



**Submission to inform the
Department of Social
Protection's consultation
on its Statement of Strategy
2016 – 2019**

FLAC, August 2016

About FLAC

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

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

FLAC Policy

Towards achieving our stated aims, FLAC produces policy papers on relevant issues to ensure that Government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, Government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies drawing on its legal expertise and bringing in a social inclusion perspective.

You can download/read FLAC's policy papers at
<http://www.flac.ie/publications/policy.html>

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Introduction

FLAC welcomes the opportunity to contribute to the Department of Social Protection's consultation on its Strategy Statement 2016 – 2019.

Public sector duty

Section 42 of the Irish Human Rights and Equality Commission Act 2014 requires public bodies to have regard, in carrying out their functions, to the need to eliminate discrimination, promote equality of opportunity and treatment for staff and service users, and protect the human rights of staff and service users. For the purposes of the 2014 Act, "functions" clearly has a very wide meaning and would include any activities undertaken pursuant to a power or duty. Government departments, including the Department of Social Protection, are covered by this duty.

In particular, because of the crucial role the Department of Social Protection plays in combating social exclusion, and because of the quantity of decisions it makes in relation to social welfare claims, there is huge scope for human rights standards and equality of opportunity to be integrated into its work.

Specifically the Act requires public bodies in giving effect to this duty to:

- a. "set out in a manner that is accessible to the public in its strategic plan an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues, and
- b. report in a manner that is accessible to the public on developments and achievements in that regard in its annual report".

The Strategy Statement 2016 – 2019 is a key instance of strategic planning by the Department. As such it must meet the requirements of the public sector duty. In preparing the Strategy Statement 2016 – 2019 the Department must:

- Carry out an assessment of and document in the Strategy Statement 2016 – 2019 the human rights and equality issues relevant to its functions as a policy-maker, service provider, employer and/or procurer of goods and services;
- Identify the policies, plans and actions it already has in place to address these issues and document these in the Strategy Statement 2016 – 2019;
- Identify the policies, plans and actions it proposes to put in place to address these issues and document these in the Strategy Statement 2016 – 2019.

The Strategy Statement 2016 – 2019 should, among any policies, plans and actions proposed to address the equality and human rights issues, include a commitment to:

1. Conduct an equality and human rights impact assessment of new legislation, policies, and plans to be developed during the lifetime of the Strategy Statement 2016 – 2019;

2. Conduct a rolling series of equality and human rights reviews of internal policies, procedures, and practices to address any issues that engage human rights or equality of opportunity for staff and service users.

The Equality and Rights Alliance, of which FLAC is a member, has developed guidance material to support the effective implementation of the public sector duty on an ongoing basis: *A New Public Sector Equality and Human Rights Duty*.¹ This recommends a number of steps that may usefully be drawn on to implement the public sector duty. The Strategy Statement 2016 – 2019 should commit to meeting the requirements of the public sector duty in its strategic planning on an ongoing basis.

This would require a commitment in the Strategy Statement 2016 – 2019 to:

1. Create the conditions for its implementation by:
 - a. Establishing a working group drawn from senior management across its different functions to oversee and drive the process of implementing the duty;
 - b. Providing training to working group members and key relevant staff on equality and human rights issues as they impact on the Department’s functions and on the implementation of the public sector duty;
 - c. Conduct a review of the current approach by the Department to equality and human rights issues to establish the most strategic approach to implementing the public sector duty.
2. Develop a methodology for the assessment of equality and human rights issues by:
 - a. Gathering data and information to develop a database of the equality and human rights issues relevant to the functions of the Department;
 - b. Establishing an ongoing dialogue on implementing the public sector duty with organisations representing groups experiencing inequality and human rights violations;
 - c. Developing and implementing an equality and human rights impact assessment methodology to be conducted on draft legislation, policies and plans and identify gaps in any of these areas;
 - d. Developing and implementing an equality and human rights review process to assess internal policies, procedures, and practices for their impact on equality and human rights for staff and service users;
 - e. Developing a plan of action to progress work on the equality and human rights issues identified.
3. Build an approach to monitoring, evaluation, and reporting by:
 - a. Establishing data systems from the outset to ensure systematic data gathering in relation to the affected groups;
 - b. Establishing indicators to ensure that change in relation to equality and human rights issues is measured.

¹ For more information see Equality and Rights Alliance’s “*A New Public Sector Equality and Human Rights Duty*”, available at <http://www.eracampaign.org/uploads/A%20New%20Public%20Sector%20Duty%20March%202015.pdf> [accessed 16 August 2016].

Drive Cost, Efficiency and Effectiveness

- **Resources allocated to the Social Welfare Appeals Office**

The Social Welfare Appeals Office published its 2015 annual report in May 2016.² The report documents welcome progress on efficiencies, with average processing times falling from 24.2 weeks in 2014 to 20.9 weeks in 2015. However, further progress is needed in addressing delays in processing appeals. FLAC is particularly concerned by the average processing time of 18 weeks for appeals on Supplementary Welfare Allowance, a payment designed as a safety net for those with no other income.

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

Strategic Objectives	High-Level Strategies	Key Outcomes	High-Level Indicators
Drive cost, efficiency and effectiveness	Provide increased resources to the Social Welfare Appeals Office	Speedy holding of appeals hearings Timely access to accurate decisions and payments	Reduction in average processing times for social welfare appeals Reduction in the number of social welfare appeals on hand

- **Creation of a social welfare appeals database**

The Social Welfare Appeals Office does not currently maintain a database of previous decisions. At present, only a limited number of cases are published each year in its annual reports, usually on a thematic basis. The lack of such a database presents all individuals taking social welfare appeals with practical difficulties.³ In the absence of a database, individuals taking appeals are forced to prepare their cases within a vacuum of information. For example, they may be unclear as to how legislation is applied and interpreted. Furthermore, without a database, appeals staff must make decisions in isolation, resulting in inconsistencies in decision-making.

In March 2016, the European Commission against Racism and Intolerance (ECRI), a human rights body of the Council of Europe which monitors issues related to racism, discrimination and xenophobia, published its conclusions on the implementation of recommendations received by Ireland in its fourth country report in 2013.⁴

In its 2016 follow-up conclusions, the ECRI noted that the Irish authorities had only published a very low number of social welfare appeals cases related to the Habitual Residence Condition and that no consistency in publishing such decisions could be observed. The ECRI reiterated its 2013 call to

² Social Welfare Appeals Office (2016) *Annual Report 2015*, Dublin: SWAO.

³ For more information see Free Legal Advice Centres (2012) *Not Fair Enough*, Dublin: FLAC, pp.44-49.

⁴ European Commission against Racism and Intolerance (2016) *ECRI conclusions on the implementation of the recommendations in respect of Ireland subject to interim follow-up*, Strasbourg: ECRI.

publish appeals decisions related to the Habitual Residence Condition (HRC) in order to ensure a “sufficient level of predictability” in decision-making.

Other human rights bodies have also emphasised the need for consistency in social welfare appeals decision-making and the adverse impact of failing to provide a database for appellants. In 2012, the former UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, called for decisions of the Appeals Office to be published in a form which allows for broad dissemination and understanding among existing and potential beneficiaries.⁵ Similarly, the UN Committee on Economic, Social and Cultural Rights has urged that decisions on appeals be made in a consistent and transparent manner.⁶

Strategic Objectives	High-Level Strategies	Key Outcomes	High-Level Indicators
Drive cost, efficiency and effectiveness	Create a database of social welfare appeals decisions	<p>Improved processes and procedures</p> <p>Greater consistency and transparency in decision-making</p> <p>Fairer and more robust initial and appeal decisions</p> <p>Greater understanding amongst clients of eligibility for payments</p>	Reduction in the number of appeals to the Social Welfare Appeals Office

Develop Staff, Structures and Processes

- **Provision of enhanced training to first instance decision-makers**

FLAC is concerned by the high number of initial social welfare decisions which are being overturned on appeal. Almost 59% of the total 25,406 appeals decided in 2015 were successful which indicates a potential problem with decision-making on initial applications.⁷ This consultation on the Department’s new strategy statement should be taken as an opportunity to review supports and training available to decision-makers at first instance and ensure that they are adequate. Again, this is a matter that could be addressed and integrated with the implementation of the Public Sector Duty.

⁵ Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona, to the Human Rights Council*, Geneva: OHCHR, p.12.

⁶ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.20.

⁷ Social Welfare Appeals Office (2016) *Annual Report 2015*, Dublin: SWAO, p.14.

In July 2015, the UN Committee on Economic, Social and Cultural Rights expressed concern at the large number of appeals filed with the Appeals Office “owing to the lack of clear understanding and consistent application of the eligibility criteria”, as well as the “considerable number” of successful appeals.⁸ To address the latter issue, the UN Committee recommended that appropriate training be provided to decision-makers at first instance.⁹ Enhanced training for decision-makers at first instance would lead to fairer and more robust initial decisions.

Strategic Objectives	High-Level Strategies	Key Outcomes	High-Level Indicators
Develop staff, structures and processes	Provide enhanced high-quality training to decision-makers at first instance	Fairer and more robust initial decisions Improved processes and procedures Speedy access to social welfare payments for all schemes and services	Reduction in the number of appeals to the Social Welfare Appeals Office

⁸ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.20.

⁹ UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.20.