



**Submission to the
Department of Finance
concerning its
Statement of Strategy 2016
– 2019**

FLAC, October 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. We also engage in strategic litigation.

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Introduction

Under the terms of the Public Service Management Act 1997, there is a statutory requirement on all government departments and offices to produce a strategy statement once every three years, or within six months of the appointment of a new minister. FLAC is of the view that consultation with relevant stakeholders, interest groups and individuals should form a very valuable element of the process. With this in mind, the following contribution is intended to inform discussions on the development of the Department of Finance's Strategy Statement 2016 – 2019.

Summary of submission

- The new public sector duty, which mainstreams human rights and equality in public life, should form a key part of both the process for developing the Department's Strategy Statement and be reflected in the outcome document.
- While a number of positive measures have been introduced in recent times with the intention of tackling the mortgage arrears crisis, a more radical approach to resolving this issue, including debt write-down, may be required. The issue of mortgage arrears should form part of the assessment that is to be carried out by the Department pursuant to the public sector duty.
- As an initial step towards implementing the Programme for Government commitment to equality and human rights proof budgetary proposals, the Department's Budget 2017 statement should include an equality and human rights statement.

Public Sector Duty

FLAC notes the contents of the Department's Statement of Strategy 2015 – 2017. In this regard, we draw the Department's attention to the mandatory obligations imposed on all government departments and public bodies by section 42 of the Irish Human Rights and Equality Commission Act, 2014. It requires public bodies, including the Department of Finance, to set out in an accessible manner in its strategic plan an assessment of the human rights and equality issues it believes to be relevant to its functions and purpose and the policies, plans and actions in place or proposed to be put in place. We note that the 2015 – 2017 Statement of Strategy does not refer to this obligation or demonstrate how it has informed the planning process.

Section 42 requires the Department to have regard, in carrying out its functions, to the need to (i) eliminate discrimination, (ii) promote equality of opportunity and treatment and (iii) protect the human rights of staff, members and service users. All three objectives of the duty must be considered. In the context of the 2014 Act, "functions" has a very wide meaning, including any activities undertaken pursuant to a power or duty and also many of the operational aspects of the work of the relevant public body.

The extent to which the public duty is relevant to the function will depend on the organisation, the nature of the function itself, and its potential impact on staff and service users. The human rights and

equality standards referred to in the public sector duty include the fundamental rights provisions of the Constitution, rights protected under the European Convention on Human Rights and also those enshrined in the EU Charter of Fundamental Rights. The right to equality and freedom from discrimination is central to all these instruments, and is also given practical effect at a legislative level by the Equal Status Acts 2000 – 2015 and the Employment Equality Acts 1998 – 2015, which in turn are underpinned by various EU Directives.

In particular, because of the Department's broad range of responsibilities, particularly as regards tax, financial and budgetary policy, there is huge scope for human rights standards and equality of opportunity to be integrated into its work. In this context it is relevant to note that policy-making which places equality and human rights at the centre of decisions concerning budgets and tax can play a hugely significant role in reducing inequalities and protecting the socio-economic rights of vulnerable and marginalised groups. The Department also has an important role to play in terms of ensuring compliance with the State's obligation to maximise available resources to realise economic and social rights.

Section 42 requires certain steps to be taken.¹ While every public body, as a matter of law, must comply with relevant human rights and equality standards in decision making, the public duty is focused on the processes put in place to reach a particular decision and whether there was meaningful consideration of the human rights and equality implications of the decision taken.

The Strategy Statement 2016 – 2019 is a key instance of strategic planning by the Department to which the public sector duty applies. The strategy statement must show how the duty has influenced the process and be reflected in the outcome. Compliance with the public sector duty must therefore be evident from the published strategy and should articulate how the requirements of the public sector duty are to be met on an ongoing basis in the period 2016 – 2019.

Minimum requirements

Section 42 sets out some minimum steps that must be taken and which provide a basis from which each public body can work in developing its individual approach to the public duty as follows:

- 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. This assessment must be made accessible to the public;
- Identify the policies, plans and actions it already has in place to address these issues and document these in the Strategy Statement 2016 – 2019, which must in turn be reported on;
- 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.

¹ The Irish Human Rights and Equality Commission has an oversight role. For instance, section 42 (3) provides that the Commission can give guidance and encouragement to public bodies in relation to the duty. In addition pursuant to section 42 (5) the Commission, if it considers there is a failure by a Public Body to comply with the public duty, may invite the body concerned to undertake certain actions directed at remedying the failure. The Commission may also review the operation of the public duty, and report to the Oireachtas in respect of same. The Courts, in due course, may also be called on to assess compliance with the duty in a particular case.

In order to meet the requirements of the duty FLAC submits that it is necessary to address two matters:

- (i) Establish internal processes and structures that will ensure the public duty is integrated into all decision making within the Department. This includes not only decisions that have an immediate impact on an individual, but also policy development and legislative drafting, budgetary decisions, human resource operations and any other work of the Department where human rights and equality standards are implicated and;
- (ii) Conduct an audit of the matters where the Department has responsibility and where individual rights are engaged to understand where change is required on an immediate basis in order to ensure human rights and equality standards are being respected.

Internal Structures

FLAC submits that there are certain actions that might be considered immediately to resource the Department in implementing the public duty.² The strategic plan should include a set of steps and objectives in relation to the public sector duty itself, addressing such issues as:

1. Staff education and development in respect of the duty and also the values and standards that underpin it;
2. Developing data systems and practical tools to underpin analysis of the equality and human rights impacts of decisions, policy proposals and practices;
3. Developing a set of performance indicators at staff and Departmental level that can track consistency and quality in complying with the public duty;
4. Establishing mechanisms for providing information and assistance to the public in relation to the duty and how the Department is meeting its obligations under the duty, including ensuring that information is disseminated in a way that is accessible to the widest audience possible;
5. Providing training, information and assistance to staff as beneficiaries of the public duty, and collaborating with public service unions to promote the benefits of the duty for all staff;
6. Disseminating information and guidance to agencies operating under the auspices of the Department, including statutory bodies, to develop understanding and encourage broad compliance with the duty not only within the centralised aspect of the Department but also the broader areas of responsibility of the Department;
7. Developing a consistent but flexible approach to stakeholder/public engagement to inform the Department's decision making, particularly as to how a particular policy, practice or decision may impact on groups with particular protected characteristics, or who may be

² 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. This recommends a number of steps that may usefully be drawn on to implement the public sector duty: *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 4 October 2016].

considered vulnerable in the context of human rights protection, and how any adverse impacts can be mitigated or removed.

To create a vehicle for engaging with the duty, FLAC would submit that a specialised task force or advisory body be established within the Department with sufficient expertise, resources and influence, including senior management input, to support all sections of the Department in developing their approach to the duty. Such a unit within the Department could also take a role in supporting and monitoring progress on implementation of the duty. While staff at all levels should understand that they each have rights and responsibilities under the duty, a central driver will be important at an early stage to support consistency of approach and understanding and to provide leadership within the Department thereby creating a positive environment for the duty to take root.

Mortgage arrears

Recent Central Bank statistics show that while the number of mortgage accounts in arrears have fallen, there are still almost 35,000 home owners that have been in arrears for over two years.³ The average amount owed on these accounts is over €61,000. FLAC welcomes the new Scheme of Aid and Advice on Home Mortgage Arrears, which, although limited, may improve a borrower’s chance of calling to account a lender’s compliance with procedural requirements and applicable regulations, and may help delay the grant of a Possession Order.

However, FLAC is concerned that without a more radical approach to resolving arrears, including debt write-down, many of these 35,000 households will eventually lose their homes and swell the ranks of those seeking scarce social housing to extreme levels, with the social and financial cost being ultimately borne by the State, not the banks. Given the central importance of the right to adequate housing in realising a range of other basic human rights, the issue of mortgage arrears should form part of the assessment that is to be carried out by the Department pursuant to section 42(2).⁴

Goal	Actions	Performance Indicators / Outcomes
➤ More effectively tackle the issue of mortgage arrears.	➤ Consider the issue of mortgage arrears as part of the assessment that is to be carried out as part of the public sector	➤ Carry out an assessment of and document in the Strategy Statement 2016 – 2019, the human rights and equality issues relevant to the matter of mortgage

³ Central Bank of Ireland (2016) *Residential Mortgage Arrears and Repossessions Statistics: Q2 2016*, Dublin: CBI, p.6.

⁴ In July 2015, the UN Committee on Economic, Social and Cultural Rights, which monitors Ireland’s compliance with the International Covenant on Economic, Social and Cultural Rights, expressed concern “at the overall difficult housing situation” in Ireland, and in particular the number of people in long-term mortgage arrears. The UN Committee recommended that the State “[c]onsider introducing banking regulations in order to strengthen protection for mortgage borrowers in arrears” and “[t]ake all the measures necessary to meet the critical needs of those who are homeless or at risk of being homeless”. UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, paras.26-27.

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	duty.	arrears, identify the policies, plans and actions the Department already has in place to address this issue and identify the policies, plans and actions the Department proposes to put in place to address this issue.
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Human Rights and Equality Proofing of Budget 2017

Given the proximity of the announcement of Budget 2017, FLAC notes the commitment in the Programme for Government to equality and gender proof budgetary proposals as a means of advancing equality, reducing poverty and strengthening economic and social rights.⁵ This is a matter that can be addressed and integrated with the implementation of the public sector duty with the Department of Finance being the most important Department in achieving this objective.

FLAC is of the view that this measure has the potential to improve the effectiveness, efficiency, accountability and transparency of government budgetary policy, as well as making a significant contribution towards promoting equality and respecting, protecting and fulfilling human rights. In particular, human rights and equality budgeting can have tangible benefits for all of society by reducing social and economic inequalities and providing a better understanding of how resources are being spent through enhanced collection of disaggregated data.⁶

As an initial step towards implementing the Programme for Government commitment, which covers all government departments, the Department of Finance's Budget 2017 statement should include an equality and human rights statement. This should set out:

- The equality and human rights objectives for the budget in relation to taxation, welfare and public service expenditure;
- The manner in which the above core principles are respected in the budget;
- The steps taken during the budget process to assess the impact of the budget on equality and human rights, including by specific reference to persons with protected characteristics under equality legislation, and the results of that assessment;

⁵ Government of Ireland (2016) *A Programme for a Partnership Government*, Dublin: Dept. of An Taoiseach, p.104.

⁶ For more information see Equality Budgeting Campaign and Stephen Donnelly TD, *Incorporating Equality Budgeting into Ireland's New Budgetary Process*, available at <http://stephendonnely.ie/wp-content/uploads/2013/10/20131003-Equality-Budgeting-Proposal-Stephen-Donnelly-and-Equality-Budgeting-Campaign.pdf> [accessed 28 September 2016].

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- The further steps to be taken to ensure a positive impact on equality and human rights prior to enacting the implementing legislation.

Further actions to give effect to this commitment will be required by all government departments, including the Department of Finance, over the medium and long-term. This includes strengthening the collection and analysis of disaggregated data, organising staff training to support the proofing process and developing new and effective systems to engage with those who experience inequality and violations of their social and economic rights.

Goal	Actions	Performance Indicators / Outcomes
<ul style="list-style-type: none"> ➤ Implement the Programme for Government commitment to equality and human rights proof budgetary proposals. 	<ul style="list-style-type: none"> ➤ As an initial step towards implementing the Programme for Government commitment, compile an equality and human rights statement to accompany the Department's Budget 2017 statement. 	<ul style="list-style-type: none"> ➤ Publication of an equality and human rights statement on October 11th 2016.