

# flacNews

FREE LEGAL ADVICE CENTRES

## Victory at last for Lydia Foy: Trans people win right to legal recognition



Minister for Social Protection Joan Burton TD, Lydia Foy, FLAC Senior Solicitor Michael Farrell

Photo: Cyril Byrne / Irish Times

In September 2015 Lydia Foy was finally recognised in the female gender she has lived in for 23 years. She was issued with a Gender Recognition Certificate 22 years after she first applied for a new birth certificate in March 1993 – she still has the reply she got at that time, saying that her request was “under consideration”. FLAC has been honoured to represent Lydia for 19 of those years.

On 8 September, Social Protection Minister Joan Burton had launched the application process that allows trans-

gender (Trans) persons to be recognised in their preferred gender. It was an emotional occasion for Lydia Foy and members of the Transgender Equality Network Ireland (TENI) who were present for the launch. For the first time in their lives they were officially recognised as who they are by the Irish state.

The Gender Recognition Act was finally passed by the Oireachtas on 15 July 2015 and the commencement order bringing it into effect was signed by the Minister on 4 September. Because President Higgins had

signed the Marriage Equality amendment to the Constitution a few days earlier, the commencement order dropped a controversial requirement that married Trans persons would have to divorce as a precondition for recognition.

Trans persons who have received Gender Recognition Certificates will still have to apply for new birth certificates, but that will essentially be a formality.

This outcome has been a huge achievement for Lydia Foy. It would not have

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# Lydia Foy receives birth certificate after 22 year legal battle

On Friday 25 September, with the last barrier to recognition of her gender removed, transgender champion Lydia Foy unveiled her birth certificate, giving her full recognition in Ireland for the first time and ending her 22-year legal battle. Dr Foy said "This is a great day for me and for the Trans community in Ireland. With this piece of paper and after 22 years of struggle, my country has finally recognised me for who I really am, not for what other people think I should be."

That same day, Dr Foy was honoured by the European Parliament, having been nominated by Sinn Fein MEPs for the European Citizens Award for 2015. She is the only Irish recipient of this award, which she will receive at a ceremony in Brussels in October. In a reception in Dublin's National Gallery, Lydia accepted a Medal of Honour from the Parliament presented by the four Sinn Fein MEPs – Martina Anderson, Lynn Boylan, Matt Carthy and Liadh Ni Riada.

Lydia was deeply honoured to be given the European award which she regarded as a tribute to all those who have helped Trans people to become equal citizens of this State. She thanked FLAC and the many others who helped to ensure that the Act was one of the most progressive transgender laws in Europe.

Paying tribute to Lydia's courage, FLAC Senior Solicitor Michael Farrell said: "Without Lydia there would be no Gender Recognition Act. And without



Lydia Foy with her new birth certificate.

her long and painful struggle, another generation of transgender people would have to endure the hardship, fear and lack of understanding that Lydia's generation experienced, before they could be recognised and respected as equal citizens in this country."

FLAC Director General Noeline Blackwell said "Lydia has shown extraordinary bravery and sacrifice as a litigant in the public interest. This award is an exceptional honour from European Parliament and is thoroughly deserved by Lydia."

As a legal rights body, FLAC is proud to have been part of this historic, groundbreaking case. There will be coverage of the Brussels award ceremony in the next issue of *FLAC News*. More at [http://bit.ly/foy\\_medal](http://bit.ly/foy_medal)



Lydia with some of the legal team which helped her win her legal case for recognition: Bill Shipsey SC, Siobhan Phelan BL, Lydia Foy, Maureen Maguire-Gourley, Michael Farrell

## Victory at last for Lydia Foy

*Continued from front page*

happened without her and the legal case she started in 1997, represented by FLAC. It was a hard, lonely and deeply painful journey for Lydia. It involved her 'coming out' as a Trans person in an Ireland that hardly knew what a transgender person was. It was a period of intense conservatism about gender issues and hostility to anyone who challenged the status quo.

Lydia Foy was subjected to ridicule and abuse in sections of the media and in the streets and she lost the first of three legal cases she had to take, when the High Court held in 2002 that there was nothing in Irish law or the Constitution that could assist her. That was a dark moment for her and most people in her situation would have given up, but Lydia struggled on.

The tide began to turn when the European Court of Human Rights ruled, just two days after the decision in Lydia's case, that Trans persons had a right to be recognised in their preferred gender and when the European Convention on Human Rights (ECHR) Act brought the ECHR directly into Irish law in 2003.

Lydia took a second case and in 2007 the High Court held that the lack of any provision for recognising Trans persons was incompatible with the ECHR and in breach of Lydia Foy's rights under the Human Rights Convention.

Even then, it took another eight years and a third court case before the law was changed. But by 2007 things were changing and Lydia was no longer on her own. Her two cases had spread awareness of Trans rights and the fact that Ireland was the only EU country that did not recognise Trans persons. The Trans community had begun to organise, led by TENI; and FLAC, TENI and the LGBT community generally were all campaigning for gender recognition. Ireland was changing too. Civil partnership was introduced in 2010 and the Government had promised to hold a referendum on Marriage Equality in 2015.

Lydia struggled on, buoyed up by growing support. When legislation had not been introduced by the beginning of 2013, she felt obliged to issue new proceedings. However, the Government had got the message and the third legal case was settled at the end of October 2014 when the Government undertook to enact the Gender Recognition Bill early in 2015.



*Lydia with FLAC staff and interns*



*Lydia Foy and Michael Farrell*

In the end it actually took a little longer than expected but the delay was worth it.

The original Bill was flawed and very restrictive. TDs and Senators from the full range of the political spectrum, many of whom had met with Trans activists to learn more about the reality of life without legal recognition, pressed for changes. The result was a law that allows self-determination for Trans persons with no requirement for medical evidence for people over 18. In that respect it is one of the most liberal Trans rights laws in Europe. There are gaps in the Act, which has very onerous requirements for young people between 16 and 18 and no provision for Trans children or intersex persons but there is a two-year review provision which will give a chance to remedy this quite shortly.

Lydia Foy is owed a huge debt by the Trans community and by the whole of Irish society. She has saved a younger generation of

Trans persons a lot of the isolation and suffering that she herself had to go through and she has helped to make Ireland a more tolerant and compassionate place.

FLAC is proud that we have been able to assist and support Lydia Foy in her long struggle, which has also shown how the law can be used in the public interest, to vindicate the rights of vulnerable people. We are grateful and appreciative too for the work of TENI and the Trans and LGBT communities because where social change is required, it is rarely enough to win cases in court. There must be popular pressure as well to get governments to implement the decisions of the courts.

But most of all we must salute Lydia Foy herself, who has spent a third of her lifetime in this lonely battle with all its emotional stress and pain. She has done the State some service. However, no-one else should have to go through such a long and difficult ordeal just to secure the right to be her or himself. In that connection, the history of Lydia's case shows that the ECHR Act needs to be greatly strengthened if it is to be an effective instrument for protecting the rights of other marginalised and vulnerable groups.

FLAC would like to express its thanks to former FLAC solicitors Mary Johnson, Maureen Maguire Gourley and Eleanor Edmond, and to counsel Bill Shipsey SC, Gerard Hogan SC (now Mr Justice Hogan), Eileen Barrington SC and Siobhan Phelan BL for their dedicated work on the Foy case over the last 18 years. 🙏

# New guides to social welfare overpayment launched

**O**n 20 July, FLAC and Community Law & Mediation (CLM) jointly launched two guides to the law underpinning the recovery of social welfare overpayments. The guides are aimed at helping people to understand their rights and obligations when a claim is made by the Department of Social Protection for return of money which the Department says has been overpaid.

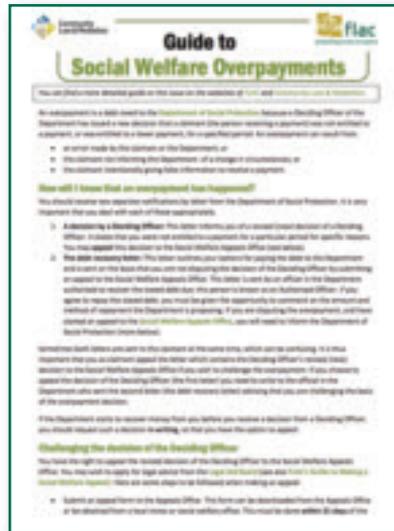
Overpayments can result from

- ▼ an error made by the claimant or the Department,
- ▼ the claimant not informing the Department of a change in circumstances or
- ▼ the claimant intentionally giving false information to receive a payment.

FLAC and CLM regularly receive queries on the issue of social welfare overpayments. Last year, 13.5% of calls about social welfare to FLAC's telephone information line were on overpayments – the third highest area of enquiry on social welfare matters - with a further 6.8% of people asking about fraud. It is hoped that the two guides will assist people and their advocates in dealing appropriately and promptly with an overpayment claim.

The shorter info sheet is a user-friendly document which explains what to do if the Department makes an overpayment claim against a person. In addition, it offers basic information on how the debt can be recovered, how much the Department is entitled to recover and what issues the Social Welfare Appeals Office will consider if the decision of the Deciding Officer is challenged.

The longer, more detailed guide is intended for use by advocates. It summarises, in practical terms, the statutory framework that gives the Department of Social Protection the authority to decide that a claimant has been overpaid, and what steps a claimant might take if disputing such a decision. It then examines the Department's debt recovery powers in the event that the



claimant is found to owe a debt. The guide also outlines the important procedural steps and actions to be taken by a claimant to either challenge a decision in the first instance, or alternatively, to reach a sustainable debt repayment arrangement if appropriate.

While both FLAC and CLM accept that the State must be able to recover money which has been unlawfully or incorrectly paid out, they are concerned that people - many of whom are on low incomes or are reliant on social welfare - are being hit with sizeable claims that could leave them at risk of deprivation or even destitution. Where they claim an overpayment, the Department of Social Protection can deduct up to 15% of a person's net weekly earnings without their consent and, if the person involved consents, they can deduct more.

Whilst a 15% deduction may not, at first glance, seem overly demanding, it may well be asking too much from a person who is dependent on social welfare for his or her sole income. For example, where a 15% deduction is made from a person's social welfare payment, this will in many cases mean that his or her income falls below the relevant Supplementary Allowance rate. The Supplementary Welfare Allowance rate is the level which the Government itself considers to be a basic minimum.

People under the age of 26 are at particular risk of falling beneath this minimum threshold given the reduced Supplementary Welfare Allowance and Jobseeker Allowance payments available for claimants between the ages of 18 and 25 years. It is also relevant to note that if the Department is recovering a debt by reducing a person's social welfare payment, that person is not entitled to apply for Supplementary Welfare Allowance to "top-up" his or her income. Therefore, a person's means may not be sufficient to meet their needs.

Some key points from the guides for claimants and advisors include:

- ▼ If the decision is recent, consider lodging an appeal with the Social Welfare Appeals Office. In this situation the claimant should also write to the Department requesting that no action be taken to recover the debt as the matter is before the Appeals Office.
- ▼ Always request proof of the debt in writing, and use the Freedom of Information Act to request records/the claimant's file.
- ▼ If the claimant agrees to repay the overpayment, he or she should not accept an agreement which has the effect of causing him or herself undue hardship. If submitting an alternative repayment plan to the Department, the claimant should submit evidence that credibly supports their proposal.
- ▼ Make sure that all communication with the Department is in writing. 

**Both guides are available to download on the FLAC and CLM websites at [www.flac.ie](http://www.flac.ie) and [www.communitylawandmediation.ie](http://www.communitylawandmediation.ie)**

# Social welfare case update:

## Arrears of benefits paid to asylum seeking parents following appeal

**T**wo former asylum seekers represented by FLAC have been awarded arrears of Child Benefit for the time they spent in Direct Provision. The decisions followed long drawn-out appeals to the Social Welfare Appeals Office.

Both applicants were mothers of Irish citizen children and, following the decision of the Court of Justice of the European Union (CJEU) in the *Ruiz Zambrano* case in 2011, were given leave to remain in Ireland. In the *Zambrano* case, the Court held that parents of dependent children who are citizens of an EU member state must be allowed to live there with their children to look after and provide for them so that they can enjoy the benefits of EU citizenship.

Both women had been refused Child Benefit while living in Direct Provision on the basis that they did not satisfy the Habitual Residence Condition (HRC).

In the first case, Maria\* gave birth to a baby boy in Belfast in 2004. He was entitled to Irish citizenship, as the law at that time still granted automatic citizenship to anyone born in the island of Ireland. Maria subsequently returned to her own country, but came to Dublin in 2007 and applied for asylum. She was placed in Direct Provision and applied for Child Benefit in January 2009, but was refused. The Social Welfare Deciding Officer said she did not satisfy the Habitual Residence Condition because her status was undecided, Ireland was not her centre of interest, and her future intentions were uncertain.

When Maria was given leave to remain as a *Zambrano* parent in 2011, she again applied for Child Benefit; this time she was

awarded it, but only from the date on which she had been given leave to remain. She appealed, arguing that under the *Zambrano* ruling she should have been entitled to reside here from her son's birthdate. If that was so and her right to reside dated from her coming to Ireland with her son in 2007, she would have met the first habitual residence requirement as her status would not have been "undecided".

The Social Welfare Appeals Officer held that the *Zambrano* ruling had "clarified the interpretation of existing EU law as it should have been interpreted since it was introduced". In other words, Maria had had a right to reside here from 2007. The Officer also acknowledged that Maria had been resident in the State for over a year at the time of first applying, had made meaningful efforts to integrate into the local community and to establish a centre of interest in this country. She concluded that Maria had been habitually resident when she applied for Child Benefit in January 2009. The Department of Social Protection subsequently agreed to pay Maria arrears of Child Benefit from January 2009 to when she was given leave to remain in August 2011, and payment had commenced.

In the second case, Anna\* also had a son born in Belfast in 2004 and came to Dublin towards the end of 2005 as an asylum seeker, whereupon she was housed in Direct Provision. Her son was issued with an Irish passport early in 2006 and she applied unsuccessfully for Child Benefit at that time. She applied again in 2011 but her application was rejected on habitual residence grounds. She was given leave to remain as a *Zambrano* parent in 2011 and was awarded Child Benefit from then on. The Social Welfare Deciding Officer held

that she did not satisfy the Habitual Residence Condition (HRC) prior to that date.

In this case the Appeals Officer did not rely specifically on the *Zambrano* decision. Instead, she noted the absence of a decision on the first application, made in 2006, and said she could not deal with an appeal where there was no decision. FLAC, acting for Anna, requested that a decision be made; a Deciding Officer duly rejected the 2006 application on the basis that Anna had not satisfied the Habitual Residence Condition. Anna appealed this decision.

The Appeals Officer then dealt with the 2006 application, saying that in 2006 it had not been necessary to have a right to reside in order to satisfy the condition and the legislation did not exclude asylum seekers. She said that to comply with the condition required a "degree of permanence – meaning that a person has been here for some time ... and is intending to stay for a period into the foreseeable future. It implies a close association between the applicant and this country and relies heavily on fact".

The Appeals Officer held that Anna did not satisfy the HRC when she first applied for Child Benefit early in 2006 as she had only been in the country for about three months. However, she said that an Appeals Officer could re-assess an applicant's position at a later date to see if things had changed. She held that by August 2007, when Anna had been in the country for nearly two years and had been joined for a time by her husband, she did satisfy the condition and that this decision should continue to apply until she was given leave to remain in 2011. The Department of Social Protection agreed to pay Anna arrears from 2007 to 2011. 

\* Names have been changed.

# FLAC's Annual Report 2014 shows

**F** LAC released its Annual Report for 2014 with a launch on 6 July by Minister for Justice and Equality Frances Fitzgerald, introduced by FLAC Chairperson Peter Ward SC. The report revealed that some 28,389 people sought help with a legal issue from FLAC and through the network of volunteer legal advice clinics in 2014.

The report catalogues the organisation's extensive policy and campaigning work throughout the last year in personal debt law, consumer credit protection, social welfare law and civil legal aid. It shows the work done in promoting the use of fundamental human rights standards and promoting public interest law, especially via the Public Interest Law Alliance.

The numbers requiring help on a legal matter from the telephone information line were up just over 10% on last year. Locally based advice centres maintained by FLAC volunteers and usually operated by Citizens Information Centres saw an overall drop of 3% in callers countrywide, mainly due to some centres dropping out of FLAC's data collection programme.

FLAC Director General Noeline Blackwell commented: "You might say FLAC's legal information helpline is almost a legal thermometer for issues affecting people in Ireland and 2014 has been our busiest year yet. For the second year running, our phone line saw a big increase in calls on housing problems, including landlord and tenant queries, up 81.7% over 2013. This is on top of an 83% increase over 2013. This makes housing the second largest area of enquiry on our phone line, with family law issues and credit & debt law problems the other top areas."

Minister Fitzgerald launched the report and welcomed the idea that FLAC's helpline can indeed be seen as a legal thermometer to identify the issues affecting the most vulnerable in Irish society clearly showing a focus on family law and housing issues. She announced that she will be promoting a Mediation Bill that will see solicitors and barristers advise parties to disputes to consider using mediation as a means of resolving them. Minister Fitzgerald said the purpose of the bill was "to promote mediation as a viable, effective and efficient alternative to court



*At the launch of FLAC's Annual Report 2014: (top) Minister Fitzgerald with FLAC staff and guests; (middle) Minister Fitzgerald (R) with FLAC Chairperson Peter Ward Sc and Director General Noeline Blackwell; (bottom) FLAC Executive Officer Emer Butler (centre) who compiled the annual report.*

# continued rise in housing enquiries

proceedings thereby reducing legal costs, speeding up the resolution of disputes and relieving the stress involved in court proceedings”



Paul Joyce speaking on debt at the launch

Senior Policy Analyst Paul Joyce also addressed the gathering of supporters and volunteers on the organisation’s work in consumer credit and personal debt law reform. He noted the recent publication of the Civil Debt (Procedures) Bill which introduces some very selective amendments to the procedure for resolving debt; he expressed disappointment that it did not take a more comprehensive approach as recommended by the Law Reform Commission.

Paul drew attention to the need for legal information and advice for people embroiled in overdebtedness and in particular those in long-standing mortgage arrears. He said there was an urgent need to reform the mortgage to rent scheme, which is still very much underperforming as a realistic mechanism for keeping people in their homes.

Turning to the other side of the debt coin, Paul said Ireland needs more robust legal protections for consumers of credit and financial services. *Redressing the Imbalance*, FLAC’s flagship research report in 2014, analyses Ireland’s current framework, including the effectiveness of the Financial Services Ombudsman’s Office, Central Bank provisions and relevant legislation. In particular, Paul recalled FLAC’s casework on redress mechanisms for consumers of credit in 2014 and the critique of the Code of Conduct on Mortgage Arrears contained in *Redressing the Imbalance*.

The Annual Report 2014 highlights new ground being broken on law in the public

## Neighbour Disputes booklet launched

In 2014 FLAC’s telephone information and referral line saw a 17% increase in calls about neighbour disputes over the previous year. People wanted to know more on a range of different questions; for example, very straightforward questions about dealing with noisy neighbours, barking dogs or anti-social behaviour. However some calls were more complicated – such as one instance earlier this year where a person asked who should be responsible for bringing the complaints about a noisy neighbour, the tenants or the landlord? Other callers queried what should be done about ongoing disputes where attempts at mediation have failed.

In response, FLAC has produced a legal guide for the public which looks at the law around disputes between neighbours involving noise and anti-social behaviour. It lays out the steps to take in such situations in two main sections. Within these two broad categories, the booklet also addresses specific circum-



Minister for Justice & Equality, Francis Fitzgerald TD

stances such as the different approaches you need to take depending on whether you are living in privately owned, private rented or local authority housing, or where you are living next to noisy commercial premises.

The booklet was launched by Minister for Justice & Equality Frances Fitzgerald TD on 6 July and is available to download on the FLAC website or from your local Citizens Information Centre. 



FLAC interns & staff (L-R): Jessica Gibbons, Suzanne O’Sullivan, Holly O’Callaghan, Claire Macken, Lisa Marie Salley, Ellen Reid, Katie Timmins, Rachel Power.

interest by FLAC’s innovative project, the Public Interest Law Alliance. Last year, PILA matched 62 social justice organisations needing legal support with pro bono legal assistance from law firms and barristers, as well as delivering legal education sessions and supporting 95 pro bono referrals.

PILA was instrumental in FLAC’s work promoting human rights standards through its work on budgeting and in coordinating a civil society response to the Irish state reporting to the UN under the Inter-

national Covenant on Economic, Social and cultural Rights; this culminated in June 2015 with a hearing before a UN Committee in Geneva and strong recommendations to the Irish government on actions it must take to fulfil its duties under the Covenant. 

▼ Download the annual report at <http://bit.ly/FLACrep2014>



# Legislate in haste, repent at leisure?

**G**overnments rushing legislation through the Houses of the Oireachtas at breakneck speed before the summer recess is hardly unusual. Still and all, the Civil Debt (Procedures) Act 2015 will take some beating as an illustration of the fine art of compromising the democratic process. The legislation is also clearly intended to provide for attaching the earnings or deducting from the social welfare payments of people who refuse to pay water charges, which may well be why the debate was cut short.

But legislating in haste may lead to repenting at leisure. This is an ill thought-out and incomplete piece of legislation that tinkers with the area of debt enforcement rather than comprehensively addressing it. By rushing it through the Oireachtas, we are left with a two-tier system that is more favourable to some classes of creditors than others and which leaves it up to a District Court judge to decide what people of already limited means can have deducted at source from their incomes.

**For the record, the Civil Debt (Procedures) Bill 2015 was presented in the Dail on 26 June and published on 30 June. The order for second stage was made on 3 July. It was referred to Select Committee on 7 July. The Committee Stage was taken on 10 July and the Report and Final Stages on 16 July. It went to Second Stage in the Seanad on 17 July and the Committee and remaining stages in the Seanad were taken on 20 July. It was enacted on 27 July, four weeks after it was published.**

In her speech at second stage in the Dáil, Minister for Justice & Equality Frances Fitzgerald TD stated that “The provisions in the Bill arise from the recommendations made by the Law Reform Commission in its 2010 report, entitled ‘Personal Debt Management and Debt Enforcement.’” The implication was that this legislation would deal with the debt enforcement side of the Commission’s report. This is only partially true. The Commission proposed a very wide suite of reforms to the system of debt enforcement in Ireland; however this Act represents a selection of isolated elements of that report, particularly in respect of attachment of earnings. The continuing lack of any legislative reform in two key debt enforcement areas in the LRC recommendations – Instalment Ord-



ers or Execution against Goods by Sheriffs / County Registrars for example – is notable.

The attachment option under the legislation is available to small or sole traders, sub-contractors and other businesses that have supplied goods and services. The Minister also explained that it would equally apply to “Irish Water charges and the charges of energy and telecommunications companies”. Significantly, however, the option of attachment does not apply to bodies authorised to provide credit in the State such as banks, credit unions and moneylenders. Where a judgment is obtained in court against a debtor and any amount between €500 and €4,000 of that judgment debt remains to be paid, the relevant creditor may apply in the debtor’s local District Court for an Attachment of Earnings Order. The debtor will be obliged to provide the court with a statement of means which the court will use to assess the debtor’s capacity to service deductions from his or her earnings. This is subject to establishing a ‘Protected Earnings Rate’ below which the person’s earnings should not be allowed to fall.

The Act also allows a court, where the judgment debtor is a person to whom certain social welfare payments such as jobseekers allowance or benefit fall to be paid, to make a ‘Deduction from Payments Order’ directing the Minister for Social Protection to make deductions from that payment for the benefit of the judgment creditor, again subject to establishing a minimum retained income.

In 2003, FLAC published its first major report on debt enforcement in Ireland, *An End based on Means*. One of the catalysts for this report was the stated intention of the government of the day to introduce attachment of earnings in lieu of imprisonment for non-payment of civil debts. As it turned out, the anticipated legislation never materialised; but the

report looked in some detail at attachment of earnings systems throughout Europe. One feature identified in the report was how frequently the amount of the attachment was decided by relying on pre-determined tables or by a court official working with specific guidelines, in order to attempt to ensure consistency of treatment. This 2015 Act by contrast leaves the matter in the hands of District Court judges with no indication of how they will be guided.

The 2003 report also found that since an Attachment of Earnings Order is directed at an employer, it is possible that an employee who is the subject of the attachment order may suffer adverse treatment at work (even including dismissal) as a result, and so must be legally protected. There are no employment protection measures, however, in this Act.

Finally, the Minister also announced that the Bill would bring an end to imprisonment for civil debt, a situation accepted by many as a human rights violation and even counter-productive from the creditor’s perspective. On closer scrutiny of the Bill as drafted, however, it was not clear that this has been achieved, in particular because it fails to amend Section 6 of the Enforcement of Court Orders Act 1940 (as amended) which still allowed for the possibility of imprisonment where a judgment debtor had ‘wilfully refused or culpably neglected’ to meet the terms of an Instalment Order.

FLAC pointed out this last deficiency (among others) in a hastily assembled submission. To be fair, the matter was remedied with a Report Stage amendment. Ironically, however, this amendment was never discussed. Such was the desire of deputies to discuss the legislation that by the time the cut-off point for debate on Report Stage amendments was reached at 1.30 pm on 16 July, only a small number of amendments had been taken. The Leas Ceann Comhairle put to the House ‘that the amendments set down by the Minister for Justice and Equality and not disposed of, including those in respect of which recommittal would in the normal course be required, are hereby made to the Bill, Report Stage is hereby completed and the Bill is hereby passed’ – and the vote was carried with no further discussion. 🗳️

# Growing numbers hit by restrictive civil legal aid scheme during crisis

**E**qual access to justice is a fundamental human right. As such, the purpose of a civil legal aid scheme is to seek real access to justice for everyone, particularly for those without the means to pay for it themselves. Notwithstanding this, the Civil Legal Aid Act 1995 precludes the Legal Aid Board from providing representation before most appellate tribunals including social security and employment appeals as well as in local authority repossession proceedings. These issues commonly affect vulnerable and marginalised groups, and have done so to an even greater extent since the onset of the economic crisis.

At Ireland's recent examination by the UN Committee on Economic, Social and Cultural Rights under the International Covenant, the Committee expressed concern at the lack of state legal aid services which, in their view, "prevents disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies, particularly in the areas of employment, housing and social welfare". Subsequently, the Committee recommended that such services be provided in a wider range of areas, including by expanding the remit of the Civil Legal Aid Scheme. The UN Special Rapporteur on Extreme Poverty shared similar views during her 2011 visit to Ireland.

The Government has continually rejected calls to provide statutory legal aid for local authority tenants defending repossession proceedings, in spite of the fact that these proceedings are conducted before the District Court. There has been a sharp increase in the number of repossessions of local authority dwellings over the course of the recession. In the period 2005 – 2009, local authorities took possession of a total of 66 houses.<sup>1</sup> However, as austerity intensified, repossessions jumped to 89 in 2010 and to 137 in 2012.<sup>2</sup> Given that the vast majority of people living in local authority houses are on low incomes and cannot afford private legal representation, clearly more people have been denied the opportunity to effectively present their own cases in repossession proceedings during the downturn.



Equally, tribunals such as the Social Welfare Appeals Office and the Employment Appeals Tribunal are a common route for many people on low incomes to access justice. Since the onset of the economic crisis, issues related to these tribunals, such as social welfare and employment, have become more relevant for vulnerable and marginalised groups. This is evidenced by the dramatic increase in the number of appeals to these quasi-judicial bodies.

For example, there has been a sharp rise in social welfare appeals applications since the downturn. In 2007, 14,070 applications were lodged with the Social Welfare Appeals Office. By 2010, this had surged to 32,432 and numbers peaked in 2012 at 35,484.

There has also been an upsurge in complaints to the Employment Appeals Tribunal. In 2007, 3,173 complaints were submitted to the Tribunal but by 2009 this number had increased almost threefold to 9,458. Given the disproportionate impact of austerity policies on vulnerable groups, it is unsurprising that issues such as redundancies, unfair dismissals and social welfare payments have become more relevant in recessionary times.

Despite growing numbers of complaints to these bodies, the Government has resisted calls to broaden the remit of the Legal Aid Board, arguing inter alia that tribunals are intended to be relatively informal, that legal representation works against the objective of accessibility to users and that legal

representation would have adverse resource implications.

However, it has long been recognised that there will always be cases where the requirements of justice demand legal representation. In the landmark European Court of Human Rights decision in *Airey v Ireland*, the Court held that, in terms of the scope of the right to a fair trial, there is a positive duty on the state to provide legal aid in matters where the rights and obligations of the individual were in question and where the matter was of such complexity that the applicant could not reasonably be expected to effectively represent him or herself.

In recent times, senior officials working with these quasi-judicial bodies have acknowledged how complicated some of these proceedings are. Then Chief Social Welfare Appeals Officer Geraldine Gleeson stated in her 2014 Annual Report that decisions relating to the right to reside must be determined by reference to immigration law and EU law which, in her words, "is very complex". Similarly, Chairperson of the Employment Appeals Tribunal Kate O'Mahony described unfair dismissal cases as "complex and contested" in the Tribunal's 2014 Annual Report.

Given the blanket exclusion of these tribunals from the scope of the civil legal aid scheme, the rise in applications and the complexity of the issues they cover, it is certain that during the recession a far greater number of individuals were not able to present their cases in the manner that fairness demands. This interferes with their right to access justice.

During the economic crisis, people on low incomes were, to a greater degree, hindered in their attempts to access justice by virtue of the Government's failure to provide legal aid for issues related to housing, employment and social welfare. Up to now, the Government has ignored the calls of both civil society and the UN to broaden Ireland's existing civil legal aid scheme. It's about time those calls are heeded. 

1. <https://www.kildarestreet.com/wrans/?id=2010-10-05.1671.0>

2. <http://www.independent.ie/irish-news/a-third-of-local-authority-homes-loans-are-in-arrears-29696111.html>

**FOCUS ON PILA**



**PUBLIC INTEREST LAW ALLIANCE  
UPDATE**

**‘Changing Ireland, Changing Law’ Series**

LGBT activists whose cases paved the way for passage of the marriage equality referendum were amongst the speakers at the ‘Changing Ireland, Changing Law’ seminar on LGBT rights and the law.

The seminar focused on individuals who have taken legal cases that brought about significant social change in Ireland, including Senator Katherine Zappone, her wife Ann Louise Gilligan and Senator David Norris. Other speakers were Professor Mark Bell of Trinity College

Dublin and Brian Sheehan of the Gay & Lesbian Equality Network. This was the second in the ‘Changing Ireland, Changing Law’ series, a project led by Dr Mary Rogan, Head of Law at Dublin Institute of Technology, and Professor Ivana Bacik,



*L-R: Brian Sheehan, Senator Ivana Bacik, Prof Mark Bell, Sen Katherine Zappone, Senator David Norris, Dr Ann Louise Gilligan, Dr Mary Rogan*

Professor of Criminal Law at Trinity College Dublin. It is funded by the Irish Research Council, with additional contributions from the Trinity College Dublin Equality Fund and Arts & Social Sciences Benefactions Fund. As lead

partner, PILA has also had the privilege of working with the National Women’s Council of Ireland and the Immigrant Council of Ireland on seminars addressing the rights of women and asylum seekers.

**The final seminar will take place on Friday 16 October at 11am in DIT Grangegorman Campus and will be a chance for PILA to bring together learnings from the lecture series in addressing barriers to public interest litigation. If you would like to attend, please email [cicl@tcd.ie](mailto:cicl@tcd.ie) to register.**

**Meeting of European Pro Bono Clearinghouses**

In July, PILA as a member of the European Pro Bono Alliance took part in a collaborative workshop and know-how exchange. The meeting was organised by PILnet, the global network for public interest law, at its European office in Budapest, Hungary. Representatives of the European Pro Bono Alliance exchanged know-how about collaborations organised by the clearinghouses between lawyers and NGOs. PILA facilitated a discussion on the development of a Europe-wide definition of pro bono, which led to a lively and interesting debate! On the second day of the meeting, international law firm DLA Piper provided a training session on marketing and promoting pro bono, as well as strategies to develop new pro bono programmes to help with individual human rights cases. DLA Piper provided an invaluable insight into how a large commercial law firm develops pro bono strategies and interventions.

PILNet will host the European Pro Bono Forum in Rome, Italy from 11-13 November. The only platform of its kind, the Forum provides an international perspective on pro bono practice and development in Europe. It brings together the NGO sector, law firms, legal academics and students to explore how they can best collaborate to address critical social issues. Further details about the Forum and registration can be accessed through [www.probonoforum.org](http://www.probonoforum.org).

**PILA Seminar: The Duty of the State in Constitutional Cases**

In July, PILA hosted a seminar with two of South Africa’s leading human rights advocates, Gilbert Marcus SC and Nick Ferreira, that explored the duty of the State in constitutional cases. This was followed by a panel discussion with Michael Lynn SC and Noeline Blackwell of FLAC, and chaired by former Attorney General Paul Gallagher SC, on the experience of public interest litigators in Ireland. The seminar was kindly sponsored by William Fry solicitors. Marcus and Ferreira also facilitated a roundtable with 14 PILA partner organisations on developing an effective rights strategy for social change.



*L-R: Nick Ferreira, Michael Lynn SC, Noeline Blackwell, Gilbert Marcus SC, Paul Gallagher SC.*

**FOCUS ON PILA**

**PRO BONO UNDER THE SPOTLIGHT:**



# ‘Labour of Love’ campaign on domestic workers

**M**igrant Rights Centre Ireland recently launched a campaign called ‘Labour of Love’ which focused on the rights of workers in private homes across Ireland. The campaign aims to combat the widespread underpayment, exploitation and abuse of workers providing essential care and housekeeping services. Labour of Love calls for:

1. The recognition of the employment rights of au pairs, including the right to a minimum wage; and
2. The introduction of a work permit for the domestic work sector, to recognise increased labour market demand for migrant workers in the provision of care and domestic labour in private homes across Ireland.

As part of its campaign, MRCI sought legal assistance through the PILA Pro

Bono Referral Scheme on the applicable legal framework in relation to au pair employment and au pair employment agencies in Ireland. Through its extensive network of legal practitioners, PILA sourced an expert barrister, Cathy Smith BL, who undertook the work pro bono. The legal opinion found that while au pairs are protected by minimum wage legislation, people within those positions are simply not aware of their rights. This campaign seeks to address this.

On the referral process, Cathy Smith BL said she found it very interesting to research and consider a group of employees and their rights under employment legislation, that she not previously considered:

“It is always interesting to consider how existing law can be applied in a new way. I was happy to be of

assistance with MRCI and found them to be helpful and professional at all times”.

Aoife Smith, co-ordinator of the MRCI’s Domestic Workers Action Group, said the campaign was strengthened by the legal opinion obtained through PILA, as it provided credible evidence to support MRCI case work and grassroots campaign work with migrant women employed in the private home sector as childminders and au pairs. MRCI intends to use the legal opinion as part of its campaign to inform media, politicians, policy makers, au pairs and employers about existing legislation. Aoife described PILA’s assistance as “invaluable to community groups and NGOs such as MRCI who can access expert legal counsel on issues central to progressing social justice work”.

## UN examination of Ireland on economic, social and cultural rights: additional resources

**T**he last edition of *FLAC News* was a special on the Irish civil society reporting process under the International Covenant on Economic, Social and Cultural Rights. This included an overview of the civil society delegation to Geneva in June, presentations from delegations members and the concluding Observations of the UN Committee on how the Irish state is meeting its legal duties and what it should do to improve its performance ahead of the next examination.



**T**he Irish state's response to the economic and financial crisis – covering public expenditure, especially in housing, healthcare, social security and education – has been criticised by the UN's top body in this area as having a disproportionate impact on vulnerable groups.

Observation on the state's performance over the past decade on Monday 22 June. The following formal observations of Irish government delegation led by Minister of State Sean Sherlock on how Ireland is meeting its obligations under the International Covenant, a treaty on human rights to which Ireland is a signatory since 1989.

The UN Committee on Economic, Social and Cultural Rights issued its Concluding Observations on the UN observations, noting the Committee's grave concerns as to the consequences of austerity measures in Ireland. Some of the groups most impacted had already been severely disadvantaged before the recession, while others had been reduced to poverty during it.

The Committee made a host of strong recommendations for state action on all areas covered by the Covenant. In particular, FLAC welcomed its suggestions.

Continued on page 27

Also present in Geneva was a group from the Irish Human Rights and Equality Commission, headed up by Chief Commissioner Emily Logan. You can read IHREC's report on its work in this area at <http://www.ihrec.ie/international/icescr.html>

A number of other NGOs which did not take part in the civil society report also made separate presentations to the UN Committee. These can be found at <http://bit.ly/orsCESCR15> – under the drop down at CESCR, then Reporting Cycle III.

▼ You can download the *FLAC News* special on ICESCR from Apr-Jun 2015 at <http://bit.ly/FN25no2>

The government's own delegation to the examination consisted of 23 state officials headed up by Minister of State Sean Sherlock TD. You can read Minister Sherlock's address to the UN Committee at <http://bit.ly/DFATcescr>

**FOCUS ON CENTRES**

## Mullingar and Athlone FLACs

The first community information centres were volunteer-run and established in the late 1960s to meet the public's need for easily accessible information on entitlements and services. Athlone Citizens Information Centre was established in 1976 – it will celebrate 40 years serving the local community next year. In February 1998 the Athlone and Mullingar Centres were registered and incorporated as a county-wide service.

Today, Westmeath Citizens Information Service has two main Centres – one in Athlone and the second in Mullingar – with a weekly outreach in Castlepollard. Westmeath CIS is staffed by paid staff, volunteers and scheme workers. The Development Manager is Deborah Dwyer. She oversees the day-to-day running of the service and reports to a voluntary Board of Management.

In February 2014, Westmeath CIS was the second CIS to achieve the EFQM Gold Star Role Model Service Excellence Quality Mark, an internationally recognised quality mark that focuses on the impact of

services for customers. In 2014, Westmeath CIS dealt with 15,000 callers and answered almost 30,000 queries as well as identifying, recording and submitting 100+ social policy matters. The service carried 128 advocacy cases and dealt with 352 once-off advocacy client transactions.

Westmeath CIS was one of the earliest services to roll out a legal clinic with a view to promoting equal access to justice for everybody. Local solicitors volunteer their skills in order to help people understand their legal rights. Westmeath CIS, which is a registered charity funded and supported by the Citizens Information Board, takes pride in the Free Legal Advice Clinics it hosts. To



Zse Varga, FLAC Volunteers and Centres Manager, with Deborah Dwyer, Westmeath CIS Development Manager, at Athlone CIC.

ensure an appointment with a solicitor, all requests for FLAC must be dealt with by an information provider within the CIC – this means initial or essential basic information can be provided in advance of the appointment with the solicitor so as to ensure time spent during the appointment

*Continued on page 13*

Areas of law at Westmeath FLACs	Callers in 2014	% of callers
Family	94	38.7
Credit & Debt	47	19.3
Will/Probate	22	9.1
Consumer	17	7.0
Employment	16	6.6
Property/Interest in Land	14	5.8
Negligence/Personal Injury	13	5.3
Criminal	9	3.7
Other	9	3.7
Neighbour disputes	6	2.5
Housing/Landlord & Tenant	5	2.1
Social Welfare	4	1.6
Immigration/refugee	3	1.2
Client-Solicitor issues	0	0
<b>Total Callers</b>	<b>243</b>	<b>100</b>

### MULLINGAR flac

**Mullingar FLAC is at Mullingar CIC, Mount Street, County Buildings Complex, Mullingar. Advice sessions are also by appointment – call 0761 07 6660 or e-mail [mullingar@citinfo.ie](mailto:mullingar@citinfo.ie) to book a place in the clinics on the first and last Mondays of the month.**

### ATHLONE flac

**Athlone FLAC Clinic is located at Athlone CIC, St. Mary's Square, Athlone, Co. Westmeath N37 E9D7. You need to make an appointment to see a lawyer in the FLAC clinic held on the second and fourth Monday of every month – just call 0761 07 6610 or e-mail [athlone@citinfo.ie](mailto:athlone@citinfo.ie) for more information.**

## FOCUS ON FLAC

# Ciarán Finlay, Legal & Policy Officer

Ciarán Finlay joined FLAC in August 2015 in the newly minted role of Legal and Policy Officer, taking over from Yvonne O’Sullivan who had been FLAC Policy and Advocacy Officer until her departure in April. His remit covers the policy focus areas of civil legal aid, social welfare and access to justice.

Ciarán hails from Portlaoise, Co. Laois and brings a wealth of experience to the organisation.

He completed a Bachelor of Common Law (Law with History) at UCD in 2011, before going on to do a LL.M. in Human Rights Law also in UCD. During his Masters, Ciarán studied a range of human rights modules which enabled him to gain a deeper knowledge of the domestic protection afforded to human rights, as well as of regional and international bodies, such as the European Court of Human Rights and the UN system. His dissertation focused on the European Court of Human Rights’ treatment of violent hate crimes, in particular against Kurds, Roma and Chechens.

In recent years, Ciarán has worked with human rights organisations including UN-HCR Ireland, Amnesty International, the Children’s Rights Alliance and the former Irish Human Rights Commission. He has also undertaken voluntary work in schools, hospitals and orphanages in Zambia.

Just prior to joining FLAC, Ciarán worked for a year as a Human Rights Attaché with the Permanent Mission of Ireland to the United Nations in Geneva. His responsibilities centred on UN treaty body reviews, general sessions of the Human Rights Council (HRC) and examinations



under the Universal Periodic Review (UPR) mechanism. Particular highlights included leading EU negotiations on a resolution at the 28th session of the HRC and the delivery of a statement to the HRC informing it of Ireland’s historic marriage equality vote.

Ciarán was motivated to join the FLAC team for a number of reasons. In his previous positions with Amnesty International and the Children’s Rights Alliance, he worked on a number of projects involving economic, social and cultural rights. As a result, he was very impressed by FLAC’s work in advance of Ireland’s examination by the Committee on Economic, Social and Cultural Rights through the “Our Voice, Our Rights” project. In addition, while he thoroughly enjoyed his time working with the Irish Mission in Geneva, Ciarán found it difficult to assess how his work at the international level was having a tangible impact on the

ground. Consequently, he was very interested in working with FLAC, whose work has such a direct and positive impact on vulnerable and marginalised groups.

Ciarán’s role is to undertake legal and policy work in the areas of access to justice, civil legal aid and social welfare. He is also assisting in case work and the provision of second-tier advice to NGOs and Citizens Information Centres.

Having worked within a range of structures – from NGO to National Human Rights Institution, UN agency and, most recently, the Government – Ciarán hopes to build constructive working relationships with all relevant stakeholders within his policy areas. He also hopes in particular to utilise his experience in Geneva to promote a better understanding of international human rights mechanisms at the local level, where human rights can sometimes be viewed as inaccessible or intangible. 

## Mullingar and Athlone FLACs (Continued)

is efficient and effective and the overall appointment is engaging for the customer.

Last year some 243 callers attended the FLAC centres based in Athlone and Mullingar Citizens Information Centres. Almost forty per cent of callers to Westmeath legal advice centres had a family law query, while just over nineteen per cent of callers presented with a debt related query. Wills were the third most common type of query, similar to last year;

however, consumer queries replaced employment queries as the fourth most common type of query.

The legal advice clinic within Westmeath CIS is actively promoted by the Service via community based presentations to various groups, national, regional and local public information events, information slots on various radio stations and ‘Know your Rights’ columns in local papers. The service also promotes the FLAC clinic on the web

and takes part in the national data collection programme for FLAC centres.

Westmeath CIS are co-located with the Money Advice Budgeting Service (MABS) and with the National Advocacy Service for people with disabilities; this co-location allows for appropriate referrals and ensures that clients receive a full and complete service as far as possible and practical. 

# Jury out on personal insolvency law

It is hardly a secret that, thus far, the Personal Insolvency Act 2012 has not been a roaring success in providing effective mechanisms for over-indebted consumers to resolve their financial problems and return to solvency, particularly in the critical area of mortgage arrears.

While it is true that activity has picked up after a very slow start in the autumn of 2013, the numbers in receipt of arrangements under the legislation is still a small fraction of the extent of the problem it was designed to remedy. For example, according to the Quarterly Statistical Bulletin released by the Insolvency Service of Ireland to the end of June 2015, a total of 469 Debt Relief Notices (for small levels of unsecured debts), 216 Debt Settlement Arrangements (for higher levels of unsecured debt) and 478 Personal Insolvency Arrangements (for secured (including mortgages) and unsecured debts) had been approved in the 21 months that the legislation has been in operation. By contrast, there have been some 760 adjudications of bankruptcy over the same period.

The latest Central Bank mortgage arrears figures, on the other hand, show that 38,041 accounts on principal dwelling houses are now in arrears for over two years, with an average arrears figure of well over €50,000. In the past 18 months, some 16,745 new applications have been brought to repossess family homes; actual repossessions, while still low compared to the level of new applications, are growing. Put simply, neither the legislation nor associated measures such as the Central Bank's Code of Conduct on Mortgage Arrears are addressing the most troublesome cases.

The reasons for this are many and varied. The Act itself is a conservative dipping of the toes into the waters of personal insolvency, with a very firm weather eye on protecting the financial system, the solvency of financial institutions and the fear of creditor constitutional challenge. Industry has responded in kind to the prompting, exercising its voting threshold veto relatively routinely. The excessively long time it took the legislation to pass also created an expectation that write-offs were about to happen; when they did not materialise, some debtors retreated into the shadows. The infrastructure to assist debtors to negotiate with their creditors is too piecemeal and lacks continuity and depth

through the various elements of the process. No one has wanted to own this problem – and it shows in the results.



On 13 May this year, faced with fairly clear evidence that its measures were not having the desired impact, the Government announced that it intended to introduce amendments to the legislation “to give Courts the power to review and, where appropriate, to approve insolvency deals that have been rejected by banks”. The vehicle for these changes was to be the Personal Insolvency (Amendment) Bill 2014, originally designed to be purely a technical ‘cleaning up’ of the Act, until it was pressed into service to accommodate more substantial changes. The section of most interest in this respect is a new Section 115A. Its purpose may be broadly summarised as:

- ▼ Where a proposal for a Personal Insolvency Arrangement includes a mortgage on a principal private residence which is either in arrears as of 1 January 2015, or where the mortgage was in arrears prior to 1 January 2015 and an alternative repayment arrangement has been entered into, and that proposal is rejected, a review may be sought in the (Circuit) Court.
- ▼ The relevant Personal Insolvency Practitioner must have reasonable grounds for seeking a review, must be instructed by the debtor to do so and must make an application to the Court not later than 14 days after the rejection. The application must notify all creditors and the Insolvency Service.
- ▼ The application must identify the creditors who voted in favour of and against the proposal and whether, in the Insolvency Practitioner's opinion, those who voted in favour of the proposal should be considered to be ‘a class’ of creditors. At least one class of creditors must have already accepted the PIA proposal; the Court may consider one single creditor or more than one

creditor to be a class of creditors.

- ▼ A creditor has 14 days to object to the application and must notify all parties of its objection.
- ▼ A number of conditions must be satisfied before the Court can grant the application. These include
  - that there is a ‘reasonable prospect’ that confirmation of the proposed arrangement will avoid bankruptcy and enable creditors to recover debts ‘to the extent that the means of the debtor reasonably permit’;
  - that the debtor is ‘reasonably likely’ to be able to comply with the terms of the proposed PIA; and
  - that the proposed arrangement is ‘fair and equitable’ in relation to each class of creditors that has not approved the arrangement.

It is welcome that the creditor veto will now be subject to review but, again, expectations need to be tempered. Many insolvent debtors never get to make a proposal in the first place, never mind have it rejected, due to insufficient income or assets capacity to justify a (commercial) Personal Insolvency Practitioner's time and effort. Equally, those expecting the Court to start routinely overturning creditor objections may be disappointed, given the criteria set out in the section.

As yet unanswered questions also occur such as who will represent the debtor at the Court hearing, what will happen if the creditor appeals and when the amendments are likely to be commenced.

The Government announcement also said that ‘Court rules and procedures will also be streamlined to guide more cases towards the Insolvency Service, building on existing measures to allow cases to be adjourned so that a defendant can engage with a Personal Insolvency Practitioner’. Under the Land & Conveyancing Law Reform Act 2013, a defendant in a family home repossession case may already apply to have the case adjourned for this purpose. It is again unclear what ‘building on’ this measure will look like but similar reservations apply. It is a long way from having one's repossession case adjourned to having one's mortgage arrears problem affordably restructured and ultimately resolved. 

# Ireland's Universal Periodic Review 2016

## A peer review of how Ireland is meeting its human rights obligations

Ireland will undergo its second examination under the Universal Periodic Review (UPR) mechanism in 2016. The UPR is a process through which the human rights records of the United Nations' 193 Member States are reviewed and assessed every four and a half years. As opposed to UN Treaty Body reviews, which are dealt with by independent experts, the UPR examination is undertaken by UN Member States which make recommendations to the State under review.

Ireland was last reviewed in 2011 and received 127 recommendations. Of these, Ireland accepted 91 recommendations, partially accepted 17 and rejected 19. The recommendations touched on a variety of issues, including prison conditions, domestic violence and discrimination in access to education. Next year's examination, to take place in either April or May, will focus to a large extent on the implementation of the recommendations which were accepted by the Government during the last review. However, the review also provides an opportunity for other issues, such as those overlooked during the first cycle or new concerns, to be raised.

The review itself is based on three documents; a national report by the State under review, a compilation of UN information on the State under review compiled by the Office of the High Commissioner for Human Rights (OHCHR) and a summary of information submitted by



*FLAC Director General Noeline with ICCL Executive Director Mark Kelly at the UPR national review event.*

civil society organisations and national human rights institutions also compiled by OHCHR.

FLAC is part of 'Your Rights, Right Now', a coalition of civil society organisations which is submitting a report to the OHCHR detailing the Government's progress in implementing the recommendations received during the first review and new issues which have arisen in the interim. The coalition is coordinated by the Irish Council for Civil Liberties. FLAC is also part of the UPR Cross-Sectoral Steering Group which is providing strategic input into the co-ordination of the civil society response.

A series of consultations were held around the country which informed the draft report. A well attended National Review

Event was held on 9 September, which provided an opportunity to review the draft text of the recommendations to be included in the civil society stakeholder report before it is finalised and submitted to the UN on 21st September 2015.

At the event FLAC's Noeline Blackwell delivered opening remarks, recapping on Ireland's 2011 UPR examination, outlining the importance of the UPR mechanism and stressing the added value of a coordinated civil society report to the UN.

Discussions covered a range of issues including hate crimes, LGBTI rights, the rights of persons with disabilities, Traveller and Roma rights, women's rights, children's rights and the rights of asylum seekers and refugees.

In light of our recent experience in coordinating a civil society report to the UN Committee on Economic, Social and Cultural Rights in June, representatives from PILA and FLAC facilitated the discussions on economic, social and cultural rights. This focused in particular on the impact of the economic crisis. A number of concerns outlined in the *Our Voice, Our Rights* civil society report on ICESCR and by the UN Committee during Ireland's examination in June were again raised during the focus group. These included the homelessness crisis, the need for pre-budget human rights impact assessments, ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the failure of the Government to respond to the Constitutional Convention's recommendation to strengthen the protection afforded to ESC rights in the Constitution.

FLAC has also sent its own UPR submission to the Office of the High Commission for Human Rights. It will be available online on the FLAC website shortly. 



▼ You can read the report and more on the 'Your Rights, Right Now' coalition at [www.rightsnow.ie](http://www.rightsnow.ie)

## Save the Date – Dave Ellis Memorial Lecture 2015 – Thursday 3 December



**W**e are delighted to announce that our guest speaker for this year's Annual Dave Ellis Memorial Lecture will be FLAC's own Michael Farrell.

Michael joined FLAC as Senior Solicitor in 2005, coming from Michael E. Hanahoe Solicitors where he worked in private practice from 1990, on areas such as criminal law, extradition, defamation, personal injuries, and in cases before the Residential Institutions Redress Board. He also took successful cases to the European Court of Human Rights and the UN Human Rights Committee.

Michael has had a varied career; he worked as a journalist and as a lecturer at the Belfast College of Technology before becoming a solicitor, and is the author of several books.

A lifelong campaigner and activist, Michael was a prominent civil rights activist in Northern Ireland in the 1960s and 1970s, was Co-Chair of the Irish Council for Civil Liberties in the 1990s and was a member of the Irish Human Rights Commission for ten years. Michael is currently the Irish member of the European Commission against Racism and Intolerance. He was appointed to the Council of State by President Michael D. Higgins in 2012.

Since joining FLAC in 2005, Michael has represented Dr Lydia Foy in her campaign for recognition of transgender persons in Ireland and has particularly concentrated in his other legal work on the area of social welfare law.

The Annual Lecture is a major event on the FLAC calendar and presents a great

opportunity to gather volunteers and supporters of FLAC, past and present, to reflect on issues relating to access to justice. This is the ninth year that we will host the lecture and we have been deeply honoured by the calibre of guests who have previously spoken at the event, including most recently Bryan Stevenson of the Equal Justice Initiative, Martin O'Brien of the Atlantic Philanthropies, Thomas Hammarberg, former Council of Europe Commissioner for Human Rights, and Baroness Nuala O'Loan, former Northern Ireland Police Ombudsman.

We look forward to welcoming you on 3 December to hear Michael's reflections on access to justice over his long and distinguished career. More information and invitations will follow, closer to the time.



## Secure the future of equal access to justice – join the **Friends of FLAC**

For people facing some kind of crisis in their life – whether it be in relation to their family situation, their job, or their home, for example – the most powerful and effective response often includes some kind of legal help. This might not necessarily involve the work of a lawyer in the courtroom (although sometimes it does) but knowledgeable guidance through unfamiliar rules and processes is crucial. Phoning up FLAC's Telephone Information & Referral Line, or talking to a volunteer lawyer at a local FLAC clinic, can be that essential first step for a person to address and resolve a legal issue. More than 28,000 people accessed these services in 2014.

To continue to provide these services – as well as to continue FLAC's work in other areas – securing sufficient funding is crucial. Through the network of several hundred FLAC volunteers around Ireland, as well as those members of the PILA pro bono register, and the support through the professional bodies of the Law Society and the Bar Council, the legal profession in Ireland forms the backbone of FLAC and we simply could not exist without your commitment and support. We are appealing to those who have been involved with FLAC in the past – whether in their student days, earlier in their career, or more recently – and who cannot volunteer

at present to consider joining our Friends of FLAC programme.

This is a scheme whereby supporters of the organisation can either sign up to make a modest monthly donation, or a single annual donation, whichever is easier. Having a solid financial base is crucial for securing the future of FLAC and its work for equal access to justice, and this kind of regular income is vital in enabling the organisation to plan for the future. If we could get just 100 supporters to commit to giving €250 per year, with tax efficient giving that would equate to just over €36,000, enough to run our Telephone Information Line for more than 6 months.

▼ **To find out more, log on to**  
<http://www.flac.ie/donate>, tel: +353 1 887 3600, or email [fundraising@flac.ie](mailto:fundraising@flac.ie)

## New guide to law on top-up loans from licensed moneylenders

In July FLAC produced a guide in response to a finding of the Financial Services Ombudsman Bureau the previous month. In it, the Ombudsman decided that two consumer borrowers had been sold illegal 'top-up' loans by a licensed moneylender. A 'top-up' loan refers to a loan which is used to pay off an existing loan balance from the same moneylender.

While this practice is illegal under Section 99 of the Consumer Credit Act 1995, it is not stated in the legislation that such loans

are unenforceable against the borrower. However the Financial Services Ombudsman in this case ordered that the outstanding amounts to be paid on the loans, as opposed to the full amounts originally borrowed, must be written off.

This decision of the Ombudsman applies only to licensed moneylenders and not to banks or credit unions. A licensed moneylender, under the Consumer Credit Act 1995, cannot charge an arrangement fee in relation to a loan and subsequently deduct

that fee from the loan.

It is important to note that while such 'top-up' loans are prohibited, moneylenders are still within their rights to have more than one loan agreement with a borrower at the same time, as long as the new loan is not used to clear the balance on an existing loan.

▼ **Download the guide at**  
<http://bit.ly/topuploans>

