

flacNews

FREE LEGAL ADVICE CENTRES

Dave Ellis Memorial Lecture 2008: ACLU legal chief hopeful of change to US policy on human rights



Photo © Derek Speirs

Steven Shapiro, Legal Director of the ACLU

On 1 December 2008, FLAC hosted the second annual lecture in memory of Dave Ellis in Dublin. The keynote speaker was Steven Shapiro, Legal Director of the American Civil Liberties Union (ACLU), the largest and oldest general civil liberties organisation in the United States. Dave Ellis' wife Sarah Flynn and various members of his family attended the lecture, as did Attorney General Paul Gallagher SC and members of the Judiciary, many FLAC volunteers and supporters and members of the public.

Opening the event, FLAC's

Chairperson Peter Ward BL spoke of the continuing influence of Dave Ellis, a public interest lawyer and activist for access to justice until his untimely death in February 2007. Referring to Dave's unwavering commitment and his many connections to FLAC's work, Peter pointed to FLAC's law reform work in the area of debt and consumer credit law – reforms that are particularly relevant in Ireland today. Pointing to the urgent need for better regulation of sub-prime lending and reform of debt enforcement procedures, he recognised the role of FLAC's Senior Policy Researcher Paul Joyce, a long

time colleague of Dave Ellis, who has been to the fore in providing analysis and solutions.

Steven Shapiro began his lecture by speaking of the public interest law work of the ACLU, an organisation which, like FLAC, is above all a campaigning organisation. Currently, the organisation is involved in about a quarter of all cases before the US Supreme Court each year; either directly or as an *amicus curiae*. It employs about 200 lawyers and has an office in every US state.

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Opinion: Equality & human rights in Ireland:

As reported in the last issue of *FLAC News*, it seems that the state's equality and human rights infrastructure is at ever greater risk of being dismantled by the state itself. While the threat of merger of five separate state agencies appears to have abated for the present, drastic budget cuts have nearly crippled the Equality Authority and are likely to cause major difficulties for the Irish Human Rights Commission. A further blow to the human rights infrastructure has been the removal of the advancement of human rights as an acknowledged criterion for recognition as a charity in the forthcoming Charities legislation. Finally, three important agencies in fighting poverty and discrimination in Ireland – Combat Poverty, National Consultative Committee on Racism and Interculturalism (NCCRI) and the National Action Plan Against Racism (NAPAR) – have all been closed down.

Sadly, CEO of the Equality Authority Niall Crowley felt obliged to resign from his post in December, citing his inability to maintain a false pretence of normal service where clearly the organisation cannot carry out its man-

date. He had even suggested the Authority could try to survive with a cut of 32% rather than the incredible 43% reduction imposed by the government – a cut overwhelmingly greater than that required of any other body under the aegis of the Department of Justice, Equality and Law Reform. This offer was flatly rejected.

The broad community support for Niall Crowley – and for his difficult but brave decision – contrasts with an almost complete absence of official comment around these troubling developments prior to his resignation. It is very regrettable that he had to leave his job – a job he did very well – in order to draw serious attention to the travesty underway.

The Charities Bill has been in draft form for a number of years now but it was only at a late stage that a most serious omission crystallised: The advancement of human rights, a pursuit recognised in many other jurisdictions as a legitimate activity for a charity, initially included in the original Heads of Bill, has been removed as a charitable purpose. It is worth mentioning that protecting animal rights, promoting conflict

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Death of Tony Gregory

Everyone in FLAC was very saddened to hear of the untimely passing on 2 January of Tony Gregory, TD for Dublin's north inner city where our offices are located. Tony was well known to the organisation, having supported many of our campaigns and events.

Born and brought up in the north inner city, where he lived all his life, Tony was all too familiar with the poverty and deprivation in the area. He worked tirelessly for over 30 years as a community activist, City Councillor and TD, to secure decent housing and employment for his community and to combat the

scourge of drugs. His achievements can be seen in the improved housing and the community regeneration schemes in the area and in the spirit of hope and possibility in a once very depressed community. The huge turnout of local people for his funeral showed the respect and affection he had earned over the years.

Tony will be sorely missed by the population of Dublin's inner city, especially as we head into a time of recession which will hit hardest at poor and marginalised people.

Ní bheidh a leithéad ann arís.

Increasingly under threat

resolution and working for environmental sustainability are all deemed causes of such benefit to the community that they – rightly – warrant explicit listing in the legislation.

The question remains: why is advancing human rights suddenly no longer a charitable purpose? Its exclusion means organisations that advance human rights will have to now disregard this legitimate and worthwhile aim when seeking charitable status. Charitable status is essential to obtain funding, volunteers and donations or support generally. Existing charities may retain their standing, but as part of a review process may be in danger of losing it under the broad threat of malicious complaint about their forbidden focus on human rights. An absurd but, sadly, feasible outcome of this inexplicable decision.

That the Human Rights Commission was granted an additional once-off payment of €250,000 at the end of 2008 is perhaps a tribute to the vigorous campaign against these cutbacks. But given that the Commission was already in the red because of chronic underfunding, this sum will only go towards paying outstanding bills; it will not enable the Commission to carry out its full programme of work, which has been badly affected by the budget cuts.

FLAC believes the government must commit itself to upholding human rights in Ireland, not just in other countries abroad. We cannot afford to sit back and say that human rights in Ireland are so secure that we do not require any monitoring. In response, a coalition of organisations campaigning for a reversal of the cuts and a strengthening of human rights and equality in Ireland has formed. Called ERA (Equality and Rights Alliance), it has undertaken several actions including a petition and a delegation to the Oireachtas Committee on Justice, Equality, Defence & Women's Rights on

10 December, which, perhaps ironically, was also International Human Rights Day. (Another, rather pointed irony was that at the same time as it was undermining equality and human rights agencies at home, the Irish government was co-sponsoring a motion to the United Nations General Assembly in December calling for greater support and resources for national human rights institutions.)

The final responsibility for these indefensible decisions lies with the Minister for Justice, Equality and Law Reform, Mr Dermot Ahern. What is now needed – before further damage is done to the sector – is to reverse the budget cuts and allow the Human Rights Commission and the Equality Authority to do their work, monitoring and supporting human rights and equality in Ireland. Further, the two bodies should be made directly answerable to the Oireachtas rather than the Department of for Justice, Equality and Law Reform, which would be more sensible and practical given their remits. Finally, human rights should be recognised as a vital and legitimate charitable pursuit. Now is not the time – recession or not – for short-sighted budgeting that will store up very costly problems for the future. It is exactly in these conditions that, more than ever, we need to protect human rights and equality for the benefit of Irish society.

You can read the latest developments on the threats to equality and human rights in Ireland on:

**<http://eracampaign.org/>
and sign the petition at
www.ipetitions.com/petition/erapetition/**

You can also download the factsheet on the Charities Bill 2007 at

www.flac.ie/download/pdf/2008_12_08_pos_paper_on_charities_bill_final.pdf

Social Charter body rejects free travel complaint

The European Committee of Social Rights has rejected by 10 votes to 4 a complaint by FLAC and the International Federation of Human Rights (FIDH) about the exclusion of non-resident Irish pensioners from the Free Travel Scheme for older persons. These pensioners, most of whom live in the UK, are not allowed to use the scheme when they return home to visit family and friends.

The Committee, which monitors complaints under the European Social Charter, “recognised the close links that many wish to maintain with public, social and cultural life in Ireland” but said that restricting access to the scheme to permanent residents of the State was not a breach of the Social Charter. Former President of the Committee Jean-Michel Belorgey filed a dissenting opinion, saying it was unacceptable for nationals of a country to be excluded from benefits when they returned home simply because they were not residents. A Turkish member of the Committee also filed a dissenting opinion.

This was the first domestic case taken from Ireland under the European Social Charter and despite the disappointing result in this case, it is hoped that other cases on social and economic rights will follow.

The decision on the complaint can be found on the Council of Europe website under the heading ‘Social Charter’.

- *In late November 2008 FLAC received a visit from Antoine Madelin of FIDH. Antoine spoke about the work of the FIDH in its offices around Europe and further afield. He was in Dublin to visit some NGOs and the Irish Human Rights Commission. With FLAC he discussed closer co-operation on a number of issues including the Migrant Workers Convention.*

<http://www.fidh.org/>

Homeless asylum seeker settles case against state

On 23 October 2008 a case was taken against the State on behalf of an asylum seeker from Afghanistan who sought a judicial review of a decision by the Reception and Integration Agency to evict him from direct provision accommodation.

A number of government departments were also named as defendants, including the Department of Justice, Equality & Law Reform. Under section 3 of the European Convention of Human Rights Act 2003, these departments are obliged as “organs of the State” to act in a manner compatible with the Convention. The plaintiff applied for an injunction requiring the State to provide him with basic subsistence.

The expulsion effectively rendered the man homeless; he was unable to avail of homeless services or social welfare assistance as he did not satisfy the Habitual Residence Condition. Furthermore, as asylum seekers are not allowed to work and are ineligible to receive Rent Allowance, he could not access private

rented accommodation.

Lawyers for the man argued that there was a violation of Article 3 of the ECHR which prohibits degrading or inhuman treatment. They cited a decision of the British House of Lords, *R (Limbuella) v Secretary of State for the Home Department* [2005] HL 66, in which it was held that destitution caused by the State’s action, or in some cases inaction, could constitute a violation of Article 3. The man, who suffers from a mental illness, was evicted without being allowed to appeal the expulsion and was offered no alternative accommodation. FLAC, as well as a number of other organisations, has serious concerns relating to the impartiality and fairness of the current complaints procedure. Lawyers for the plaintiff argued that the lack of an independent and fair complaints mechanism breached Article 6 of the European Convention on Human Rights.

There were also concerns that the expulsion may have negative conse-

quences for the plaintiff’s asylum application since he would not have a postal address where he could receive correspondence. Failure to reply to such correspondence could lead to his asylum application being deemed as withdrawn.

At the initial hearing, Judge Hedigan stated that it was “not an acceptable state of affairs” for a person with a mental illness to be left on the street with no means. The plaintiff was accommodated in direct provision accommodation on the basis of an undertaking to abide by the house rules. The parties agreed to adjourn until Thursday 30 October by which time they would make written submissions. Due to the serious nature of the case, it was agreed to hold the hearing on the interlocutory injunction together with the substantive issue. However, the matter was then settled out of court. The plaintiff has been readmitted to direct provision accommodation on the condition that he would have access to the appropriate medical treatment.

2008 statistics show continuing rise in employment & consumer queries

During 2008, FLAC’s Data Collection Programme received over 7,000 data collection forms. We are delighted that 46 centres around the country participated in the programme last year, and are very grateful to our volunteer solicitors and barristers for taking the time to complete the forms.

Preliminary results indicate that family law queries again account for roughly one-third of all queries brought to the centres last year, and also show a further rise in employment law, consumer law and credit and debt related queries. Succession/probate and immigration queries appear to be down slightly on 2007 figures.

One in five callers to FLAC centres was referred on to the Legal Aid

Board with the query, which mainly related to family law.

A quarter of callers to FLAC centres in 2008 were advised to consult a private solicitor, and figures show that only one in ten of these were also advised to seek civil legal aid.

This would imply that the legal advisors felt that either these clients’ issues would not be covered by the Legal Aid Board or that the client’s income was in excess of the financial eligibility criteria for civil legal aid.

Final figures for 2008 will be published in the next issue of *FLAC News*, and will be available to download from our website in early 2009.

Draft Bill of Rights for NI

The Northern Ireland Human Rights Commission has presented a draft Bill of Rights for the North to the Secretary of State for Northern Ireland. Provided for in the Good Friday/Belfast Agreement, it sets out supplementary/additional rights to those in the Human Rights Act 1998, which incorporated the European Convention on Human Rights into UK law.

The draft Bill contains provisions on a range of rights, including the rights of victims of the conflict in the North, language rights and the right to identity and culture. There are provisions for making the social and economic rights contained in the draft justiciable and enforceable by the courts. The UK government will hold a public consultation on the draft Bill before deciding how to proceed.

www.nihrc.org

Getting it Right

Nasc public forum on Direct Provision

On 14 November 2008 Nasc (the Irish Immigrant Support Centre) hosted a public forum in Cork on legal and welfare issues affecting asylum seekers living in direct provision. The forum consisted of two panels and was led by Nasc's chairperson, Senator Dan Boyle of the Green Party.

The legal panel included inputs from Colm Stanley, solicitor and Nasc board member, who discussed the current asylum application process and the difficulties faced by applicants including the long delays in the system and also the culture of disbelief with which people are met by the authorities. He commented that the system is "too often forgiving of the decision-maker in his mistakes but this does not always apply to the applicant".

Robin Hanan, CEO of the Irish Refugee Council, gave an overview of the upcoming Immigration, Residence and Protection Bill which will have little impact on those already in the asylum process but, he hoped, would improve on the current system. He referred to amendments put forward at Committee stage which totalled over 700. There is some indication that the government may reconsider the issue of lawyers being accused of taking "frivolous and vexatious" cases on behalf of asylum seeking clients. FLAC's Policy and Campaigns Officer Saoirse Brady spoke about the negative impact the Habitual Residence Condition continues to have on people living in direct provision. She also discussed current casework in this context.

The second panel of speakers dealt with welfare issues. David Joyce from the Irish Congress of Trade Unions spoke on the right to work for asylum seekers. He stated that ICTU supports the right to work campaign for asylum seekers once they have been waiting for an outcome on their application for six months. ICTU has passed a resolution calling on the government to reinstate Child Benefit as a universal payment.

A resident from one of the direct provi-

sion accommodation centres in Cork, spoke on behalf of the asylum-seeking community about the hardship and the "mental challenge" faced by people living in direct provision under the current system. She highlighted the lack of transportation to and from the centres and the isolation felt by residents.

Bernard Ruane, a GP in Tralee, told the forum that the Irish Medical Organisation had passed a resolution calling for the right to work for asylum seekers as a huge percentage of those living in direct provision are suffering from depression or related disorders. He described the different stages which an asylum seeker would encounter during the course of their asylum application, as the positive feelings which they may have experienced on arrival in Ireland are replaced by feelings of despair on being left in direct provision.

Nasc Director Gertrude Cotter described how asylum seekers are afraid to speak out about their living conditions. She also referred to the case of an Afghan asylum seeker evicted from direct provision accommodation which resulted in his becoming homeless (see article opposite). Leave for a judicial review was given but the case was then settled out of court. Ms Cotter stated that three individuals in similar situations had presented to Nasc in the month following this potential legal action. She raised other important issues including the barring of NGO workers from direct provision centres in Cork as well as the unsuitability of direct provision accommodation in terms of personal development, especially for children.

Fergus Finlay, CEO of Barnardos, gave the closing address. He referred to the Department of Justice devising current immigration policy on the basis of national security and suggested that attitudes needed to change. He also commented on a visit he had made to a particular direct provision centre which he likened to an "open prison".

www.nascireland.org/

Hammarberg backs transgender rights

Council of Europe Commissioner for Human Rights Thomas Hammarberg devoted his first weekly Viewpoint of 2009 to a call for legal recognition of transgendered people and an end to discrimination against them.

Commissioner Hammarberg noted that there is still widespread ignorance and prejudice against transgender people in Europe and discrimination ranging from brutal attacks to obstruction and humiliation of transgender people by officialdom.

Commissioner Hammarberg mentioned Dr Lydia Foy's 10-year battle to get the High Court here to rule that the Irish Government's failure to recognise her gender identity was in breach of Article 8 of the European Convention on Human Rights. Unfortunately, that battle is not over yet as the Government has appealed the ruling to the Supreme Court.

Commissioner Hammarberg concluded: "There is no excuse for not immediately granting this community their full and unconditional human rights. Council of Europe Member States should take all necessary concrete action to ensure that transphobia is stopped and that transgender persons are no longer discriminated against in any field".

This item was first printed in the Public Interest Law Bulletin. To subscribe to this regular e-Bulletin, mail to piln@flac.ie

Thomas Addis Emmet Fellowship 2008

Report from Fellow: Kelly Mackey

Kelly Mackey, a final year student from Dublin Institute of Technology, was the recipient of the 2008 Fellowship. Kelly spent the summer as an intern in Seattle where she also attended classes at the Law School of the University of Washington. Here she gives an account of her time as Thomas Addis Emmet Fellow:

Under the FLAC Thomas Addis Emmet Fellowship for Comparative Law in the Public Interest, I spent nine weeks as a legal intern with the Washington Appleseed Center for Law in the Public Interest. Washington Appleseed coordinates attorneys and public interest causes to provide legal solutions to social problems that leave sections of society underserved and isolated. Through my time there, I learned of the myriad of social issues facing lawyers and vulnerable groups in Washington State and also of the complex legal remedies for them.

Much of my time was spent researching the legislative response of other states to predatory lending. My particular focus was on payday lending, a short-term, high-interest loan offered by cheque cashiers at extremely high-interest rates, which has proliferated in recent years across the United States. This form of credit was federally illegal until the mid-1990s, when usury laws were liberalised to allow for this new small-money credit product. However, the past decade has demonstrated that the most financially vulnerable are becoming mired in debt as a result of payday loans and in particular because of their interest rates, which can rise to over 1000%.

My role was to document the legislative caps on such loans in other states and the alternative credit options offering more favourable interest rates provided by credit unions, banks and other financial institutions. Documents arising from this work are now being disseminated to lawyers and NGOs to assist them in their efforts to curb predatory lending. I was



Kelly Mackey (right) pictured at the Fellowship award ceremony for 2008 with runner up-Orla O'Malley and Mrs Justice Catherine McGuinness

Photo © Jack Storms

also tasked with modifying a recent District of Columbia Appleseed report on economic self-sufficiency and opportunity for low-wage workers and their families to suit the Washington legal and social environment.

Applying what I had learned of the *pro bono* relationship between Seattle law firms and public interest causes, I also researched and collated a report on possible avenues for a similar rapport to be established between firms of solicitors and public interest organisations in Ireland. I was stunned to discover the difference in the approaches taken by US firms of transactional attorneys and Irish solicitor firms to *pro bono* activities in our respective legal systems. In the US, the provision of *pro bono* work is an enticement for student lawyers to firms. By contrast, in Ireland it seems that structured *pro bono* work—with the exception of the role of barristers—is not yet within the contemplation of most legal practitioners. It appears that many firms in Ireland do not realise that there is a role for them in *pro bono* initiatives and hopefully this crucial role can be realised in the near future.

The valuable insights I learned in Seattle were of course not limited to the office. As part of the fellowship, there were opportunities to liaise with other public interest and lobby groups on pressing social concerns facing marginalised groups in

Washington at present, such as the provision of pre-Kindergarten education to all children and the increasing prevalence of hunger across the state. I also had the opportunity to attend General Externship seminars for UW law students working in legal internships. Here I met judges, public prosecutors and defenders, bailiffs and others working in public law. From my interactions with Appleseed staff and also with other interest groups, I was able to explore the contrasts between our two legal systems and the similarities in the passionate dedication to social justice demonstrated by our public interest law centres.

2009 Applications

Applications are now invited for the 2009 Emmet Fellowship. Candidates must compose an essay from a selection of topics, discuss some relevant legal issues, and outline experience with NGOs or voluntary bodies.

Law undergraduates, postgraduates, King's Inns students and Law Society students are eligible to apply. The Honourable Mrs Justice Catherine McGuinness chairs the Adjudication Committee.

You can download an application form/information leaflet from the FLAC website at: <http://www.flac.ie/about/fellowships/howtoapply.html>

New legal advice centres in 2008

Over the past twelve months, FLAC has expanded its network of legal advice centres throughout Ireland. Many of these centres were set up thanks to the work of dedicated citizens' information staff in sourcing local solicitors and barristers.

New centres in Balbriggan and Nenagh are evidence of this; the centre in the Balbriggan Citizens' Information Centre started in April 2008 as a monthly service but has since increased its hours and will run as a weekly service from January 2009. The new centre based in the Nenagh CIC will also open in January 2009 and will run on a monthly basis.

In October, FLAC opened a new centre in the Blackpool Citizens' Information Centre in Blackpool, Cork City. This centre runs on the second and fourth Wednesday of the month – alternate weeks to the centre on South Mall in Cork City.

In December we also saw the establishment of an immigrant advice service in the Galway CIC. This runs on the first Wednesday of the month and will bring a much-needed service to Galway City.

The current economic climate has

caused an increase in the number of employment law queries in our centres which in turn has meant a surge in demand for our specialised family and employment law centre on Meath Street in Dublin's south inner city. The centre runs on the first three Wednesdays of the month and is staffed by two employment lawyers and one family lawyer who do great work in helping clients with often very complex queries.

FLAC also extended its immigration advice clinic in the CIC on North King Street to a weekly service in 2008. We hope to continue with the expansion of free legal advice centres in 2009. We would like to thank all our volunteers for working towards greater access to justice for all in making legal information and advice available to so many.

You can subscribe to FLAC News for €10 a year from:

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Fax: 353-1-874 5320

E-mail: info@flac.ie

Web: <http://www.flac.ie>

FLAC needs you!!!

FLAC is aiming to send a team of runners, joggers, walkers, leppers and crawlers to the 2009 Women's Mini-Marathon in Dublin city centre, with the aim of raising some much needed funds but also to have a great day out. This year the marathon will take place on 1st June – it may seem very far off while we are still in the throes of winter, but the time flies along so there's no time to waste in getting organised!

If you would like to run the marathon for FLAC, please let us know and we will send you out an information pack with details of how to enter and other goodies. You can also have a look at the dedicated website (www.womensmini-marathon.ie) which has everything you could wish to know about the event itself, pre-training schedules and groups, and plenty more.

And of course keep an eye on the FLAC website for more details of 2009's Team FLAC!

Follow-up ICCPR conference 2009

FLAG, the Irish Council for Civil Liberties and the Irish Penal Reform Trust are to continue work on the International Covenant on Civil and Political Rights (ICCPR) by organising a follow-up conference on 6 April 2009.

Having ratified the ICCPR in 1989, Ireland undertook to report periodically to the UN Human Rights Committee which monitors state implementation of the Covenant. Ireland's third periodic report was

examined by the Committee in Geneva in July of this year. A Shadow Report to the state's report, produced by a coalition of the three organisations, was also submitted to the Committee.

This, together with a presentation of the report in Geneva, was very well received. The Committee adopted its Concluding Observations on Ireland in late July, detailing over twenty areas of concern and recommendations for the government on implementing the

Covenant in Ireland. FLAC, the ICCL and IPRT feel that it is vital that this process does not end here and that stakeholders are given the opportunity to discuss the issues highlighted both by the Shadow Report and the Concluding Observations and the implementation of the Committee's recommendations.

We hope that members of the UN Committee will also attend the event. For details, keep an eye on www.flac.ie and www.rightsmonitor.org.

Dave Ellis Memorial Lecture 2008 looks at the

[cont'd from front page]

However, while using public interest litigation as a tool to promote rights, and recognising it as a “powerful engine of social change”, Steven also acknowledged its limitations. He suggested that litigation “cannot be divorced from its larger political context”. In his view, courts will rarely move ahead of political sentiment. When they do, they risk provoking a backlash that will negate progress made. He described human rights as a political struggle that required litigation but also grassroots organisation and coalition-building. As he said: “it is hard to maintain change without popular support”. In answer to a question after his speech, he developed this point by saying that grass roots support was not just effective in widening access to justice on a community level, but also such support yields a wider base for human rights cases to be built. He pointed out that the communication with communities is a two way process, allowing the ACLU to learn from communities as well as vice versa.

The bulk of Steven’s talk centred on the ACLU’s work in protecting and defending rights during the Bush Administration. The US has “witnessed a legal struggle...not only over national security and human rights, but over the principle of separation of powers and divided government that is so basic to the US governmental structure.” The Supreme Court, despite its rather conservative composition and reputation, has been central in upholding many rights at risk during the so-called ‘War on Terror’. The ACLU has raised issues of detention in Guantanamo Bay and the illegal ‘rendition’ of people around the world in the court as well as clarifying questions of habeas corpus and constitutional jurisdiction. In contrast, a number of the lower courts have firmly backed the new order and have used “a variety of court closing judicial doctrines to bar any serious judicial enquiry into government policies”.

Steve cited a number of ACLU cases to

illustrate both the power and the powerlessness of the courts to defend rights. The most astonishing case was that of Khaled El-Masri, a German citizen.

In a horrific case of mistaken identity, El-Masri was secretly abducted by US agents in Macedonia, taken from there via Baghdad to Kabul and held and interrogated for over 4 months secretly, in appalling conditions. While it appears that his captors discovered very quickly that he was not the person they wanted, it took them months to decide how to deal with him. Ultimately, he was unceremoniously flown to Albania where he was released without apology or explanation in the countryside. During all this time, no one in his family or country knew where he was. Eventually reunited with his family, he began the quest to find out what had actually happened. He still had no idea why he had been kidnapped.

The case became well-known throughout Germany and eventually El-Masri brought a case through the ACLU in the US courts against the Director of the CIA and others. The government opposed the case on an argument that on its face seems tortuous but which was ultimately upheld by the courts. The government’s argument was that it could neither confirm nor deny any allegations. If it had been involved in the events surrounding El-Masri’s detention, those events were necessarily covert and so the government could not speak about them - even if they had happened - which it would not admit. As a result, the US government argued, it could not defend itself and the case must be dismissed. Despite the overwhelming evidence compiled by the ACLU including evidence of the German government and Council of Europe, the court found in favour of the US government and threw out the case, rejected the subsequent appeal and declined to review it. Thus, Mr Shapiro emphasised, there are limits to the power of the courts in restraining executive action in the US, even if it may stop the worse excesses.

Steven Shapiro was optimistic regarding the incoming Obama administration’s

intentions to close down the Guantanamo Bay facility. However he sounded a note of caution regarding the subsequent fate of detainees, as the chilling notion of ‘indefinite preventative detention’ has been raised in the US. This would see cases being “periodically reviewed by a judge, subject to standards that have yet to be articulated, and pursuant to procedures that have not yet been identified, but that if the Government satisfies its burden of proof, whatever it may be – every six months let us say – then it can keep people in detention for perpetuity, as long as every six months it goes back to a judge and gets a judge to sign off.”

Steven’s concluding point focused on the universality of human rights:

And so, part of the message that I bring to you from the United States – recognising that we have different legal systems, different cultures, different political experiences, different political systems – is that the role of human rights advocacy and human rights advocates is indispensable throughout the world. That the meaning of universal human rights is that they apply universally. And that human rights have no meaning unless they are enforced. They are not enforced on their own.

In the final question and answer session, Steven described increasing restrictions around the use of class actions, including the absence of legal aid. In ACLU’s view, as class actions cannot now be legally aided, there is a need for more imaginative approaches even in a country like the United States with a relatively entrenched system of public interest law.

In conclusion, FLAC Director General Noeline Blackwell spoke of the worrying attacks on equality and human rights in Ireland evident in the wholly disproportionate budget cuts to the Human Rights Commission and Equality Authority and the failure to include the advancement of human rights as a ‘purpose beneficial to the community’ from draft charities legislation.

evolving landscape of human rights in the USA

You can read a synopsis of his address on the FLAC website and we hope to also upload an audio version to the site in the near future.

You can find more information online at:

- <http://www.aclu.com>
- <http://eracampaign.org/>
- <http://www.ipetitions.com/petition/erapetition/>
- http://www.flac.ie/download/pdf/2008_12_08_pos_paper_on_charities_bill_final.pdf



Photos © Derek Speirs

Pictured at the lecture (L-R): Michael Farrell, FLAC Senior Solicitor; Steven Shapiro, ACLU; Attorney General Paul Gallagher; and Peter Ward BL, FLAC Chairperson



Members of Dave Ellis' family at the lecture



ACLU Legal Director Steven Shapiro (R) with Attorney General Paul Gallagher



Steven Shapiro pictured with FLAC Director General, Noeline Blackwell at the Second Dave Ellis Memorial Lecture.

Global credit crisis: How to

On 13 and 14 November 2008, interested parties of all types came together in London to discuss the global credit crisis that turned the world's financial system on its head in the latter half of 2008. FLAC was also there.

The event was organised by the Centre for Economic and Social Inclusion (Inclusion) and the British charity, Debt on our Doorstep, and supported by European Coalition for Responsible Credit (to which FLAC is currently the sole Irish affiliate) and the US-based National Community Reinvestment Coalition. The conference was held to exchange views on the causes of the current crisis and its effects on consumers and financial systems in countries right across the globe.

Noting that taxpayers worldwide are paying the bill for the irresponsible lending of banks but that it is households who are feeling the worst effects of the crisis, the conference took as its central theme the need to provide immediate support for at risk households, to focus on solutions for those who are indebted and the need to lay ground rules to govern the future provision of credit. These aspirations are summed up in the 'London Declaration', a statement of principles which all governments are urged to adopt to protect vulnerable consumers, as the full effects of the crisis and the global downturn hit home in 2009.

Day One

The first day of the conference included a contribution from Professor Udo Reifner, Institute of Financial Services, Hamburg and Chair of the European Coalition, who noted that a three trillion underwriting of banks was in place and yet not a single cent had been received in government support for this conference. He suggested that financial institutions' less than concerned attitude to customers was evident in their language. For example, we

should be speaking not of the administration of risk but the prevention of risk, not of creditworthy people but people-worthy credit. What is a non-performing loan, he asked? Surely it was the person who borrowed the money who was not performing. Risk of default could not be hidden by packaging loans as investment vehicles, because risk was a people problem. Ultimately, he concluded, only socially responsible banks are safe.

Regina Jensdottir, Head of the Public and Private Law Unit of the Council of Europe's Human Rights and Legal Affairs section, outlined the reasoning behind the Council's decision to issue a recommendation (REC(2007)8) on legal solutions to debt problems. She also stressed the need for a better understanding and more balanced use of credit as an instrument of economic growth.

A panel discussion followed on what caused the crisis and what tomorrow might bring, which included two banking representatives sounding appropriate notes of contrition. A representative of CitiBank (which to be fair had sponsored the conference) made a constructive contribution on the steps it was taking to prevent repossession of family dwellings in the USA, involving both a 'Home Assistance' programme, designed to anticipate problems and thereby restructure loans, and a 'voluntary foreclosure moratorium' subject to borrowers meeting a number of stability criteria.

The British Bankers Association representative provided a forensic explanation of how the crisis occurred, remarking that former US President Bill Clinton's policy of promoting access to housing for those on low incomes marked the beginnings of the sub-prime securitisation trend in the US. This was rejected by John Taylor, Chief Executive of the US-based National Community Reinvestment Coalition, who said he was tired of the inaccurate suggestion

that loans to poor people caused the crisis. Toxic refinancing loans, he said, granted to higher income, already over-extended consumers, were far more responsible and these only took off in 2003. He argued that the crisis was caused by Wall Street investment firms looking to find a profitable home for money and might have been averted by proper consumer protection and regulation. Reverend Graham Blount, Chair of Citizens Advice Scotland and Debt on our Doorstep, said that out-of-touch governments and people themselves had become convinced that success as a nation could be measured by the profits of banks. He asked that we should put in place interest rate caps on credit and nurture community-based finance initiatives.

Of two workshops, the first dealt with the potential of the revised EU consumer credit directive and the Council of Europe recommendation on legal solutions to debt problems in dealing with the current crisis. Ultimately, members seemed to agree that the directive had been overtaken by events even prior to its transposition in Member States and it would do little to prevent irresponsible lending. The Council of Europe recommendation had more potential but less prospect of enforcement. The second workshop on 'Who rescues insolvent consumers' looked at the variety of models of consumer bankruptcy across Europe. Although not new, the absence of any such developments in Ireland – despite its credit boom and debt bust – is again particularly marked.

Day One closed with 18 reports on the effects of the credit crisis in individual countries. FLAC's Paul Joyce had the very dubious pleasure of trying to summarise the Irish situation in less than five minutes. What was noticeable from this session and informal conversation throughout the event is that the effects of the credit and debt crisis on consumers seem more pronounced in English-speaking countries. People in

protect households at risk

Scandinavian and Benelux countries, Germany and France, less fixated on home ownership and multiple credit card use and many cases having interest rate ceilings on loans in place, were suffering less even though they too were heading into recession.

Day Two

The keynote address on day two was given by Martin Wolf C.B.E., Associate Editor of the *Financial Times*, who deconstructed the causes of the collapse. Extreme inflation stability, he explained, had provided an ideal background for risk-taking. Rising confidence fuelled the purchase of assets with debt, with the hope that the assets purchased would appreciate in value. 'Success breeds excess' he suggested. When assets do not appreciate, confidence wanes and asset values collapse. In his view, a deep and prolonged recession was inevitable. To combat it, he suggested that fiscal discipline should be parked, governments should spend and interest rates should be reduced to zero (advice that the UK since appears to be following). In terms of lessons learned, he believed that liquidity must be better managed in the future and that the balance sheets of the major banks need to be controlled as they are contingent liabilities of the State.

In the panel discussion that followed, many contributors suggested that a failure to properly regulate had contributed significantly to the crisis. Doug Taylor of *Which?* (the UK consumer magazine) made the point that responsible lending is not just about assessing affordability; products must also be safe and fair to consumers. Creditor representatives noted that a more comprehensive dialogue between the industry and consumer groups was needed, as were ongoing consumer education programmes.

An afternoon workshop on irresponsible lending featured contributions from South Africa, the US, the UK and Japan. Peter Setou of the National Credit

Regulator's Office provided details of South Africa's National Credit Act (in operation since June 2006) which put in place a new infrastructure for regulating consumer credit. Features of this system include the compulsory registration of credit bureaux and debt counsellors, a consumer complaints process to the Regulator with a right of appeal to a National Consumer Tribunal and a debt rescheduling mechanism that has already had 35,000 applications. Reckless lending is specifically prohibited under the Act, with credit providers obliged to carry out an assessment of the consumer's understanding of the proposed credit, previous payment history and financial means and obligations before entering into an agreement. Where an agreement is deemed to be reckless, a court has the power to reschedule its terms.

Matt Lee, a board member of the National Community Reinvestment Coalition, outlined the purpose of the 1977 Community Reinvestment Act in the US to encourage banks to meet the credit needs of low and middle income neighbourhoods. He said that, crucially, penalties for non-compliance were slight and sub-prime lenders had not by and large abided by the Act. Opportunities for public review of credit provision had, in his opinion, diminished under Republican administration, with mergers being approved at short notice and little Federal concern or regulation of sub-prime.

Nigel Cates of the UK Office of Fair Trading gave an account of its current project on irresponsible lending. Public consultation informed its intention to take a wide approach to the question and it would look at not just the assessment of the borrower's capacity to repay, but also advertising, marketing, and selling techniques, product design, use of appropriate credit scoring techniques, and how cases of default or arrears are handled. The identification of irresponsible lending practices might then have a future impact on the grant-

ing of credit licenses under the consumer credit legislation.

Finally, Saya Oyama of Kinjo Gakuin University, Nagoya, recalled the 1998 debt crisis in Japan, where bank failure led to three million job losses and some 30,000 suicides, many prompted by over-indebtedness. Since then, a series of legal challenges had succeeded in reducing the maximum credit interest rate from 109.5% in 1994 to 29.2% in 2002 and to 20% in 2006. Personal lending of over one-third of a borrower's income had been banned. Together with improved debt advice services, education programs and public consumer finance, the indebtedness problem in Japan had therefore stabilised. However, the potential downside of such a strategy included reduced access to credit, perceived harm to the economy and the encouragement of loan sharking.

The final plenary session agreed that common principles of responsible lending needed to be adapted to create a better financial world. There was a clear sense from speakers, including creditors, throughout the conference that a much more balanced approach to the provision of credit was required. However, it may be easier to sound the right notes in the middle of a crisis. As one delegate pointed out, banking is a business and employees were under huge pressure to sell credit. Responsibility must come from the top down, not just in credit institutions, but also from regulators and governments.

See the ECRC website at for the text of the 'London Declaration' and more details on the Coalition, its aims and a full list of members:

www.responsible-credit.net

Focus on FLAC Staff: Saoirse Brady Policy & Campaigns Officer



As Policy and Campaigns Officer in FLAC, Saoirse Brady's role involves analysing certain government policies to see if they are in line with the work of FLAC. She assists Michael Farrell, senior solicitor in FLAC, with social welfare cases. She has been researching the system of direct provision and is currently updating the FLAC 2003 report in this area. She expects the new report to be out in 2009.

Saoirse works on campaign strategies for all of FLAC's work, such as the promotion of FLAC's campaign to restore Universal Child Benefit. Saoirse also works alongside other NGOs and offers assistance and guidance especially in

cases relating to the Habitual Residence Condition.

Saoirse has a BCL degree from University College Dublin. During her undergraduate studies, she spent a year on Erasmus in Italy. She also holds a Masters in European Studies from the Dublin European Institute in UCD. As part of her Masters, Saoirse also studied Spanish. After finishing university, Saoirse worked as a legal researcher for the Commission to Inquire into Child Abuse. Her research focused on the abuse in industrial schools.

Saoirse then went on to be awarded the Frank Jennings Internship with Front Line, the organisation working for Human Rights Defenders. This internship gave her experience working for the protection of human rights defenders. During the course of her internship, she spent four months working in the UN Office of the High Commissioner for Human Rights in Geneva where she worked with Hina Jilani, the former UN Special Representative for Human Rights Defenders.

In September 2007, Saoirse joined FLAC as she wanted to get some experience working on human rights at a national level. Her father worked in welfare rights so she had a grounding in social welfare

and social justice issues in Ireland.

According to Saoirse, the most rewarding part of her work is being able to provide people with legal information and steering them in the right direction. Saoirse also feels lucky to be able to work alongside the experienced and dedicated fellow staff members in FLAC and she feels that there are always people in the office who are willing to help her.

One area of law where Saoirse would like to see change is in the application of the Habitual Residence Condition. She feels that the application does not always take people's individual circumstances into account. This has caused great hardship for many families, especially asylum seekers.

Recently, Saoirse was very disappointed that the amendment to the Charities Bill to include the advancement of human rights as a charitable purpose was struck down in the Seanad Debate. This is a crucial part of many organisations' work and opens the way to them being 'accused' of doing human rights work, a ridiculous situation. The reluctance to include human rights in the Bill was even more stark given that these debates took place in the same week that celebrations took place to mark the 60th anniversary of the UN Declaration of Human Rights.

Providing information on law to communities A clinical legal education project for law students

FLAC is initiating a Student Initiative on Clinical Legal Education in conjunction with Irish law schools. This will enable law students to get involved in providing legal information and services to marginalised groups in Irish society.

The students, supervised by qualified lawyers, will deliver legal information to the public through workshops for various community groups. The aim is to promote access to justice by improving public understanding of law and the legal process and informing people

about their legal rights and duties.

The second key component involves a virtual legal advice centre for the public. This web-based resource will answer standard queries in a style that will direct the caller through scenarios based on typical questions to our telephone information line. Law students can volunteer to help conduct the legal research involved, which will be substantial. This will require students to work in small groups and prepare questions and answers on a particular topic, e.g. probate or immigration law. Students are

overseen by a qualified practitioner-tutor. They can use this research for presentations to community groups. The programme will allow students to apply the legal principles they have learned while at the same time developing the interpersonal and analytical skills they will require for professional practice. Through work with communities, students are encouraged to think about issues such as human rights, underlying democratic values, how the law should be reformed and how access to justice and equality can be improved. For more information, contact volunteers@flac.ie or 01-874 5690.

Volunteer training covers immigration, employment & collaborative law

FLAC held another volunteer training evening in the Royal Dublin Hotel on O'Connell Street on Tuesday 4 November 2008. The evening had a packed schedule which included talks on family law, the use of collaborative law, employment law, civil legal aid and immigration law.

Jennifer O'Brien, a partner with Mason, Hayes & Curran and Keith Walsh, Vice-Chair of the Dublin Solicitors Bar Association Family Law Committee (also a FLAC volunteer in Ballyboden) started the evening off with a talk on separation and divorce and the use of collaborative law. Jennifer gave a detailed explanation of the legislation surrounding separation and divorce which was accompanied by an informative slide show. She covered the constitutional provisions for the family; the European Convention on Human Rights, 2003; the Judicial Separation and Family Reform Act, 1989 (as amended by the Family Law Act, 1995); the Family Law Divorce Act, 1996 and the Civil Partnership Bill, 2008. This presentation also gave examples of case law in the circuit court.

Keith Walsh then spoke about the use of collaborative law for separation and divorce proceedings. Keith gave very clear examples of the questions to ask a FLAC client who may be in the process of getting a separation or divorce in order to give the best advice.

Eugene Smartt gave a very useful talk on unfair dismissal and redundancy. A long-standing volunteer in the Clondalkin FLAC, Eugene was able to illustrate clearly how to help FLAC callers with these queries and deal with the queries effectively in a short timeframe. He continued by examining both the dismissal and redundancy of an employee separately. He also looked at important considerations when deciding whether a client should bring an unfair dismissal action based on A) unfair selection for redundancy or B) not a genuine redundancy situation, and the comparison of the amount received in the redundancy as against the amount which would likely be awarded if the case succeeded before the Employment Appeals Tribunal.



Above: Speakers at the volunteers training event on 4 November (L-R): Catherine Hickey (FLAC), Jennifer O'Brien (MHC Solrs), Eugene Smartt (Solr), Ruth Dowling BL (FLAC), Ruth Ni Fhionnain (ICI) Keith Walsh (Solr)

Below: Attendees at the training event.



Eugene's talk was followed by a talk on immigration law. The talk was given by Ruth Ni Fhionnain, Legal Information Officer for the Immigrant Council of Ireland, who kindly stepped in at short notice to give an excellent talk on immigrants' rights and entitlements. The Immigrant Council is a non-governmental organisation established in 2002 that provides information services to immigrants. It also carries out lobbying/policy, research and education & training (for more information, see the website at www.immigrantcouncil.ie).

In her presentation, Ruth, described categories of migrants, visa processes, various residency stamps and their conditions, employment permits available, the ending of residency, family reunification and long-term residence.

Our final speaker of the night was Ruth Dowling, a barrister and former FLAC employee and a volunteer in our centre on Pearse Street, Dublin 2. Ruth spoke on legal aid in Ireland, starting with the Civil Legal Aid Act 1995. She went through the areas excluded from the legal aid scheme, the merits test (case must be reasonably likely to be successful), the means test (financial eligibility) and how to apply.

Ruth described the private practitioner's scheme, the complaints procedure and foreign legal aid. She then quickly looked at the criminal legal aid scheme in Ireland.

We would like to thank those who attended the training as well as the speakers for their excellent contributions. If anyone would like copies of speaker's presentations, please contact us at volunteers@flac.ie or 01-874 5690.

New social welfare law targets recession-hit homeowners

FLAC and Northside Community Law Centre made a joint submission on the Social Welfare (Miscellaneous Provisions) Bill 2008 on 20 November 2008. The submission was prepared by Ciara Murray, an independent Public Information Consultant.

The submission dealt with proposed changes to a number of different schemes including Mortgage Interest Supplement, Jobseekers Benefit, Child Benefit and Early Childcare Supplement.

Mortgage Interest Supplement is a payment made as part of the Supplementary Welfare Allowance scheme, in circumstances where the claimant is in receipt of a social welfare or HSE payment and is having difficulty in making the interest payments on his/her mortgage. The Bill sought to insert a new definition for Mortgage Interest into the legislation which would mean that a person would be refused the payment if s/he were seeking to repay a loan which was for a purpose other than the purchase and/or repair of their principal residence. FLAC and Northside CLC believe that any loan which was secured against the home of the claimant should be considered and a payment could be awarded if the other criteria were met. It was suggested in the submission that the definition of a "loan" contained in the Consumer Credit Act 1995 (as amended) should be inserted into the legislation.

The Bill aimed to restrict the HSE in interpreting the circumstances in which the supplement might be granted; heretofore the payment could be awarded where the interest was deemed "reasonable". This allowed for a degree of discretion, as the Community Welfare Officer could take into account the merits of the individual case, but the new provision seeks to introduce a common standard by which all cases would be determined. Anecdotal evidence suggests that persons who borrowed from sub-prime lenders in particular have been refused the payment in recent months on the basis that the loan was not affordable in the first place.

In the current economic context, it would be a more sensible option for the authorities to consider strengthening the entitlement to Mortgage Interest Supplement in the short term in order to avoid substantial debt or even the repossession of the claimant's home. Furthermore, the submission referred to a recommendation of the Working Group on the Review of the SWA Scheme, where procedures would be put in place to address long term housing need.

Northside CLC and FLAC are also concerned at the proposed changes to Jobseekers Benefit which increase the number of PRSI contributions required to qualify, reduce the length of time a person can receive the payment and retrospectively limit the time in which an existing applicant can claim the benefit. Regarding changes to the payment of Child Benefit and Early Childcare Supplement, FLAC and Northside CLC cautiously welcome proposals to reform child income support provided they address the needs of all children in the State and retain the universality principle of Child Benefit.

Both organisations stressed the importance of ensuring that the changes in the social welfare legislation are made in light of the European Convention on Human Rights, as Section 3 of the ECHR Act 2003 provides that all "organs of State" must act in a manner compatible with the Convention. In particular, the authorities should give due consideration to Article 8 which affords the right to respect for private and family life including a person's home, and Article 1 of the First Protocol which allows for protection of property.

Roisin Shortall TD (Lab) and Olwyn Enright TD (FG) referred to the submission at committee stage and the Minister stated her Department would take it into consideration for report stage. However the Bill was enacted into law on 17 December 2008 without including any of the changes suggested in the submission.

**Read the submission in full :
www.flac.ie/publications/policy
under 'Social Welfare Law'**

Focus Ireland:

FLAC is grateful to Zoe Hughes of Focus Ireland for this article

Housing and homelessness charity, Focus Ireland, recently published a magazine that underpins its campaign seeking a statutory right to aftercare for young people leaving State care.

The magazine, *Bridging the Gap: From care to home*, outlines the case for a right to aftercare and features articles by organisations working in the area and a range of independent experts, including legal expert on Child Protection Geoffrey Shannon, Children's Ombudsman Emily Logan, Focus Ireland Life President Sr. Stanislaus Kennedy, and Focus Ireland Director of Services Orla Barry.

Recent figures show that there are over 5000 young people in state care. Approximately 90% of these are in foster care and the remainder live in residential centres (ref. Office of the Minister for Children and Youth Affairs). As it stands, once these young people turn 18 years of age, the State no longer has any legal obligation to provide aftercare services or support to help them make the transition to adult and independent living.

Most young people experience a period of transition from their teenage years to adulthood. They are supported by family as they take up third level education, as they find work or as they move away from home for the first time. However, young people who have grown up in State care are not automatically entitled to this support on turning 18 and can end up being out on their own with no one to turn to for advice or reassurance.

This is why Focus Ireland is campaigning for a statutory right to aftercare – to ensure that all young people who need support are provided with it and to ensure that no young person is left to fall through the cracks in the system. Section 45 of the Childcare Act 1991 provides that, "Where a child leaves the care of a health board, the board may, in accordance with subsection (2), assist him for

Campaign for statutory right to aftercare for young people leaving state care

so long as the board is satisfied as to his need for assistance and, subject to paragraph (b), he has not attained the age of 21 years.” In effect, this allows the Health Service Executive (HSE) to provide aftercare support but does not oblige them to. Any aftercare that is provided is dependent upon the will of the HSE and it does not guarantee a right to aftercare support for those young people who need it.

For many young people, leaving care is a daunting and terrifying time and being left without the supports that most people take for granted can have devastating consequences. Many young people that Focus Ireland works with come from a care background and in 2000 Focus Ireland published a research report, *Left Out on their Own*, which looked at the fate of young people leaving State care. Damningly, this study found that around two-thirds of young people who left State care ended up experiencing homelessness within two years. This figure shows that it is imperative that aftercare become a legal right to prevent young people from becoming homeless and becoming involved in associated problems such as addiction and crime.

Drawing from his own experiences of leaving State care, soccer legend Paul McGrath has endorsed and helped launch Focus Ireland’s campaign for a statutory

right to aftercare. The magazine includes an article from Paul, who speaks candidly about his own fears and how he struggled to cope when he left care.

Focus Ireland provides aftercare services in Dublin in collaboration with the Government and the HSE. These services provide the structured support that young people need to help them make a successful transition to independent, adult life. Supported accommodation is provided for a year. Staff work with the young people, helping them to access training or education programmes and providing the practical and emotional support needed to help build their confidence and independence.

When the young people are ready to move on from Focus Ireland’s aftercare programme, they are assisted in settling into the local community and staff continue working with them until they have fully settled. However, there is already a waiting list for the aftercare services and many young people continue to be unsupported when they leave State care. A right to aftercare would mean that all young people would have equal access to aftercare services if needed.

Not only is there a strong moral argument for aftercare, but it stands to reason that it would make financial sense for the Government to invest in aftercare and so

help prevent young people becoming drawn into homeless services, addiction services or even the criminal justice system in the future. Investing in aftercare services now would lead to better outcomes for both the young people and the State.

Focus Ireland will continue to campaign for a statutory right to aftercare in 2009 and will lobby Oireachtas members to help build momentum and support for a right to aftercare. *To order a copy of Bridging the Gap, contact Focus Ireland’s Information Officer on 01-881 5967.*

Jacinta’s Story

”When I left care I had nowhere to turn to for support and found myself staying at friends places and sleeping on sofas. I wasn’t happy, I had no support and was moving from place to place with no direction.

When I moved in to Focus Ireland’s aftercare accommodation it was so different. I had my own room and could get great support from the staff here and could turn to them for advice when I needed it. I was lucky as there weren’t many places available.

I really struggled to keep on my feet when I left care but the staff here changed all that. They were so good to me and showed me how to have more confidence in myself. I think there should be more support for people like me leaving care and it should be everyone’s right to receive this type of care should they need it.”

The full text of this story can be read in Focus Ireland’s magazine, Bridging the Gap: From care to home. This magazine can be ordered by contacting Focus Ireland on 01 881 5967.



Pictured at the launch of *Bridging the Gap: From care to home* are soccer legend Paul McGrath and Focus Ireland CEO, Joyce Loughnan

Photo: Mac Innes Photography

Opinion: Proposed rules on repossession must take consumer viewpoint into consideration

FLAC notes with satisfaction the Financial Regulator's proposal to put rules on repossession of mortgaged family homes on a statutory basis. We believe this long overdue measure should be implemented without delay. However, haste should not negate the need to adopt the correct statutory framework. In particular, FLAC seeks mechanisms by which those seeking to protect consumer rights can be heard and their concerns taken on board before the measures are adopted.

The notification by the acting head of the Regulator's office came at a hearing of the Oireachtas Economic Affairs Regulatory Committee on Tuesday 13 January 2009. Mary O'Dea announced that the Regulator intended to put its existing statutory code and the voluntary code of the Irish Bankers Federation on a statutory basis and to apply the code to all those who lend, including so-called sub-prime lenders.

By combining the codes and putting them on a mandatory statutory basis, there is likely to be an improvement in the methods of handling mortgage arrears which will give breathing space to some facing repossession. However, as they stand, both codes fail to adequately protect the needs of consumers. In particular, they fail to

address the inequity that the lender always wins the property at the end of the day, no matter how reckless the loan. FLAC has doubts too about the investigation mechanisms and the adequacy of sanctions.

The code thus far reflects the view of lenders and the Regulator. But it lacks consumer input and no mechanism has been suggested for consumers or consumers' rights bodies to discuss the proposed revised code. Nor is it clear that the Regulator proposes to discuss the code with the Oireachtas. In FLAC's view, the perspective of consumer rights and public representatives is crucial and must be considered before the code is adopted.

FLAC has written to the Financial Regulator raising some consumer protections issues. Among these are the question of sanctions and machinery to oversee the code's application and investigate alleged breaches. There is currently no analysis – or, at least, none publicly available – of the efficacy of current sanctions. While welcoming a stronger code, FLAC has reservations about the capacity of an internal tribunal (that appears largely untested) to investigate a financial transaction which, for many consumers, is the biggest they will ever make. Any investigation machinery must be well constructed, respect fair

hearing standards and consumer rights, and be properly resourced. Sanctions too must be effective. Those tempted to lend irresponsibly must know that there are genuine consequences if they fail to observe the code.

Even if a proper system is put in place, it will not solve the dilemma of repossessions where, no matter how reckless or irresponsible the lending, only one party – the borrower – is ever dispossessed. If a lender goes to court seeking a repossession order, then, in the absence of any technical defence, a court's hands are tied: either adjourn the matter or grant a Repossession Order. Courts can only adjust the property of the imprudent borrower; they have no power to hold the irresponsible lender at least equally accountable. This is particularly difficult as in most cases, the power, knowledge and expertise of the lender are vastly superior to that of the borrower. Rectifying this anomaly by permitting the court to use its discretion on reckless loans is not a matter for a code, but rather for legislation. FLAC has asked the government to use the opportunity in re-capitalising the banks to include provisions which would right the inequality of arms that arises in such situations.

The full text of FLAC's letter is on www.flac.ie.

Celebrating 60 years of Human Rights



The Irish Human Rights Commission and the Human Rights Committee of the Law Society recently ran a joint poster competition for school children to mark the 60th anniversary of the Universal Declaration of Human Rights. Pictured left to right are Rebecca Kane, Monika Czuba & Shannon Ward, 1st year students at Presentation Secondary School Galway with their posters at the opening of the exhibition, Human Rights - Framed By Young People, at the Law Society, Blackhall Place.

Photo: Moya Nolan