government policy of dispersal of asylum seekers means that such services should be available to immigrants wherever located.

Such are the principles behind all specialist law centres: they deal with the complex legal needs of people affected by a common issue, regardless of where they live, and in a way which enables the centre to identify how legal provisions, or the lack of them, impinge on the lives of people. Specialist law centres also see the vindication of the human rights of their clients as a core value.

Catering for immigrants, asylum seekers and refugees, one such centre is the Immigrant Council of Ireland. Its vision is that “all people seeking to live in, living in or travelling to Ireland are guaranteed their human rights”.

“Immigration to Ireland is a permanent reality and one which will enhance our country and nation,” according to the Immigrant Council. “Cultural and ethnic diversity should be respected and supported.”

It offers free legal advice and information on issues such as residence permits, work permits, family reunification and deportation. It also publishes guides for immigrants. The Council was established by Social Innovations Ireland, an organisation set up by Sr Stanislaus Kennedy in 2001, which works to demonstrate and create innovative responses to changing social needs in Ireland. The Joint Steering Committee of the Immigrant Council of Ireland consists of individuals who have expertise, interest and commitment in the field of immigration.

This is not the first specialist legal service for immigrants, though it is the first with an educational and strategic role. The Legal Aid Board has been providing a Refugee Legal Advice Service since 1998 for clients who have sought asylum in Ireland. In one nine-month period after it was established, it provided legal advice to 1,483 people. However, the strict limitation of its service to people within the asylum system means that it fails to provide for large and vulnerable groups; the Immigrant Council of Ireland seeks to fill this gap.

The Irish Traveller Movement Legal Unit

The new legal unit set up by the Irish Traveller Movement is another example of a specialist law centre with both service and strategic interests. Its aims are:

- ▼ To advance the right of members of the Traveller community to access expert legal advice and representation.
- ▼ To advance Traveller human and legal rights under the various legislative frameworks.
- ▼ To develop a range of strategic relationships with relevant bodies to ensure change in the situation of Travellers.
- ▼ To develop the capacity of Traveller organisations to respond to legal issues facing Travellers.

The key premise on which the initiative is based is access to justice for all Travellers. The legal unit will be a catalyst for discussion and debate on legal issues and will provide opportunities to inform Travellers of their legal rights. It will also engage with the legal system to work for justice and fairness for Travellers before the law. Much of the work will also involve campaigning for laws to be repealed that impact negatively on Travellers' lives. FLAC was represented on the working group established to set up and expand the legal unit.

In 1969 the founders of FLAC believed that one factor that discouraged people who were experiencing poverty from going to lawyers was lawyers' own unfamiliarity with many of the issues affecting poor people, such as social welfare provision. More than three decades later, the Irish Traveller Movement has identified this as one of the issues which it must address. In this, it might be said that the analysis of social need which led these founders to establish FLAC has stood the test of time.

Disability Legal Resource

Disability Legal Resource (DLR) is a joint venture involving FLAC (which has been part of the Disability Legal Group since 2001), the Irish Council for Civil Liberties, Center for Independent Living and the Forum of People with Disabilities. It is co-funded through a grant from the European Year of People with Disabilities 2003 and the promoting organisations.

DLR is a pilot project to assist people with disabilities in pursuing their rights through existing legal mechanisms and to offer legal representation in cases from which a broader public benefit may be derived. Many people with disabilities, as with other marginalised groups, are not aware of their rights. They often do not know who to turn to or where to start. It is hoped that this project will develop the supports to enable people with disabilities to raise their awareness and use of existing services and facilities.

In addition to legal advice and representation, the project will provide training for people with disabilities in relation to rights and enforcement. This training will be open to all legal professionals and to others interested in disability issues with a view to developing knowledge and expertise across a wide spectrum.

While DLR will be based in Dublin, at least initially, it will be available to and cater for the needs of people with disabilities wherever they are located. Its legal services will be accessible from anywhere in the country and its training services will be delivered on a regional basis from the outset. At the time of writing, the project has appointed a co-ordinator and an administrative assistant and shares an office with other groups at the Carmichael Centre for Voluntary Groups.

It is likely that, in addition to those described above, other specialist law centres will emerge in the coming years.

VINDICATING RIGHTS – TEST CASES

While in the last analysis the manner in which we structure our society is ultimately a matter of politics rather than law, so that it is futile to expect judges to be able to alter the fundamental political premises of society, nonetheless it is arguable that public interest litigation can achieve results that, though reformist rather than radical in nature, are still of some significance to those who benefit from them.

Gerry Whyte, paper on ‘Social Inclusion and the Law’ delivered at the 4th Annual Conference of the Irish Social Policy Association, 13 September 2002.

Debate continues, especially in the current political climate, about the role of the courts in addressing what are traditionally referred to as socio-economic rather than civil and political rights. FLAC remains committed both to the indivisibility of rights into such categories and to the appropriateness of a litigation strategy to bring about change.

The following is an excerpt from a speech by Mr. Michael McDowell T.D., Minister for Justice, Equality and Law Reform, on the theme of Irish Culture and the Law on 15 April 2003.

“It seems to me that it is a fundamental error to imagine that the area of the resolution of value differences in a modern liberal society can be consigned to the courtroom. On the contrary, differences within societies concerning economic and social values and ends should, in the normal course of things, be resolved by the democratic political process. An ever increasing tendency to state all value differences as conflicts of rights carries with it the potential to diminish and belittle the democratic and political debate in our society. And if we have decided for whatever reason to give up on the representative politics and redirect its role toward the court, then we have even more fundamental questions to ask ourselves about the direction of policy and civil society.”

To quote Frederick Douglass, “power concedes nothing without a demand”. The role of public interest litigation is to make that demand through the mechanism of the courts in such a way that the establishment is bound by its own rules not to ignore. Whether it reacts in a constructive manner is another matter; however, the making of the demand and the use of the legal system to do so are in themselves an important step in the development of rights for marginalised people.

McDowell's view of social and economic rights

Madam, - On the basis of the report in your edition of April 15th of a paper written by Mr Michael McDowell, it would appear that the Minister for Justice opposes the concept of judicially enforceable socio-economic rights on two grounds.

First, he challenges the view that socio-economic rights can be compared to civil and political rights on the ground that the exercise of the former involves resource constraints.

However, while it is true that the exercise of many civil and political rights do not have resource implications, that is not always the case. If the State wishes to vindicate effectively the right to liberty, it has to fund the criminal court system to ensure that innocent people are not wrongly convicted of criminal charges. Even the exercise of the right to vote requires the

State to fund the collection and counting of votes. Thus one cannot rely on the fact that the exercise of a right may involve public expenditure as a basis for excluding such a right from the remit of the courts.

Mr McDowell's second, and perhaps more substantial, objection is that social issues are properly the concern of politics rather than the courts. I would certainly agree that it is preferable, for various reasons, that such issues be resolved by the political system rather than by the courts. However in my opinion, the political system has a regrettable tendency to ignore the socio-economic interests of disadvantaged groups, probably because such groups are insignificant electorally. Proceeding from that premise, I suggest that judicial intervention performs a useful role in requiring the political

system to engage with the needs of these groups.

This role is very limited, for a judicial pronouncement of socio-economic rights cannot pre-empt a subsequent response by the Oireachtas or executive to the issue in hand, even where that response nullifies the impact of the judicial ruling. Thus, in the end, the protection of socio-economic rights will always be a matter for the political system.

However, as a means of requiring the political system to take seriously the goal of social inclusion and of informing any debate on this issue, the concept of judicially enforceable socio-economic rights is, in my view, both necessary and desirable. - Yours, etc.,

GERRY WHYTE,
Law School,
Trinity College,
Dublin 2.

Gerry Whyte, Irish Times, 23/4/2003

Right to Legal Aid: Cavanagh -v- Legal Aid Board

In the case of *Elizabeth Cavanagh -v- Legal Aid Board, Minister for Justice, Equality and Law Reform, Minister for Finance, Ireland and the Attorney General*, FLAC sought a judicial review of the Legal Aid Board on behalf of a woman who had waited over 18 months for an initial appointment with a solicitor after having been granted legal aid in relation to the breakdown of her marriage. The High Court decided that the Legal Aid Board had provided a service as best it could subject to resources and declined to make any order requiring the relevant ministers to allocate sufficient resources to enable the Board to carry out its functions. The case is on appeal to the Supreme Court.

Minority rights: Foy -v- an t-Ard-Chlaraitheoir, Ireland and the Attorney General

Dr Lydia Foy had been registered at birth as male but suffered from a condition known as 'gender identity disorder', also known as transsexualism. She underwent gender reassignment surgery in 1993 and was successful in changing her name by deed poll and in obtaining documents such as a passport and medical card stating her sex as female. She applied to have her birth certificate changed to reflect her correct gender but this was refused by the Registrar General.



Dr Lydia Foy outside the High Court in Dublin following the verdict in her case, 9 July 2002. (© Dara McDónaill).

FLAC took on the case and leave was granted for Judicial Review. In July 2002, Judge McKechnie, in the High Court, while remarking that Dr Foy appeared to him to be “utterly genuine, honourable and committed” in her quest for legal recognition of her status, declined to grant the relief sought. Just two days later the European Court of Human Rights held unanimously that the UK government’s refusal to allow Christine Goodwin to amend her birth certificate in a similar case amounted to a violation of both the right to respect for private and family life and the right to marry. Dr. Foy’s case is currently on appeal to the Supreme Court and FLAC is hopeful that the implications of the Goodwin decision bode well for its ultimate success.



Miriam Donahoe, Irish Press, 12/6/1986

Social Welfare

FLAC brought its first case before the High Court in 1984 when it believed that a Department circular on the administration of the Fuel Scheme was defective. In *The State (Kershaw) -v- Eastern Health Board, 1985* and *The State (McLoughlin) -v- Eastern Health Board, 1986*, FLAC successfully argued that people on short-term social welfare payments were entitled to fuel vouchers. The State met the cost of implementing this judgement by reducing the entitlement of other claimants.

Subsequently the Department introduced an identical set of rules by way of Statutory instrument and FLAC challenged it in the Supreme Court successfully in November 1986.

Cotter and McDermott -v- Minister for Social Welfare and Attorney General.

This is perhaps FLAC’s best known case, which brought success in the European Court of Human Rights in 1991 and more than €350 million in welfare arrears to over 70,000 married women who had been discriminated against in social welfare matters because of the State’s failure to implement a 1979 EEC Directive.

Hyland -v- Minister for Social Welfare 1989

The Supreme Court held in this case that the relevant social welfare provisions, treating a married couple living together less favourably than an unmarried cohabiting couple, were unconstitutional. The Government responded by “equalising down” and reducing the maximum payments available to cohabiting couples to those available to married couples.

Thus, FLAC has taken a number of test cases since its foundation. The outcomes have ranged from successes, such as the payment of more than €350 million in social welfare arrears to married women, to disappointments in the field of eligibility for Civil Legal Aid. In some cases success was followed by disappointment when Government, in reacting to findings that it was discriminating against groups of people, responded by equalising down rather than improving payments for the more disadvantaged groups.

FLAC’s ongoing work in the social welfare may lead to further public interest litigation. Current cases involve issues around Orphan’s Allowance, Carer’s Allowance and social welfare practices affecting asylum seekers and Travellers.

THE IRISH TIMES, Wednesday, April 13, 1994



Ms Laura Doyle of Clondalkin and Ms Julia Adamson of Finglas at the High Court yesterday for the FLAC hearing on social welfare arrears payments. Photograph: Jack McManus.

Social welfare arrears claim by 1,800 women settled

A CLAIM by 1,800 married women against the Department of Social Welfare over welfare payment arrears dating back to 1984 has been settled, the High Court was told yesterday. The State had failed to treat married women equally with married men in respect of arrears, it had been claimed.

The action before the court was taken by the Free Legal Advice Centres (FLAC) and it is expected that several thousand other women could also benefit under the settlement.

Mr Justice Costello, on the application of counsel for the women, yesterday adjourned the proceedings until March 6th,

1995, to allow time for details of the individual settlements to be worked out.

Ms Mary Finlay SC, for FLAC and the women, said the claims were in respect of the failure of the State to implement an EU Equal Treatment Directive in relation to social security matters. The settlements were without admission of liability and involved the payment to each woman of money for arrears and a compromise sum in respect of interest.

A FLAC representative refused to comment on speculation that the total cost to the State could be about €130 million. FLAC said the terms of the settlement reached yesterday

would only apply to the women who instructed FLAC. It advised others who might be eligible to claim arrears to contact a solicitor.

The Department of Social Welfare said that since the introduction of the retrospective legislation in 1992, further legal proceedings had been initiated in about 80 cases involving some 7,000 plaintiffs. The Department believed the legal position in these cases was quite different.

“All proceedings initiated since the legislation was amended are being contested by the Department and the matter will be determined by the courts,” a statement said.

The Fine Gael spokesman on Social Welfare, Mr Bernard Allen, said the Minister, Mr Woods, had for months claimed that all outstanding claims had been settled. Mr Allen said he would be questioning him on his attitude to the remaining 3,000 claims submitted since 1992 and if he did not get a full disclosure of the facts he would ask the Public Accounts Committee to summon the Department.

The leader of Democratic Left, Mr Proinsias De Rossa, described the outcome as a “tremendous victory for Irish women” and a “humiliating climbdown” by the Minister.



CAMPAIGNING ON MANY FRONTS

The experience of those who are involved in the provision of legal services in urban communities in Britain and North America shows that a purely casework approach does mitigate the rigours of the system for individuals, yet has little overall impact.

FLAC Annual Report, 1978

To date, FLAC has been primarily a campaigning organisation. While it provides services, it does so in the interest of bringing about strategic change and has always critically assessed its service provision in the light of pressurising those State bodies which should rightly be taking responsibility for such services.

FLAC's original concern was access to justice in the sense of access to legal services in order to assert established rights. However ensuring access to justice also essentially includes establishing and naming new rights and in forcing the establishment to take account of the existence of such rights.

The right to legal aid is, of course, one such right and continues to be a concern. Other areas have come to the fore over the years and FLAC continues to try to respond actively to social change and to identify new areas where rights are vulnerable.

FLAC combines lobbying, education and public campaigning with a strong belief in effecting change through taking appropriate action through the courts in cases where the outcome may not only benefit the plaintiff but establish a principle which will benefit a broader class of people.

FLAC has participated in a wide range of campaigns over the years both on its own and in conjunction with other organisations.

Credit/Debt

Society should treat the casualty of credit in a humane manner and not in a punitive way. The bigger picture in terms of the marketing of credit by highly profitable institutions and societies fostering of credit as a tool for economic growth should be taken into account.

Paul Joyce, FLAC, author of *An End Based on Means*, 2003

Central Bank statistics confirm the explosive growth of consumer credit in Irish society in recent years. For example, between 1995 and 2002, the amount of personal loan credit provided by mainstream credit institutions rose by 241 per cent and the

amount of residential mortgage credit rose by 255 per cent. Whilst figures on the amount of over-indebtedness this has resulted in are hard to come by, it is clear from court statistics on debt proceedings and the growing client base of the Money Advice and Budgeting Service (MABS) that consumer over-indebtedness is a growing phenomenon in Irish society.

In the interim, the legal system in relation to debt recovery and debt enforcement has remained largely unchanged in over 60 years. As part of its campaign for change in this area, FLAC published *An End Based on Means?* in May 2003, a comprehensive report of how the Irish legal system treats uncontested consumer debt cases.

This report calls for a comprehensive overhaul of existing procedures which are outdated and confrontational and fail to acknowledge in many cases the debtor's inability to pay due to an adverse change in their circumstances. It calls for an end to imprisonment for non-payment of civil debt and fines. The report examines alternatives used in other jurisdictions such as attachment of earnings and debt settlement, focusing on the need to protect the indebted consumer and dependants from greater poverty, to ensure that creditors receive some payment and that the costs of the process of debt recovery to the State are minimised. FLAC hopes that the report will trigger a fundamental review of this much neglected subject by the Department of Justice, Equality and Law Reform.



Carmel Foley, Director of Consumer Affairs; Donncha O'Connell, FLAC Council; and Paul Joyce of FLAC at the launch of *An End Based on Means?*, 20 May 2003. (© Collins Photo Agency).

The Money Advice and Budgeting Service (MABS) was established by the then Department of Social Welfare as a group of five pilot projects in 1992. It is now a countrywide service with 52 offices, offering the services of trained money advisors to people with debt and money problems. Based on a detailed examination of the client's financial circumstances, negotiations are undertaken on the client's behalf with creditors to agree affordable payments and in some cases, partial write-offs. MABS also has a community education focus, assisting people to budget and to become more informed on credit and credit options.

FLAC has been directly involved in supporting and advising MABS from the outset. As well as providing training courses in areas such as consumer credit legislation and mortgage debt and publishing explanatory guides like *Moneylending and the Law* (soon to be republished), we also act as a technical legal support resource to money advisors where legal issues impinge on their work. The experience gained from this work has helped to inform many of the recommendations made in FLAC's report on debt and the legal system outlined above.

Finally, FLAC is a member of a number of networks examining credit and debt issues at both domestic and international level, including the Credit and Debt policy group in Ireland and the Consumer Debt Net, a network of experts on credit/debt and money advice issues throughout Europe.

Finally, FLAC makes submissions on legislation relevant to credit and debt issues, the most recent of which is a submission on the establishment of the Irish Financial Services Regulatory Authority (IFSRA) and its role in fostering consumer protection in the provision of financial services.

Rights of immigrants

The launch in July 2003 of the report *Direct Discrimination? An analysis of the scheme of Direct Provision in Ireland* was the culmination of a long period of research and campaigning on the issue of social welfare rights and entitlements of asylum seekers. FLAC has criticised the system of 'direct provision' from the outset as contrary to both the spirit and letter of the Irish social welfare code and on an individual level has assisted many asylum seekers in attempts to access standard minimum social welfare benefits. The system, according to FLAC, leaves adults and children alike "bored, isolated, socially excluded, impoverished, deprived of services, unaware of their entitlements, demoralised, deskilled and institutionalised."

Currently FLAC is involved in the campaign launched by a number of organisations in response to the threatened deportation of up to 11,000 families of Irish-born children following the Supreme



Eleanor Edmond, Siobhán Phelan, Ruslan Tsechoev and Dr Maurice Manning,
President of the Human Rights Commission at the launch of
Direct Discrimination? An analysis of the scheme of Direct Provision in Ireland,
16 July 2003

(© Collins Photo Agency).

Court decision in the *Lobe* and *Osayande* cases in January 2003. These cases led to a change in established practice in relation to the grant of residency to the parents of Irish citizens. FLAC has expressed particular concerns about the absence of legal aid for such families and the resulting implications for both procedural fairness and the protection of basic rights.

Employment

As part of its focus on welfare-related legal issues, FLAC has provided a specialist employment law advice service for nearly two decades. Referrals to FLAC's information line come from a number of sources, including the Department of Enterprise, Trade and Employment. In 2002, employment-related calls accounted for 12% of all calls.

In recent years, we have also acted as a legal resource service to the network of Citizens Information Centres (CICs) operating throughout the country, providing advice and technical support to information workers dealing directly with employment cases and queries and conducting training courses throughout the country on employment rights on behalf of Comhairle.

For many years FLAC provided a routine representation service in the area of employment appeals, in particular unfair dismissal. This work was carried out principally to demonstrate the need for civil legal aid to be introduced, particularly where the case in question involved a complex issue of employment rights such as the transfer of a business, maternity-related dismissal or the non-renewal of fixed term contracts. Given the State's failure to provide this service and the labour intensive nature of conducting these appeals, FLAC took a decision to confine its casework in the employment law field to cases with the potential to develop or challenge the provision of employment rights.

Central to FLAC's campaigning role in the employment arena is the preparation of submissions on potential employment legislation. A steady stream of such legislation has been passed in recent years, particularly in the course of the 1990s and up to the present day. Much of this legislation has been issued due to the need to comply with European Union directives and a close eye has been kept on such compliance, both in terms of time limits (where Ireland's record is poor) and substance (where minimal implementation is usually the norm).

Deportation orders

Madam, - FLAC (Free Legal Advice Centres) notes with deep dismay that the Minister for Justice, Equality and Law Reform has issued 400 deportation notices to the parents of Irish citizens without making any corresponding provision for legal assistance in relation to applications for leave to remain on humanitarian grounds.

The effect of the Minister's action is that over 400 Irish children face deportation from their country. There is no dispute over the fact that, as Irish citizens, they are entitled to reside in the State. However, that right is of little practical use to a six-month old Irish citizen whose non-national parents do not have the right to remain with their child.

The Refugee Legal Service provides representation in asylum appeals and may deal with humanitarian leave to remain in the context of such cases.

However many of the families involved may have previously withdrawn asylum applications in the belief, correct up until January of this year, that they would be granted the right to remain based on their parentage of an Irish-born child. It appears that such families will not be eligible for legal aid.

These families have been given 15 working days to present a detailed argument as to why they should be allowed to remain, but in the majority of cases will be unable to access legal assistance in doing so, as no legal aid is provided and the legal fees involved are likely to be prohibitive.

The decision as to whether to allow the family of an Irish-born child to remain in the State is at the discretion of the Minister for Justice, Equality and Law Reform.

In order to ensure that he has the full facts and relevant considerations at his disposal, we are calling on the Minister to urgently review the situation to ensure that State-funded legal advice will be available on an emergency basis to such families.

- Yours etc.,
ELEANOR EDMOND,
Free Legal Advice Centres,
1, Dorset Street,
Dublin 1.

Eleanor Edmond, Irish Times, 30/7/2003

From submissions on the Unfair Dismissal amendment legislation (1993) through to the Organisation of Working Time Bill (1997) and the Employment Equality Bill (1996), and, more recently, the legislation on the rights of part-time employees (2001) and fixed-term employees (2003), FLAC has prepared submissions that are designed to strengthen employees' entitlements and improve the quality and clarity of employment legislation. To complement this, the practical application of such legislation is monitored with a view to campaigning for amendments.

Social Welfare

Equity in social welfare has been a concern of FLAC from the beginning, as it is an area of legal rights crucial to disadvantaged people. While many of the anomalies which arose at earlier stages have been resolved, often through the intervention of FLAC, instances always arise where individuals find themselves falling between stools. It provides some representation to people in social welfare appeals as this is one of the areas excluded from the remit of the Legal Aid Board.

FLAC is currently active in cases involving apparent anomalies in the payment of Orphan's Allowance and Carer's Allowance. It has worked with Traveller's groups to improve situations where lack of understanding of cultural differences led to problems in accessing entitlements. As outlined elsewhere, FLAC is also very involved in the issue of supplementary welfare allowance and rent allowance for asylum seekers. It continues to monitor Social Welfare Acts with other anti-poverty organisations acting 'on the ground' to make sure that vulnerable groups are not excluded, whether in theory or in practice, due to changes in legislation.

Over the decades, FLAC has developed an intricate knowledge of the social welfare system as administered at central and local level. Its first welfare rights centre was established in 1982. FLAC played a major role in forcing the Irish government to eventually implement equal treatment between men and women in social welfare payments and to pay back more than €350 million to over 70,000 married women.

Civil Legal Aid

FLAC's primary campaign continues to be for the introduction of a comprehensive and well-resourced scheme of Civil Legal Aid. Such a scheme would include a mix of Legal Aid Board law centres as at present; community and specialist law centres with statutory funding; and panels of private solicitors with the expertise to take on casework dealing with the concerns of people on low incomes.

The scheme should cover all civil legal areas including social welfare and employment tribunals. It should allow for the taking of test cases as these provide an important means whereby the rights of people on low incomes can be vindicated. It should also

aim to educate people on their rights and local centres should be a resource for community groups seeking change.

FLAC will continue to lobby for such a scheme and to highlight the wide gaps in current provision both through ongoing campaigning and litigation where appropriate.



FLAC lays a wreath in protest outside the Department of Justice to mark the third anniversary of the Pringle Report, December 1980.

(© Eamonn O'Dwyer)

THE WAY AHEAD

The only way to influence change now, having tried to see Pringle implemented, is to campaign relentlessly for a comprehensive scheme of civil legal aid whilst meeting unmet need through the network of legal advice centres and through the development of Community and Specialist Law Centres.

Catherine Hickey, FLAC Executive Director, interview 2003.

In its new strategy, being developed under the leadership of chairperson Siobhán Phelan, FLAC aims to be at the centre of public interest litigation in Ireland and to continue to campaign for a comprehensive State-funded Civil Legal Aid Scheme. Most of this work will involve a planned and sustained involvement with other non-governmental organisations to develop a strong legal rights movement in Ireland.

FLAC is also developing its research function and is planning two projects which it hopes to commence in the near future.

The first is on the structure of employment appeals in Ireland in comparison with other Member States of the European Union. It has become apparent that the amount of employment legislation introduced in Ireland as a result of the obligation to implement EU directives has resulted in an unwieldy and complex system of complaints with different forums (Rights Commissioners, Equality Tribunal, Employment Appeals Tribunal, Labour Court) hearing similar issues and no clear rationale or structure in place.

The second is a social welfare benefit take-up campaign for asylum seekers in ‘direct provision’. Terms of reference have been drawn up and the project will involve the production and dissemination of a leaflet explaining all the social welfare benefits of relevance to asylum seekers. The leaflet will be produced in English, French and Romanian. It will also involve meetings with interest groups on the leaflet and how to access benefits. It will involve one-to-one meetings and follow-up with some 100 individuals/families in relation to applying and accessing social welfare payments of which they may not have been aware.

One of the most conspicuous failings of the State Scheme of Civil Legal Aid was the failure to provide for community law centres in which community groups play a strong management role. Only two such centres exist – Northside Community Law Centre (formerly Coolock Community Law Centre) and Ballymun Community Law Centre, both in Dublin – and both owe their existence to initiatives taken, in the first instance, by FLAC.

FLAC hopes to see the establishment of as many as ten new community law centres in areas of greatest need countrywide. They would be established in conjunction with local communities with funding from a variety of bodies.

Their valuable role in these communities will add weight to the argument that the State Scheme should include the establishment of community law centres, an argument which the State has been most reluctant to concede.

Community law centres generally have geographical catchment areas and deal with the broad range of issues which arise in their areas. Specialist law centres have a different focus; they deal with issues arising within a particular area of interest, such as disability, regardless of where the people who have these issues live. All these bodies – community law centres and special interest law centres – involve close alliances with other organisations, both community-based and interest-based. It is this set of alliances, created and sustained over a period of time, which is evolving into a broadly based legal rights movement.

Another pillar of FLAC's future work will be the existing 55 legal advice centres either operated by FLAC or run by Citizens Information Centres. These receive information and advice from FLAC. The Research and Development Officer will collate data from the legal advice centres which are in an excellent position to pinpoint the areas in which legal reform is needed for the benefit of disadvantaged people and communities. Most of the centres' 200 volunteer barristers and solicitors are recruited with the assistance of FLAC's Centres Co-ordinator.

These links will further the purpose of a public interest law centre as envisaged by FLAC; to bring about changes in the law for the benefit of socially and economically disadvantaged people and communities.

That work will have two main facets: the first is public interest litigation and the second is monitoring legislation. The litigation strategy will be developed through links with non-governmental organisations, such as organisations working with the homeless, disability groups and so on.

FLAC intends to take a more innovative approach to using international treaties; it will develop its work to include making reports to and liaising with the relevant UN Committees with the aim of influencing Government to adhere to the conventions to which it signs up.

In a sense, FLAC has evolved from an organisation seeking to bring about a civil legal aid system into a body concerned with the promotion, through the legal system, of human rights in Ireland. The future for FLAC, then, appears busy; a future in which the organisation will take on the challenges of the new era as well as issues which continue to affect disadvantaged people.

But what of the campaign, begun in 1969, for a comprehensive, well-funded State system of Civil Legal Aid and Advice? FLAC will continue to campaign with vigour until there is equality of treatment for all.

FLAC's NATIONAL COUNCIL

Siobhán Phelan	1990-1992 and from 1994 <i>Chairperson from December 1996</i>
Peter Ward	1983-1984 and from 1990
Iseult O'Malley	from 1987
Don Crewe	from 1990
Joanne Hyde	from 1999
Donncha O'Connell	from 2002

State found guilty of welfare discrimination

From Sean Flynn, in Brussels

THE GOVERNMENT discriminated against women in the payment of social welfare allowances in the 1970-1980, the European Court of Justice ruled yesterday.

A Department of Social Welfare spokesman said that the Government would now face a potential bill of 10,000 million if the 40,000 married women claiming weekly benefits between December 1984 and May, 1986, received retrospective payments.

Last night, the Free Legal Advice Centres (FLAC) called on the Government to apologise to all the

1980-1986 women. The spokesman said that they were also entitled to special retrospective payments which were made to married men when the 51 weekly benefits were lifted. The law concerned unemployment and post-natal allowances.

During the hearing, the Government argued that its failure to married women payments made to married men could be seen as discriminatory only in a double portion of the later payments in the same families. Such payments would be "essentially abroad", the Government claimed.

The court ruled otherwise that the women were entitled to the higher level of social allowances, that they were not "essentially abroad" of the

Government did not terminate the new measure until May, 1986. In the intervening period married women increased in many areas social welfare payments and payments but shorter periods than did their male counterparts.

In January, 1987, the court also asked the High Court in Dublin, which referred it to the European Court of Justice. In March, 1987, the European Court ruled that the two women were entitled to arrears of unemployment and post-natal benefits. Subsequently, the Government lodged an appeal with the Supreme Court. In the Supreme Court, leaving the women satisfied that they were not entitled to income dependent allowances, temporary, of their husband's income. They also claimed that they were entitled to receive the same

benefits as their husbands. The court held that married women without actual dependants are entitled to the same amount of social welfare payments as married men, in respect of a spouse and child. They would not be liable to prove actual dependants, even if it is shown that the woman would benefit in domestic payments.

The court further ruled that married women are also entitled to special retrospective payments made to married men. These payments were made by the Government in order to compensate married men who had lost their entitlement to an increase in some social benefits in respect of a

spouse only in circumstances in which a person granted an increase in their payments was financially disadvantaged. The court, however, said that, while the State may regulate whatever conditions it wishes in respect of entitlement to increases in benefits, it is required to comply fully with the principle of equal treatment.

The Supreme Court will now consider the ruling and investigate a bill to judgment on the case.

The Department of Social Welfare spokesman said that the Government would be consulting the Attorney-General on the ruling.

When the European Court found against the Government in 1987, the Government simply paid the arrears to both women. Some 500,000 FLAC has acted a liaison on behalf of 100,000 women with the EC Commission.



flac

FLAC (Free Legal Advice Centres Ltd.)
13 Lower Dorset Street, Dublin 1
tel: +353 1 8745690
fax: +353 1 8745320
website: www.flac.ie