

flacNews

FREE LEGAL ADVICE CENTRES



Commissioner Hammarberg highlights Foy case

See page 3

FLAC gauges public opinion

On 6 July 2010, the interim recommendations of a government-appointed Expert Group on Mortgage Arrears and Personal Debt were released. The group comprises members of government departments, representatives of the banks, economists and other financial experts including FLAC's Paul Joyce.

One of the recommendations of the group was the revision of the Code of Conduct on Mortgage Arrears, which governs the

manner in which lenders deal with mortgage arrears on primary residences. In August, the Office of the Financial Regulator released a draft revised Code of Conduct and sought representations from "interested parties" within a short three week timeframe. FLAC made its own substantive submission to the Regulator on the revisions, noting the need for better consumer protection in all aspects of the Code and in addition, pointing to serious gaps where borrowers remained unprotected.

FLAC also initiated a campaign to facilitate the public in communicating their views to the Regulator. With the help of volunteers, it collated the views of 35 people who completed FLAC's questionnaire as a means of communicating with the Financial Regulator. Both FLAC's own submission and the compilation of views of members of the public can be seen on FLAC's website www.flac.ie. Read more on pages 8-10.

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Contributors: Saoirse Brady, Michael Farrell, Paul Joyce, Aine Hynes, Peter Harper, Roisin Boyd, Gillian Kernan, Jenny McCarthy, Lianne Murphy, Colin Lenihan, Zsé Varga, Larry Donnelly, ISSN 07914148

The views of individual contributors do not necessarily represent the views of FLAC.

Deaf woman wins jury service case

FLAC client Joan Clarke won an important victory in July when the High Court ruled that the Galway County Registrar had no authority to exclude her from jury service. Judge Dan O’Keeffe also held that there could be no blanket ban on deaf people serving on juries. Unfortunately, he did not go on to modify a longstanding common law rule against allowing anyone except jury members in the jury room while they are considering their verdict.

Joan Clarke, a deaf woman, who is a working mother and is fluent in lip reading and sign language, received a jury summons for the Galway Circuit Court in April 2006. She contacted the court office to say she was keen to serve on the jury but would need a sign language interpreter.

The court staff were helpful and arranged for an interpreter but shortly before the court date, they informed Ms Clarke that the Courts Service had instructed them that no deaf person could serve on a jury. The 1976 Juries Act lists deaf people as “incapable persons”, who are “unfit to serve on a jury” (This offensive language was modified by the Civil Law (Miscellaneous Provisions) Act 2008 but the practical effect appears to be much the same). The County Registrar wrote to Joan to say she had been excused from jury service even though she had never asked to be excused and did not want to be. She was disappointed and upset.

Joan Clarke, represented by FLAC, challenged her exclusion in the High Court. The case was heard in 2008 and judgment was finally given in July last, four years after the original jury summons.

Judge O’Keeffe held that the County



Joan Clarke: took her case to High Court

Registrar had no power to excuse someone who had not asked to be excused and who did not fit into the categories of person who could be excused. He also said that deaf people could not be excluded just because they were deaf. They would have to be deaf and unfit to serve on the jury. He also said that where there was an issue about whether someone was fit to serve, that issue should be determined by the court.

This is a welcome move away from the offensive and hurtful ban on all deaf people serving on juries and it should enable some hearing impaired persons to carry out jury duty with the assistance of readily available modern technology. Regrettably, however, the judge took the traditional view that protecting the confidentiality of the jury required the exclusion of sign language interpreters from the jury room, thus continuing to exclude profoundly deaf persons like Joan Clarke.

This view has been abandoned in the largest common law jurisdiction, the United States, where deaf people regularly serve on juries and the courts have accepted that sign language interpreters are highly trained professionals with a strict code of ethics that precludes them from interfering in any way in the jury's deliberations. There have been cases in England as well where a deaf person has served on a coroner's jury

“... deaf people could not be excluded just because they were deaf”

(“Account of a deaf juror”, Sign Matters, July 2005) and where the Court of Appeal held that there had been no breach of jury confidentiality where a police officer operated a video recorder for the jury during its deliberations (R. v. Szypusz [2006] EWCA Crim.1552).

The Law Reform Commission in its Consultation Paper on Jury Service published earlier this year expressed the view that the presence of a sign language interpreter in the jury room would not inhibit the jury's deliberations. It can only be a matter of time before this outmoded barrier to treating deaf people as full and equal citizens is abandoned. Hopefully, Joan Clarke's case will have hastened that day.

Council of Europe Commissioner for Human Rights, Thomas Hammarberg, has welcomed the Irish Government's decision “at long last” to drop its opposition to Lydia Foy's transgender legal challenge and recognise her as a woman. Commissioner Hammarberg singled out the Foy case for mention in his weekly Comment on 1 September which goes out to all 47 member states of the Council of Europe.



European rights chief welcomes Foy decision

He said it was crucial that the Government should now include transgender representatives on its working group to draw up new legislation and urged it to adopt an inclusive law which could become a model for other European countries. The Commissioner said: “The rights of transgender persons are still ignored or violated, but some signs of understanding now begin to appear. One example is the outcome, at long last, of Lydia Foy's struggle in Ireland. She was registered as male at birth but has lived as a woman since 1992.

“Most people legally defined as man or woman will experience a corresponding gender identity. Transgender persons, however, do not have such a corresponding identity and may wish to change their legal, social, and sometimes also physical status,” he continued.

“The case initiated by Lydia Foy in 1997 led to a High Court ruling ten years later that Ireland was in breach of the European Convention on Human Rights by not providing recognition of Dr Foy in her preferred gender. It took the Irish government another two and a half

years to accept that Irish law is incompatible with the European Convention. In June 2010 the Irish government withdrew its appeal to the Supreme Court and will now recognise Lydia Foy as a woman.

“The Irish government will introduce legislation to recognise transgender persons in their preferred gender including the possibility for them to obtain new birth certificates. An inter-departmental working group has been set up by the Irish government to develop a legal framework which respects the human rights of transgender individuals. It is crucial that representatives of the transgender community as well as other experts be represented in this working group. This could become a good model for other states which are currently considering improving their legal framework for transgender persons...”

In particular Mr Hammarberg urged against legislation that required transgender persons to divorce their partners and undergo sterilising surgery before they can be recognised in their preferred gender.

Working with PILA to promote Human Rights and Access to Justice

This article is by
Aine Hynes,
Director of the Irish Mental
Health Lawyers Association

The Irish Mental Health Lawyers Association supports the work of FLAC and Public Interest Law Alliance (PILA) in utilising the law for the advancement and protection of human rights and for the benefit of marginalised and disadvantaged people.

The IMHLA was set up in early 2007 by Mark Felton and Aine Hynes following the implementation of the Mental Health Act in November 2006. Our initial membership comprised of lawyers appointed to represent persons detained in psychiatric hospitals. The IMHLA has now widened the membership to include all solicitors, barristers and academics with an interest in this emerging area of practice.

The Mental Health Act provides patients who are detained with legal representation and a right to have their detention examined by a tribunal. It is a very important piece of legislation which aims to bring Ireland in line with the European Convention on Human Rights. We represent some of the most vulnerable members of our society.

Our aims are to promote the best legal framework for those who are detained in psychiatric hospitals, to ensure that people are detained in accordance with the law and in accordance with their rights under the European Convention on Human Rights.

At our most recent conference in May 2010, excellent presentations were provided from Professor Darius Whelan on “Reforming Mental Health and Mental Capacity Law”; from Lianne Murphy, Project Officer with PILA on “Opportunities for Public Interest in



IMHLA's Aine Hynes (centre)

Ireland” and from Dr Ciaran Craven, “Is the Man Mad - A New Test of the Lawfulness of Involuntary Detention”.

Professor Darius Whelan called for urgent reform of legislation which determines how patients may be detained in psychiatric hospitals. In Ireland people in psychiatric hospitals who are there on a so-called ‘voluntary’ basis are not free to leave. If they attempt to leave, despite their ‘voluntary’ status, they may be legally restrained and detained. This practice has been ruled lawful in several High Court decisions and in the Supreme Court. It has been held that a person can be detained in a locked psychiatric unit without a legal order. Because these people are officially “voluntary” patients, they do not have the right to an independent tribunal to determine whether they require to be kept in a hospital in order to be treated.

Lianne Murphy gave a very informative lecture on mental health law and the link with PILA. She said that mental health is a vitally important public interest law issue and that mental health law is in need of reform. She identified how PILA can assist by way of education through resources on the barriers to public interest litigation on the PILA website and education seminars. PILA will play a coordinating role between all those involved with an interest in public interest law which includes lawyers, law firms, community and independent law centres, NGOs,

academics and students both here in Ireland and internationally.

Dr Ciaran Craven’s paper addressed recent case law and the approach adopted by the Supreme Court in interpreting the Mental Health Act 2001. He discussed several cases including *EH v Clinical Director of St Vincent’s Hospital & ors.*, a case that has given rise to considerable debate in the context of Ireland’s compliance with the European Convention on Human Rights. Article 5 of the Convention provides that persons may only be deprived of their liberty in accordance with a procedure prescribed by law. This means that procedural errors in relation to a warrant for arrest or search in criminal cases will invalidate that arrest and defects in the procedures would be grounds for a person to be released from prison. The situation for those being deprived of their liberty in psychiatric hospitals is different.

The EH case suggests that a challenge to a person’s involuntary detention is not warranted “unless the best interests of the patient so demand”. Lawyers now have to consider what is in a patient’s best medical interest in determining whether to bring defects in a detention to the attention of the courts. The Supreme Court further stated that “[m]ere technical defects, without more, in a patient’s detention should not give rise to a rush to court, notably where any such defect can or has been cured.” Dr Craven pointed out that “all defects in a person’s detention are technical, unless a substantive challenge can be made to the very existence of mental disorder in the applicant.”

Further information about the IMHLA, is available on its recently launched website www.imhla.org

Debt issues main talking point at Hamburg conference

Matters of debt, both personal and commercial, have moved centre stage in Ireland since the bubble officially burst two years ago. Reform is now clearly on the agenda with final recommendations due soon from the Law Reform Commission in the areas of personal insolvency and debt enforcement and from the government appointed Expert Group in connection with mortgage arrears. Reform in a time of crisis may be fraught with danger but our hopelessly outdated approach to problems of over-indebtedness cannot continue.

FLAC's Paul Joyce, a member of the Expert Group and a contributor to the Law Reform Commission's deliberations, was recently invited by the IFF (Institut Fur Finanzleistungen) to contribute to a plenary session on 'Banking in other countries – Current national problems and solutions' at the IFF's national conference in Hamburg. The IFF has a long track record of working for the protection of consumers in financial services in Germany and Europe and has been at the centre of many European research projects in this area. The IFF is the founder member of the European Coalition on Responsible Credit (ECRC) of which FLAC is a member.

Speakers at this panel reported a wide range of personal debt problems in their countries due to the banking crisis internationally. The speaking order perhaps reflected the gravity of the situation with Ireland preceded by Greece and followed by Portugal. As the session unfolded through the contributions of delegates from Italy, the UK and the Netherlands, it was notable that the detrimental effects of the crisis on consumers were less pronounced. This is likely to reflect two factors – a stronger economy less vulnerable to external shocks and a more effective personal insolvency



FLAC's Paul Joyce (fourth from right) speaking at the IFF conference in Hamburg

regime. Paul attempted, in the limited time available, to summarise the current position in Ireland. This included a brief outline of why the National Asset Management Agency (NAMA) came into being, some details of current mortgage arrears and repossession rates, mention of recent reports detailing the causes of the crisis including the Regling/Watson and Honohan reports and a summary of the measures being proposed to reform the law and assist over-indebted consumers.

Beyond this particular panel, this one day conference provided a fascinating snapshot of the relationship between the credit industry and the consumer lobby and debt advice sector in Germany. One session moderated by a well known financial journalist involved a no-holds-barred Question and Answer session with prominent banking representatives. An interesting session on 'Responsible Credit and the Consumer Credit directive' heard Sarah Lynch from the Internal Market Directorate General (DG) of the European Commission announce that the Commission intend to introduce legislation on the issue of responsible lending and borrowing in the near future. Workshops on 'Bankruptcy Laws for the Insolvent Consumer', 'Corporate Social Responsibility' and 'Financial Literacy' all served to remind once again the long road Ireland has to travel.

FLAC on their travels

In November, PILA will attend the 2010 *European Pro Bono Forum* in Paris. This is the fourth annual *pro bono forum* to be held by PILI, the Public Interest Law Institute.

This year it expects to draw together more than 200 lawyers, NGO representatives and academics from throughout Europe and beyond. The forum provides a unique opportunity for those involved in *pro bono* to come together to share information and compare experience on developing and promoting *pro bono* work.

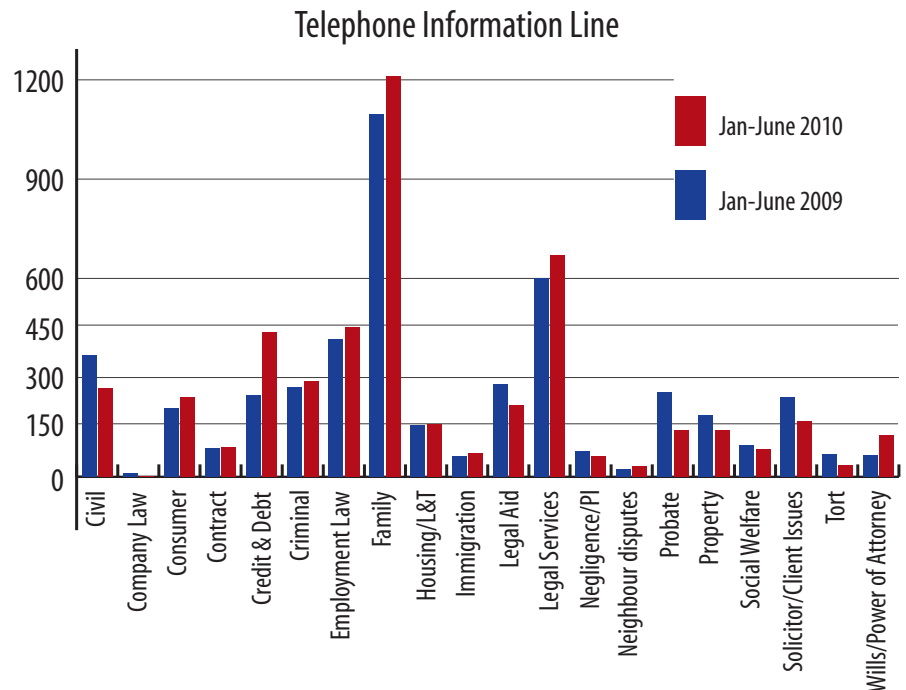
PILA is delighted that PILI has invited Noeline Blackwell to speak on combating poverty and social exclusion through *pro bono*. Noeline will speak on an international panel alongside representatives from FEANTSA (the European Federation of National Organisations Working with the Homeless) and the Grameen Foundation.

76% rise in debt calls to FLAC telephone information line

By the end of June 2010, 5,098 callers had phoned FLAC's telephone information and referral line seeking legal advice, up slightly from 5,091 during the first half of 2009. Similar to last year, almost one quarter of callers to the FLAC information line sought advice on family law. Just over 13 per cent of calls wanted information on legal services such as contact details of a FLAC centre, the Legal Aid Board, etc.

Nine per cent of callers had an employment issue, and the same percentage had a credit and debt concern. The number of debt related calls during this period saw a dramatic 76% increase on the same period last year.

During the first half of 2010, FLAC received details through the Data Collection Programme on 5,378 clients who called to FLAC centres around the country. This information was recorded in 55 centres, and shows an increase in the number of centres returning data to FLAC.



Again similar to last year, just over 30 per cent of all queries at FLAC centres were in relation to family law matters. Employment law continues to be the second most commonly discussed area, accounting for 15 per cent of all queries.

Debt queries rose by 52 per cent from 236 queries in the first half of 2009 to 359 during the same period in 2010 reflecting the economic problems faced by many people in the country.

Slopping out in Portlaoise Prison deemed “unacceptable”

The High Court has found that the ‘slopping out’ regime in Portlaoise Prison is “unacceptable”, however it found that the sanitation and hygiene conditions were not such as to constitute a violation of constitutional rights.

The judgment in the case of Mulligan v. Governor of Portlaoise Prison & Anor was handed down by Mr Justice Mac Menamin in the High Court in July 2010. It held that on the specific facts of this case, that the plaintiff’s constitutional rights and rights under the European Convention on Human Rights were not violated by the practice of ‘slopping out’.

According to the judgment, the plaintiff complained of sanitation, ventilation, and hygiene issues while he was a prisoner in Portlaoise. He had a cell to himself which was not overcrowded, and the medical conditions to which he claimed that the ‘slopping out’ aggravated were never documented. The evidence was not sufficient to show that the conditions of Mr Mulligan’s detention were such as to

seriously endanger his life or health.

More than 1,000 prisoners are obliged to ‘slop out’ each day in Irish Prisons with the majority being in Mountjoy and Cork Prison. The practice has been widely condemned, including a 2006 report by the European Committee for the Prevention of Torture where the Irish authorities were called upon to eradicate the ‘slopping out’ system from prisons. The Irish Prison Service has acknowledged that the practice is unacceptable; however the State has made no significant plan to end the degrading practice.

The Executive Director of the Irish Penal Reform Trust, Liam Herrick stated that “the case presents a horrific description of the reality of the humiliation and discomfort caused by forcing adults to carry out basic human functions in appalling circumstances. It also gives a further damning indictment of the persistent failure of the State to prioritize the provision of basic sanitation to prisoners.”

New manager for PILA

A word from PILA's new manager –

Larry Donnelly

“I’ve closely followed FLAC’s work in the area of public interest law since the superb international conference it convened on the topic in 2005. The public interest law conference was exciting to me as an American lawyer who had seen at first hand the positive impact that the work of public interest lawyers had on US society. Furthermore the conference demonstrated how public law can be an effective tool for advancing the public interest and bettering the lives of those on the margins of Irish society.”

During my time at NUI Galway I was in regular contact with FLAC - and later with PILA - about my efforts to place law students with quasi and non-governmental organisations and practitioners. I have placed students with, among others, the Equality Authority, the National Federation of Voluntary Bodies, the Immigrant Council of Ireland and Northside Community Law Centre.

When the PILA manager position was advertised earlier this year, I was delighted and eager to pursue the opportunity to further the work I’d been doing from within



academia in a different context. I hope to build on the excellent work already undertaken by my predecessor, Tony O’Riordan, and the rest of the PILA team as we continue to identify the legal needs of the non-governmental sector and match their needs with experienced lawyers. We hope to expand our *pro bono* register of lawyers and ultimately nurture a *pro bono* culture in Irish law firms, with the aim of working to minimise barriers to public interest litigation and seeking to expand clinical and community legal education in Ireland.

With PILA there are many things we can accomplish in the short term and many seeds we can plant for the long term. I’m looking forward to working with the PILA team and all of our stakeholders.”

BIOGRAPHY

Larry Donnelly is a Boston born and educated attorney who holds American and Irish passports. He holds a Bachelor of Arts degree from the College of the Holy Cross in Worcester, MA and a Juris Doctor degree from Suffolk University Law School in Boston, MA.

Before joining PILA he was Lecturer & Director of Clinical Legal Education in the School of Law at the National University of Ireland, Galway.

At NUI Galway, Larry established the School of Law’s Clinical Legal Education programme, the largest of its kind in Ireland. The school was a 2009 finalist for the MacJannet Prize for Global Citizenship.

He has published law review articles on legal education and comparative law.



Clare Naughton of the Northside Community Law Centre speaking at the housing law event

PILA Training

Through the *pro bono* referral system PILA organised social welfare and housing law training for NGO staff members on 18 August and 1 September respectively. Both sessions were very successful with a full audience and positive feedback. Staff members from a wide range of NGOs with whom PILA works participated in the training sessions. Saoirse Brady, Policy and Campaigns Officer with FLAC, delivered the session on social welfare law, concentrating on the habitual residence condition and the social welfare appeals process. Clare

Naughton, Solicitor with Northside Community Law Centre, delivered the training on housing law concentrating on local authority obligations, the right to a home, the imbalance of rights and anti-social behaviour.

Due to the high demand from NGOs, PILA is organising a second training on both social welfare and housing law in the Autumn, which other organisations with whom PILA works will attend.

Materials from both training sessions are available on the PILA website www.pila.ie

Debt expert group's interim report released



“Our focus in the area of debt has always been, and will continue to be, the protection of vulnerable consumers.”

– Noeline Blackwell.

On 6 July the Expert Group on Mortgage Arrears and Personal Debt made interim recommendations to government. Chief among these was the amendment and revision of the Code of Conduct on Mortgage Arrears. See pages 9 and 10 for more information on the proposals for revision of this Code of Conduct.

The report also suggested a number of changes to the Mortgage Interest Supplement (MIS) including the removal of the ban on paying MIS to a couple where one person is in full-time employment and the suspension of the rule which excludes the payment of MIS when a house is up for sale. It also urged that no legal action should be taken by the lender while MIS is being paid and the borrower is co-operating.

On personal debt, the Group's interim findings urged that immediate consideration be given to the reform of judicial bankruptcy proceedings and the establishment of a non-judicial debt settlement process. Such measures should take into consideration the Final Report of the Law Reform Commission's Report on Personal Debt

Management and Enforcement expected later this year.

Following the publication of the report, the Group's Chairman Hugh Cooney encouraged all lenders to take immediate steps to implement the findings stating that it would significantly improve the position of families in arrears.

The Minister for Finance, Brian Lenihan commented: *“These recommendations are pragmatic and capable of speedy implementation,”* while Minister for Communications, Energy and Natural Resources Eamon Ryan stated:

“The group is working well and these interim recommendations should be implemented by the banks, the regulator and all agencies without delay. The people of Ireland stood by the banks in their hour of need for the benefit of the whole population. It is incumbent on the banks to similarly stand by vulnerable people in our society who find themselves in difficulty through no fault of their own.”

The Financial Regulator said he would act swiftly to address the main priorities identified in the report and encourage

lending institutions to take immediate steps to implement the findings. He also urged consumers who feel they are in difficulty to contact their bank at the earliest possibility before an arrears problem gets out of hand, noting that lenders must treat borrowers fairly. The Financial Regulator has since published a revised code to implement these recommendations and this Code should be in operation before the end of the year.

In addition to the proposed new code, the Civil Law (Miscellaneous Provisions) Bill 2010 now proposes to amend the Bankruptcy Act 1988 based on the Law Reform Commission's Interim Report. This involves the reduction of the basic discharge period for bankruptcy from 12 to six years where the bankrupt's estate has been realised, preferential costs have been paid and the court feels it is reasonable to grant it.

FLAC Director General Noeline Blackwell noted *“FLAC will continue to contribute to the workings of the Group in a constructive manner through the membership of its Senior Policy Researcher Paul Joyce. Our focus in the area of debt has always been, and will continue to be, the protection of vulnerable consumers.”*

Regulator proposes changes to mortgage code

In August, the Financial Regulator published a consultation paper which set out proposed changes to the Code of Conduct on Mortgage Arrears which had originally been introduced in February 2009.

The Regulator proposed amendments in a number of distinct areas including: the provision of financial information to consumers; communication between lenders and borrowers; pre-arrears situations; repossessions; appeals procedures; and the introduction of a

Mortgage Arrears Resolution Process or MARP. MARP sets out definitive steps which a lender would be obliged to follow when a borrower falls into arrears.

In an unusual step, the Office of the Financial Regulator actively sought the views of what it termed 'interested parties'. It looked for input in four main areas – communications; what constitutes arrears; the definition of a primary residence; and the creation of an independent appeals process.

FLAC, which campaigns in the area of credit and debt reform, examined the consultation paper and made its own submission, outlining recommendations and suggesting changes. However, FLAC also felt that it was vitally important to gauge the views of the public and as a result conducted a public consultation campaign on the Regulator's proposals. A summary of the outcome of FLAC's public consultation is summarised in the next article.

A public response to the regulator's questions

Communications

The Code proposes financial institutions can make three "unsolicited contacts" to a customer in any given month. The vast majority of those surveyed by FLAC felt that these contacts should be reduced.

While receiving three communications, as suggested by the Regulator, was described as 'excessive' and 'amounting to harassment' by a number of respondents, some felt that this level was 'satisfactory'.

According to one respondent: "Lenders should contact borrowers once a month to ensure they are aware of default and outline implications and possible remedies to address any default. When an arrear arises the lender should contact persons in writing, these should then be followed up by a meeting if response does not deal with the matter to both parties' satisfaction".

Arrears

Under the existing Code of Conduct on Mortgage Arrears, (CCMA) a borrower is deemed to be in arrears as soon as he or she fails to make a full mortgage repayment. Aware that lenders are applying different definitions as to what constitutes arrears, the Regulator was keen to elicit the views of the public in determining when a person is in arrears.

Over a third of the respondents to FLAC's questionnaire felt that a person should be deemed in arrears only "after the second consecutive missed payment".

**contact
should be
after the
second
missing
payment
before they
get too big**

"Arrears should be considered if a mortgage payment is missed on two successive occasions, one payment should not be deemed arrears... An arrear should only be recorded whereby the full mortgage is not met."

Another respondent felt that arrears

should only be referred to "after the second missed payment [as this] would rule out extraordinary cases where one month is missed but it would identify problems before they get too big".

Finally, nine out of 35 respondents felt a borrower should be considered in arrears after three months of missed payments.

Primary Residence

Pointing to the myriad of definitions for what constitutes a 'Primary Residence', the Regulator was keen to ensure the scope and definitions of the CCMA accommodate different, but equally valid, situations. Hence, the Regulator requested the views of the public on the matter.

The strongest contention from the majority of respondents to FLAC's survey was that the Code should not apply to holiday homes or investment properties.

In the cases of multiple properties, a number of respondents suggested that the mortgage holder be required to state clearly which is his or her permanent residence or family home. There was a lot of support for the protection of the family home as well as for those mortgage-holders forced to move out and rent properties to meet the cost of mortgage repayments.

A public response to the regulator's questions (continued)

The issue of relationship difficulties and the subsequent effects these have on mortgages on jointly-owned property was raised by several respondents who felt that protection should extend to the primary residence of both former partners (if now living separately).

An Independent Appeals Body

Under the original 2009 Code of Conduct, no provision exists for a borrower to have a lender's decision reviewed by an external body. As a result, the Regulator

sought opinions and views on whether an external appeals mechanism is necessary and if so, what form it could take.

This idea evoked strong reactions among the respondents. Many felt that the banks and financial institutions were biased, with one commenting "the banks cannot be trusted to self-regulate ... [as has been] proven by recent events".

"If someone is finding it difficult to repay... and circumstances have changed then the lender should come to a new repayment agreement. If the lender is

over demanding on the borrower income then there should be a specific appeals body aside from the financial ombudsman," commented one respondent.

A small number of respondents felt that the Financial Service Ombudsman was sufficient and feared the creation of "another quango". Some respondents however expressed unfamiliarity with the office and appeals process of the Financial Services Ombudsman – which was described by one respondent as "too difficult for people to deal with".

Recognition of need for broader resolution of debt problems

While asking members of the public for their response to questions raised by the Financial Regulator, FLAC took the opportunity to test public opinion on other matters of concern relating to mortgage arrears. These included the supports available to borrowers including legal advice, and the need, if any, for an overall debt settlement process.

What kind of support is needed?

From the thirty respondents who answered this question, the main opinions broadly fell into two categories – those who did not believe that there was enough support or advice available and those who were not aware of current supports or were unsure of where to go. A number of respondents felt that the services and supports which are available are not advertised sufficiently.

Another respondent commented that it would be in everyone's interest to have proper supports and tools available to the borrower: "In addition to the borrower and the lender coming to a new agreement it would be in the lender's interest to help apply a financial support and money management tool to the borrower. A tool to help forecast inflows and outflows, manage the household budget and cost saving initiatives in the home. The better the borrower can

manage all aspects of spending, the better they can manage and repay all debts."

However, a small number of respondents felt the supports that are currently available are sufficient. One respondent commented that "a mortgage is a private contract entered into freely and knowingly so I don't believe there should necessarily be supports for people facing arrears. It would lead to uncertainty over all debt repayment."

The availability of Legal Advice

While groups like FLAC and MABS try to get the best possible advice to those in mortgage arrears it was unsurprising to note that those surveyed felt that a lot more could be done. Aside from those who believed that there was not enough support, there were also a number who simply stated that they were not aware of where to go in relation to these matters.

In relation to legal matters in the area MABS, FLAC and the Citizens' Information Centres were all actively named by a number of respondents. A number of respondents were aware of the service provided by FLAC – one commented that FLAC and MABS, along with other support bodies, need greater funding to meet the increased demands.

An Overall Debt Settlement Process

Nearly two-thirds of respondents agreed that there needs to be an overall

debt settlement process and a more holistic approach taken.

These respondents felt that "all outstanding debts need to be included in the process" and that "there should be a more comprehensive process for debt settlement".

One respondent felt that an overall debt settlement process would "help people who find themselves in arrears," but stressed that "repossession [be] the very last option and everything possible [be] done to prevent people from losing their homes."

Another respondent feared that the Code did not adequately address the issue of those with multiple mortgages and other debt: "The Code as it stands does not take into account the reality that a significant number of borrowers have multiple mortgages, which is going to become a real issue. The Code should be applied to both principal and investment mortgages or some other form of debt settlement process should be implemented. The Code on its own is not going to ease the problem of growing personal debt."

One respondent felt that reform of the Bankruptcy legislation was needed urgently. The same respondent also felt that: "We need individual voluntary arrangements in place to allow people to agree schemes with creditors and take the pressure away from the debtor."

The importance of our people: volunteering with FLAC

FLAC builds on our volunteers' commitment and expertise at different levels of our work, but probably most visibly in our Legal Advice Centres. FLAC supports over 500 volunteers who dedicate their time and expertise to serve their communities around the country.

Since January 2010 at least 7,080 clients were seen by volunteer advisors in the centres. Without their commitment and reliability these people would have not been given legal advice free of charge.

FLAC acknowledges the importance of its volunteers and a volunteer programme development strategy is being developed and implemented. As part of that we are looking at the areas volunteers can get involved in, our support systems for our volunteers, our policies and procedures and quality assurance.

What do volunteers do?

Most of our volunteers are involved in our Free Legal Advice Centres. Volunteer advisors are all qualified barristers and solicitors. Advisors assist callers in identifying where there is a legal problem, explain what options are open to them and, if necessary, direct them to where they may obtain further assistance. No casework is taken on at the Centres.

Our Legal Advice Centres do not offer second opinions. Volunteer advisors may



FLAC volunteer Michael O'Dwyer in action at our Clondalkin Centre

inform callers who already have a solicitor that, according to FLAC's strict policy in this regard, we cannot assist them, and that they should return to their own solicitor.

Our volunteer assistants deliver support roles in the centres. Some get involved in staffing reception at the centres or in other support roles. They also support the FLAC head office by keeping us up to date on resources needed in the centres.

FLAC also involves volunteers in other areas of work. Volunteers get involved in our campaign work as well as in working groups that we set up to focus on areas such as the Civil Legal Aid Scheme.

Vacancies in our centres

Volunteer advisors are needed at a Dublin City Centre location for a day-time clinic. We are looking for fully qualified barristers and solicitors who are ready to commit to a two hour involvement, on a monthly or fortnightly basis, in a new daytime centre.

FLAC is always on the lookout for volunteer legal advisors who are ready to commit themselves to our ethos and goals and are available to volunteer on a regular basis.

We are also seeking volunteers in the following areas:

Newbridge, Wicklow, Arklow,
Waterford, Dungarvan,
Limerick, Tralee.

We are also recruiting volunteers who are interested in getting involved in our campaigns, and our working groups.

For further information please contact Zsé Varga Volunteer and Centres Manager at volunteers@flac.ie.

FLAC data collection programme

One of the core principles of FLAC is to ensure that disadvantaged people can effectively access legal services. FLAC is also dedicated to advocacy for the promotion and protection of human rights, particularly the right of access to justice.

To achieve those aims, it is essential for FLAC to have an accurate picture of the legal need of its callers. The information collated from FLAC's network of centres has greatly assisted FLAC in its development and in its ongoing research and campaigning efforts.

FLAC's Data Collection Programme relies heavily on the co-

operation of both volunteer advisors and Citizens Information Centre organisers. Participating Citizens Information Centres assist FLAC by ensuring that all necessary data collection material is made available to advisors at the centres and returned promptly to head office.

Collection of client data

While the main objective of the legal advice centres is to assist clients with their legal query, the improvement and development of service delivery and of FLAC's campaigning role depends on accurate data collection. Once advisors have dealt with the client's query, they complete a Data Collection Form recording some basic information about the area of law discussed. These forms are then returned to FLAC head office for collation and analysis.

Direct Provision update

As widely publicised in the media, on 6 July 2010 more than 100 residents in Mosney direct provision centre received letters ordering them to transfer to a centre in Dublin within a few days without prior consultation with the residents. While it is not unusual for people within the direct provision system to be transferred at such short notice, residents are not usually transferred on such a large scale unless a centre is being closed for business.

The Department of Justice and Law Reform justified the transfers as part of a “value for money” audit following the publishing of a report in May 2010 which referred to a need for the Reception and Integration Agency (RIA) to reduce capacity in a number of centres. The department has apparently renegotiated its contract with the owners of Mosney and reduced capacity at the centre. However, FLAC was concerned that this approach concentrates only on the financial cost of the scheme while ignoring the individual needs and human rights of residents in direct provision accommodation centres. It reported its concerns once the news was known.

In response to the proposed transfers,

FLAC issued a background note and initiated an email campaign inviting members of the public to contact the Minister for Justice and Law Reform and the Reception and Integration Agency (RIA) to register their opposition to the transfers.



One person who wrote to the Minister stated:

I understand that we live in difficult times, that we must do more with less, and that we don't have the same resources at our disposal. You have explained this decision on the basis that it amounts to a cost cutting exercise with savings of €1.8 million to be made on an annual basis. But what will be the human cost of this decision?

The date for transfers passed and

residents were not forced to move and a new transfer date of 31 August was set. Some residents moved to Dublin before then while others felt they had little choice but to move out of direct provision to stay with friends or relatives. In many cases doctors working in Mosney, as well as NGO support workers, made representations to RIA on behalf of residents who did not want to move for medical or personal reasons. This resulted in the reversal of the transfer order in some but not all cases. As this article goes to print there remains a group of approximately 40-50 residents who are still expected to transfer and have not yet received a satisfactory response to representations made about their concerns.

FLAC is a member of the NGO forum on direct provision made up of national and local organisations working on issues affecting direct provision residents. On 26 August 2010 members of the forum sent an open letter to Minister Ahern outlining our concerns about the manner in which the situation in Mosney was handled. To date, there has been no direct response to this letter and it remains to be seen how the situation in Mosney will be resolved.

Ombudsman wins benefit for asylum teen

A teenage asylum seeker was refused Child Benefit because her application was received on the first working day after the Habitual Residence Condition was introduced on 1 May 2004. The teenager, who did not speak much English, did not appeal at the time and when FLAC took up the issue for her some years later, the Social Welfare Appeals Office refused to accept her appeal.

FLAC made a complaint to the Ombudsman on behalf of the young woman, who by then had a child of her own. The Ombudsman's office took it on and pursued the

issue with the Department of Social and Family Affairs, suggesting that the deadline had been applied too rigidly. After an investigation that took nearly a year and a half, the Department finally agreed to award the benefit retrospectively and to pay arrears to the young woman who has been given leave to remain in Ireland and now has two children.

FLAC and our client were impressed at the persistence and determination the Ombudsman's office showed in following this up and hope the Department will be more flexible in future when dealing with vulnerable people.

Joint Oireachtas briefing on the Direct Provision system

In the previous issue of FLAC News we reported on the revised House Rules and Procedures document issued by the Reception and Integration Agency (RIA). It contained little substantive change other than a limited right of appeal to RIA for an asylum seeker to be re-admitted to direct provision accommodation in circumstances where he or she has been evicted for breaching the house rules.

FLAC and other members of the NGO forum on direct provision held a briefing in Leinster House at the end of June. The aim of the session was to inform politicians about the need for an independent complaints mechanism in direct provision centres based on best practice guidelines issued by the Office of the Ombudsman. Representatives from Labour, Fine Gael, the Green Party and Sinn Féin attended the briefing and engaged with the group.

Following this event, FLAC and AkiDwA, the migrant women's network, were invited to make a presentation on their respective reports launched earlier this year to the Joint Oireachtas Committee on Justice, Equality, Defence and Women's Rights. The committee debate which took place on 7 July, coincided with events in Mosney and highlighted the issues about gaps in the administrative system raised by FLAC in *'One Size Doesn't Fit All'*. Alan Shatter TD, Fine Gael Spokesperson on Justice, stated that the way in which the Mosney situation was handled was an *"utter and complete disgrace and should not have occurred."*

In August, the Joint Oireachtas Committee on Health and Children visited direct provision accommodation centres in Monaghan and Mosney. FLAC sent a briefing paper and relevant documents to Committee Members in advance of these visits at the request of direct provision residents in both centres. These documents highlighted the length of time that people are waiting for a decision on their asylum

applications, the adverse effect of it on their mental health, and the impact on children who are spending the initial part of their formative years in these centres and being denied access to a normal family life. The cross-party delegation was made up of Deputies Seán O'Fearghail, Kathleen Lynch, Margaret Conlon, Caoimhghín Ó Caoláin, and Senator Phil Prendergast. The Committee told the Irish Times (23 July 2010) that "our concern would be around the impact that that unduly lengthy system has on the health and welfare of families and on children in particular". Deputy O'Fearghail also described the conditions in some direct

“conditions in some direct provision centres are cramped and inadequate”

provision centres as “cramped and inadequate”. The RIA will be invited to come before this committee in the autumn and we plan to make further representations in advance of this meeting.

FLAC will continue to seek substantive changes in the direct provision and dispersal system to improve the living conditions of people who are in the care and control of the state while they seek protection in Ireland.

The debate can be accessed at
<http://debates.oireachtas.ie>

FLAC client seeks access to Social Welfare decisions

Appeals body says it does not keep its own decisions

A FLAC client has challenged the failure of the Social Welfare Appeals Office to give her access to previous decisions relevant to her appeal. In a case which has implications for many other social welfare appeals, she claimed that she could not make her case properly if she did not know how the Appeals Office decided other similar cases.

In a bizarre development, the Appeals Office told her that it did not keep copies of its own decisions, apart from a handful which it publishes on its website or in its annual report. Instead it sends them all back to the Department of Social Protection, which is the defendant in social welfare appeals.

When FLAC's client, who is a refugee and is appealing a decision to refuse her Child Benefit, asked the Department for copies of the decisions, they replied that they did not file them in any systematic way that would allow her to access them.

The Refugee Appeals Tribunal used to refuse to release past decisions as well but in a case called *Atanasov v. The Refugee Appeals Tribunal* in 2006, the Supreme Court ordered them to make relevant decisions available to appellants. In the UK, the social welfare appeals bodies publish their decisions regularly on their website so that claimants can see how decisions are made.

FLAC's client was granted leave to apply for judicial review at the end of July and her case was set to appear in the High Court on 13 October.

Focus on FLAC: Liam Thornton, FLAC Council

F LAC is always looking to bring fresh minds onto its National Council to bring new ideas and opinions to the table. The most recently joined member is Liam Thornton. The Cork native graduated from UCC in 2005 and it is his close links to third level life and society that inspired FLAC's National Council to offer Liam his place at the top table. Throughout his studies, Liam was aware of FLAC's campaigns in relation to legal aid and its work with asylum seekers but it was his work with the UCC FLAC Society that laid the foundations for him to join the Council, hoping to inspire other students to become actively involved in human rights law.



The Society in UCC originally started when law students were given the chance to sit in with FLAC volunteer solicitors once a week observing them giving advice and seeing the problems faced by ordinary people in the FLAC clinics. The society formalised and grew from there and Liam played an integral part in building up one of the strongest links between FLAC and any university in the country. "In fourth year, after returning from Erasmus, I was auditor of UCC FLAC. This was when we formalised our relationship with central FLAC. We began holding more seminars and attending more events in relation to provision of legal aid, in relation to FLAC campaigns on PILA and on asylum seekers in direct provision. We just became more involved centrally with the main body of FLAC. That's how I would have gotten to know those working in FLAC as well as those on the FLAC Council," explains Liam.

Liam graduated with first class honours from Cork and he is currently in the process of finishing his PhD on 'Reception Conditions for Asylum Seekers and the Culture of Control'. He was working on this full time for over two years before

moving to part-time study in order to accommodate opportunities for other work, including a position of Research and Policy Officer with the Irish Human Rights Commission, and now a lecturing role in the University of Ulster (Magee Campus).

In 2008 Liam was invited onto the FLAC Council where he has put his experience with UCC FLAC to good use. "My main work on the board is with student societies. It was about formalising them across a number of campuses. I was in with UCC FLAC, which was already fully associated. I also worked with UCD and NUIG, as well as with TCD FLAC to basically increase engagement with their students involved in FLAC helping them understand its aims and objectives. Basically, my job was to create a greater awareness of access to the law and how access to the law can help promote equality and help improve human rights."

Although Liam accepts that not all law students or graduates are drawn to this type of practice he does feel that it is important to get a taste of it to "make them aware". He accepts that many students are more interested in

commercial and traditional law subjects but they should still take the opportunity to look at areas of law which are not seen as very financially profitable but which help others to achieve their rights within society. Certainly it is something that Liam and those in UCC FLAC benefitted from, and many have gone on to work in the area of public interest law.

Looking back on his FLAC involvement so far, Liam points to a number of highlights with the excitement and buzz surrounding the Foy case being an obvious high point. He also points to the release of FLAC's report on the Direct Provision system in Ireland which he feels helped to "put the topic back on people's agenda and their attitudes towards it."

Of course, Liam has no time to look back on past achievements as he hopes to finish his PhD this October. From then, it will be a case of getting as much experience as possible in his specialist fields of social welfare law, immigration law and EU Law. We hope that his work with FLAC will also be a constant in the years to come.

Human Rights in Ireland blogging seminar



At the blogging seminar: Mark Kelly Director ICCL; Fergus Ryan DIT; Aoife Nolan QUB; Jo Kenny PILA; Liam Thornton, University of Ulster (Magee) and member of FLAC Council.

The Human Rights in Ireland Blog, in conjunction with PILA, hosted a seminar on rights, advocacy and engagement on 20 August. The seminar focused on the ways in which NGOs, practitioners, social activists, academics, the media ('new' and 'traditional') and others interact in the areas of rights promotion, awareness, enforcement, protection and discourse.

The seminar had three themes: 'Ideology and Rights', 'Rights, Society and Interaction' and 'Media and Rights Engagement'. Each panel featured a number of speakers and was followed by a general discussion in the group as a whole as well as interaction from online listeners via twitter. This innovative seminar was webcast live on the Human Rights in Ireland and PILA websites.

Jo Kenny, Legal Officer with PILA, spoke on the 'Rights, Society and Interaction' panel. The speakers on this panel were asked to identify the challenges and limitations of using human rights language. Jo noted that many of the issues which concern the NGOs with which PILA works are traditionally termed "socio-economic rights" e.g. healthcare, housing, social welfare. Jo suggested that the question as to whether these rights could or should be tested legally is not an academic debate but a debate for everybody. PILA provides online resources on the barriers to public interest litigation on its website www.pila.ie and over the coming year will be providing further resources on socio-economic rights, class actions and mootness.



FLAC Policy and Campaigns Officer, Saorise Brady, presents a copy of 'One Size Doesn't Fit All' to Karen Tumlin Managing Attorney of the National Immigration Law Center and Lucy Jessel of the Immigrant Council of Ireland.

FLAC was delighted to welcome Karen Tumlin of the LA-based National Immigrant Law Center and Immigrant Council of Ireland's Lucy Jessel recently. Karen spoke about her organisation as well as the United States' legal system in terms of human rights and immigration law.

Person of the Year Award for Lydia Foy

Congratulations to Dr Lydia Foy who recently won Person of the Year at the 2010 Gay and Lesbian Awards (GALAS), held on 24 September at the Radisson Hotel, Dublin. The GALAS



have been set up by the National Lesbian and Gay Federation (NLGF) to honour lesbians, gay men, bisexuals and transgender people, their organisations and their supporters for their contributions to Irish society.

DATES FOR YOUR DIARY

Public Interest Litigation Seminar

On 29 October 2010 PILA will hold its third seminar for practitioners. This half-day seminar on public interest litigation will run from 2 – 5pm in the Arbitration Centre at the Distillery Building, Church St. Dublin. It will feature Iain Byrne of Interights on non-governmental organisations and strategic litigation; Patrick Dillon-Malone BL on rules of standing; and Brian Kennelly of Blackstone Chambers on protective costs orders. Please note that places are limited and attendance should be confirmed in advance to jo.kenny@flac.ie or on 01 872 8048.

Dave Ellis Memorial Lecture

The 4th Annual Dave Ellis Memorial Lecture will take place on Tuesday 23 November at 6pm. FLAC is delighted to announce that Michael Mansfield QC will deliver this year's lecture on the theme of "Access to Justice". The event will take place in the Pillar Room, Rotunda Hospital, Parnell Square, Dublin 1 and will be followed by a wine reception. Attendance is free but places are limited – to register your attendance, please email aibhe.storan@flac.ie or phone us at: (01) 874 5690.

FLAC publishes Habitual Residence Guide

In response to queries from the public, legal practitioners and other organisations working in the field of social welfare as well as in the context of increased attention from the media and politicians, FLAC has produced new guidelines on the Habitual Residence Condition (HRC).

Since its introduction in May 2004, a number of changes have taken place in the law relating to the HRC which have led to confusion and in many instances, misapplication by decision-makers. Through lobbying and casework, FLAC has been able to clarify the law around the HRC and the FLAC Guide to the Habitual Residence Condition sets out the five criteria in more detail and explains the situation for various categories of people seeking to satisfy the Condition. FLAC consulted with the Department of Social Protection and sought its views before publishing the guide.



L-R Doreen Mescal, Andrew McElwee, Noeline Blackwell, Ian Dalton, and Kirsty Watterson

Cheque presentation

As with all NGOs there is a constant battle to ensure the necessary funds to provide an adequate service. FLAC has a number of generous funders, and it is especially gratifying when students choose to fundraise on our behalf.

For the second year in a row UCD BB&L Law Day, one of the university's biggest events, saw part of its proceeds given to FLAC. Chairman Ian Dalton and Andrew McElwee were on hand to present a cheque for €1,500 to FLAC.

400 volunteers hit the streets of Dublin for BB&L Law Day on 25 February this year to help raise funds, however, the bulk of the money raised came from activities back on the UCD campus. This year saw the highest amount raised, testament to the work put in by Ian, Secretary Andrew McElwee and Treasurer Stephen McCrea. We sincerely thank all the volunteers and those who supported the event.

Congratulations Yvonne

Congratulations to FLAC Communications and Information Officer Yvonne Woods who became a mother for the second time on 12 September. Baby Donncha arrived on this earth weighing over 9lbs and in perfect health. He is currently thriving and will soon be making an appearance at FLAC no doubt. Yvonne, Brian and Sadhbh now have another addition to their happy home. From all at FLAC, congrats once again.

Making access to justice possible

FLAC has been working for equal access to justice for all people in Ireland since it was set up in 1969. Forty years later, we are still campaigning, researching and providing practical help to people all over the country. In 2009, FLAC answered some 10,154 queries over its telephone helpline and provided free legal advice to around 8,730 people via its centres around the country.

The current economic climate means increased strain on FLAC's workload. If you would like to help FLAC continue its work promoting equal access to justice for all, please consider making a donation to the organisation.

You can help FLAC by:

- ▶ Sending a cheque/postal order with your details to **FLAC, 13 Lower Dorset Street, Dublin 1**
- ▶ Logging on to www.flac.ie and following the link to www.mycharity.ie
- ▶ Making a credit/laser card donation by completing and returning the donation form below:

Name:	Amount: €	<input type="checkbox"/> I am : a PAYE taxpayer <input type="checkbox"/> a non-PAYE taxpayer
Address:	If you are a PAYE-only taxpayer, a gift of €250 or more could be worth up to an extra 72% to us!	
.....	Please debit my: Visa <input type="checkbox"/> Mastercard <input type="checkbox"/> Laser <input type="checkbox"/>	
Card number: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	Expiry Date: <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	CSV: <input type="text"/> <input type="text"/> <input type="text"/>