

## Free Legal Advice Centres (FLAC)

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# UPR Factsheet 5: The Right to Social Security in Ireland

FLAC is an independent human rights organisation based in Dublin, Ireland which is dedicated to the realisation of equal access to justice for all.

We promote the use of law as a tool for social change and the right of equal access to justice, with a focus on economic, social and cultural rights and on protecting marginalised and disadvantaged groups. To this end we formulate policy and law reform proposals, principally in our core areas of social welfare law, personal debt law, consumer credit law and civil legal aid. As an Independent Law Centre, we take a small number of public interest cases each year. We advance the use of law in the public interest, particularly through our [PILA project](#). Finally, we deliver confidential and free basic legal information and advice to the public, both directly and in cooperation with key partners.

## 1. Overpayments

FLAC is concerned that individuals and families may be pushed below the poverty line due to the Department of Social Protection's updated system for recovering social welfare overpayments. An overpayment is a debt owed to the Department of Social Protection as a result of a claimant receiving a social welfare benefit which they were either wholly or partly not entitled to.

Legislation introduced in 2012 permits the Department to recover 15% of a person's social welfare payment without his or her consent, and even more if such consent is obtained. As a result, social welfare claimants may end up receiving less than the basic minimum rate set by the Government to ensure an adequate standard of living. Prior to this legislative change, the Department was prohibited from recovering an amount which would result in a person receiving less than the basic social welfare rate.

### **Recommendation:**

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

## 2. Social Welfare Payments for Under 26s

Young people under the age of 26 years who are eligible for a means-tested social security payment receive a lesser amount than those aged over 26. While eligible individuals aged 26 and over receive a basic weekly payment of €186, claimants aged between 18 and 24 years with no dependent children receive €100, and claimants aged 25 years receive €144. These lower payments fall below the basic minimum income standard of €186 set by the Government.

There appears to be an assumption by the State that adults below the age of 26 are able to live with parents or family members, which is not always the case; consequently, concerns abound that these age-related social

welfare cuts increase the vulnerability of people under the age of 26 to homelessness, particularly those who are already disadvantaged and without family supports.

**Recommendation:**

*1.2 End the discriminatory practice of providing a lower rate of social welfare payments to young people under the age of 26.*

### 3. Social Welfare Appeals System

The social welfare appeals system, as it currently operates, does not comply with the State's domestic and international human rights obligations and does not provide a fair, efficient and effective remedy.

One of the problems identified with the system is the absence of a searchable database of previous appeals decisions. At present, decisions are only published at the discretion of the Social Welfare Appeals Office. As a result, there are inconsistencies in decision-making and claimants taking appeals are forced to prepare their cases within a vacuum.

Following her 2011 visit to Ireland, the former UN Special Rapporteur on Extreme Poverty, Magdalena Sepúlveda Carmona, expressed concern regarding the transparency of the social protection system and called for decisions of the Social Welfare Appeals Office to be published in a form which allows for broad dissemination and understanding among existing and potential beneficiaries. In July 2015, the UN Committee on Economic, Social and Cultural Rights recommended that social welfare appeals decisions be made in a consistent and transparent manner.

In 2014, 56.5% of appeals to the Social Welfare Appeals Office had a favourable outcome for the appellant. The same figures for 2012 and 2013 were 50.4% and 55% respectively. Given the consistently high rate of successful appeals to the Social Welfare Appeals Office, it is apparent that more resources must be channelled into training for decision-makers at first instance. These views are shared by the UN Committee on Economic, Social and Cultural Rights. FLAC submits that greater investment in first instance decision-making may lead to fairer and sounder decisions, which could in turn reduce the number of appeals applications and ensure that those who are entitled to a payment receive it in a timely manner.

**Recommendation:**

- 1.3 To improve consistency in decision-making, provide appropriate training to Department of Social Protection officials responsible for making decisions at first instance;*
- 1.4 Establish an anonymous, searchable database of social welfare appeals decisions.*