

flacNews

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Using the Law to Secure Social Justice: Michael Farrell delivers FLAC annual lecture



Photo:Derek Speirs

FLAC was delighted to welcome our own Senior Solicitor Michael Farrell to give the 9th Annual Dave Ellis Lecture on 3 December. Michael is an internationally recognised human rights activist, lawyer, journalist, author and lecturer, and has been working with FLAC for more than ten years. As Michael was set to retire from his FLAC at the end of the year, his address was particularly important and poignant.

This year's lecture again took place in the Pillar Room of the Rotunda hospital, and was attended by over 300 people,

including colleagues in the legal sector and from various NGOs, members of the judiciary, current and former FLAC staff and friends and former colleagues of Michael. In his lecture, which focused on 'Using the Law to Secure Social Justice', Michael reflected on Ireland's relationship with human rights and the opportunities for change and improvement.

Michael began by remembering the late Dave Ellis, whom he had known from their involvement with the Right to Remarry group which campaigned for a 'Yes' vote in the 1995 divorce referendum. In particular,

Michael welcomed Dave's wife Sarah and his son to the lecture.

Michael also spoke about his impending retirement, thanking all FLAC staff, past and present, for their hard work. Reflecting on his time with the organisation, he highlighted a number of key moments, including the landmark case where he represented Dr Lydia Foy as she fought for the right to have her true gender recognised by the State. Lydia was in the audience and proudly displayed the long-sought birth certificate for all to see.

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FLAC News is published quarterly by Free Legal Advice Centres Ltd., 13 Lower Dorset Street, Dublin 1. Editors: Yvonne Woods & Noeline Blackwell.

Contributors:

Noeline Blackwell, Emer Butler, Naoise Duffy, Emma Foley, Ciarán Finlay, Eithne Lynch, Rachel Power, Eamonn Tansey, Katie Timmins, Zsé Varga, Yvonne Woods

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FLAC, Derek Speirs

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Lydia Foy becomes first transgender person to receive European Citizen's Award

After receiving a Medal of Honour at a ceremony in Dublin in September, Dr Lydia Foy became the first transgender person to receive the prestigious European Citizen's Award at the European Parliament in Brussels on 14 October 2015.

Dr Foy was chosen by the European Parliament in recognition of her courageous and long-fought campaign to have her true gender recognised by the Irish State. Dr Foy's 22-year legal battle to obtain legal recognition of her true gender, throughout which she was represented by FLAC, led directly to the passing of the Gender Recognition Act 2015. This Act allows transgender people in Ireland to amend their birth certificates to reflect their true gender, and puts Ireland at the forefront of progressive nations on transgender rights. After receiving the very first Gender Recognition Certificate issued, Lydia was finally able to get her long-sought amended birth certificate in September.

The only Irish recipient this year, Dr Foy was presented with the Citizen's Award along with 47 others from various EU countries by Vice-President of the European Parliament, French MEP Mdme Sylvie Guillaume, at a ceremony held at the European Parliament in Brussels.

FLAC Senior Solicitor Michael Farrell and other FLAC staff accompanied Lydia to Brussels, as well as members of her family and representatives from Transgender Equality Network Ireland

(TENI), a group which ran an extremely effective awareness-raising campaign for Trans recognition alongside Lydia's case.

Mr Farrell reflected that the award was a fitting tribute to Lydia's courage and persistence for the last 22 years. "Lydia Foy had fought a lonely battle to save a new generation of Trans people from the hardships suffered by her generation," he said. "The award is also an acknowledgement by the European Parliament of all those who had campaigned for LGBT rights in Ireland for so many years and who had this year set an example of tolerance and diversity for our European partners."

During their time in Brussels, the FLAC staff visited the offices of ILGA Europe, where they discussed the Irish campaign for transgender recognition and its hugely successful outcome. They also met with a number of MEPs and their representatives – including Lynn Boylan and Martina Anderson of Sinn Féin, who with other Sinn Féin MEPs had nominated Lydia to receive this honour – at the European Parliament to speak about Dr Foy's lengthy legal case.

Dr Foy said she was honoured to receive the award, remarking that "I feel now that with the endorsement of Europe and the endorsement of Ireland, I can say yes, maybe I was doing something right for the good of people, for access to the law and for future generations when it comes to diversity. Hopefully we'll have a more open mind and won't be marginalising anybody." 



FLAC team in Brussels for award ceremony – L-R:Yvonne Woods, Michael Farrell, Lydia Foy, Rachel Power and Catherine Hickey

FLAC policy round-up

Submission to the Department of Public Expenditure and Reform on Proposed Principles to Guide Public Engagement on Policy and Services Development (October 2015)

In late July, the Department of Public Expenditure and Reform published a set of draft principles to guide public engagement on policy and services development. The Department stated that the new guidance document would “replace and update” the current guidelines which date from 2005.

The Government committed to updating the 2005 guidance in Ireland’s first Open Government Partnership (OGP) National Action Plan. OGP is a global initiative, launched in 2011, to promote more open and transparent government.

FLAC’s submission noted that the original guidance dating from 2005 is far more detailed and practical compared to its proposed successor. With this in mind, FLAC recommended that the draft guidance build and improve on the 2005 guidelines and that human rights principles underpin the guidance document. FLAC recommended that all those who are directly affected by policy decisions be afforded the opportunity to meaningfully engage in consultations, that civil society be allowed to participate at all stages of policy-making in an open and accessible manner and that the guidance document be placed on a statutory footing.

The Department has stated that it is currently considering the more than 50 submissions it received.

Universal Periodic Review Submission (November 2015)

In advance of Ireland’s second examination under the Universal Periodic Review (UPR) mechanism, FLAC drafted a submission to the Office of the UN High Commissioner for Human Rights (OHC-HR). This submission will feed into a summary of all the submissions received by the High Commissioner, which will be published before Ireland’s review.

FLAC’s submission touches on a wide range of issues, including ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the incorporation of



economic, social and cultural rights into domestic law and the introduction of human rights and equality impact budgetary assessments across all Government departments. Other concerns highlighted in the report relate to the civil legal aid scheme, social welfare, lack of legal supports for those in mortgage arrears and failure to recognise the promotion of human rights as a “charitable purpose” under the Charities Act 2009.

This submission will also form the basis for lobbying of UN Member States which will take place in early 2016. Ireland is expected to undergo its second UPR examination in May 2016.

Submission to the Seanad on the Legal Services Regulation Bill (November 2015)

In advance of the Report and Final Stages of the Legal Services Bill in the Seanad, FLAC made a submission to Seanad members, singling out four areas for immediate amendment to promote access to justice.

FLAC called for the new oversight body for the legal professions, the Legal Services Regulatory Authority, to promote understanding of the law and legal system and for the new principles proposed for lawyers in the legislation to match those promoted by the United Nations Basic Principles on the Role of Lawyers. FLAC also recommended that sections of the Bill that limit transparency around fees in family law cases or others held in private

or settled before hearing be repealed and that Protective Costs Orders be introduced to remove the personal risk to people wishing to take cases in the public interest or to seek redress from the State, who legitimately fear significant financial loss if costs are awarded against them.

Submission to inform the implementation of the Irish Human Rights and Equality Commission’s Strategy Statement 2016-18 (October 2015)

To inform the implementation of its first Strategy Statement, which will cover the period 2016-18, the Irish Human Rights and Equality Commission (IHREC) engaged in proactive outreach with the public and civil society organisations. As part of this, IHREC conducted a series of consultations across the country and issued a call for written submissions.

In response, FLAC attended a targeted consultation meeting with civil society organisations in Dublin and also drafted a written submission. FLAC’s submission proposed a number of actions for IHREC including to assist the State in progressing towards ratification of international human rights treaties which it has signed, and to prioritise both the Legal Aid Board and the Social Welfare Appeals Office in its public sector duty work. Other suggestions for IHREC included to assist in the dissemination of the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights, and to seek a greater role in the budgetary process.

IHREC will compile a consultation report based on all the feedback it has received and will use this to inform the development of its Strategy Statement 2016-18, which is to be published in January. 

Who was Dave Ellis?

The late Dave Ellis was a community activist who dedicated his career to working with community groups on issues including welfare rights, legal aid, legal education and legal entitlements generally. He was Community Law Officer for more than 20 years at Coolock Community Law Centre (now CLM Northside), established by FLAC in 1975 as the first of its kind in Ireland. Dave subsequently established Community Legal Resource to provide information, training and support for the non-profit and community sector. He died in 2007.

Using the Law to Secure Social Justice: (Continued from front page)



Michael also spoke about the less high profile work in which he had been involved, such as helping people in the asylum system to access the social welfare supports to which they were entitled. While a great deal of progress has been made over the years, Michael expressed frustration at struggles still faced by many, including those in Direct Provision trying to access Child Benefit, people dealing with mortgage arrears, and the law centres and poorly resourced advocacy groups fighting to provide assistance to all who need it.

Although claims have been made that the economic crisis and era of austerity are over, Michael stressed that a rising tide does not lift all boats. He argued that 'this prosperity is only skin deep', highlighting that in the midst of the anticipation of Christmas, there were 738 families homeless in Dublin, and one in nine children living in consistent poverty. Michael also reflected on other 'deep faults' in our society, including the failure and inadequacy of the Direct Provision system, the huge number of patients on trolleys in hospitals, and the risks faced by Travellers living in dangerous conditions on halting sites. Quoting President Michael D. Higgins, he warned against the danger of returning to 'business as usual' when we are being told the worst is over.

Despite these issues, Michael said there were ample opportunities for change. He noted in particular the forthcoming election and urged everyone to ask those seeking our votes to commit to a real structural change that would protect the rights of poor and marginalised people. He also reflected that there have been sources of hope in recent months, such as the

Marriage Equality campaign, the success and passion of which 'has given confidence to others in our society that they too can achieve substantial change'.

However, Michael also noted the lack of adequate protection for social and economic rights in the Constitution, calling it 'a creature of its time' and 'pious, socially conservative and notoriously condescending to women'. He called for a substantial update and amendment of the Constitution to serve a modern Ireland.

Michael then turned to international Human Rights standards, accepting that though there are many international and European treaties that Ireland has ratified, there are notable gaps. In particular, he noted how Ireland has yet to ratify the UN Convention on the Rights of Persons with Disabilities, Protocol 12 to the European Convention on Human Rights (ECHR), which strengthens the prohibition on discrimination, and the Optional Protocol to the ICESCR Covenant allowing individuals to make complaints against their governments if there is a failure to implement the rights contained in the covenant.

In Ireland, the only piece of international human rights legislation that has direct effect is the European Convention on Human Rights, through the implementation by the Oireachtas of the ECHR Act in 2003. It was the effectiveness of this Act which Michael then turned his focus to, doing so in the context of the Lydia Foy case. After giving a brief overview of the 22-year legal battle, Michael concluded that while the ECHR Act eventually worked and provided a mechanism to enforce human rights where there was a gap in the



Constitution, it cannot provide an effective remedy unless the government is required to act upon Declarations of Incompatibility within a strict timeframe, and the court is empowered to grant a greater remedy than damages.

Michael then turned to consider how things may be changed to remedy the serious problems of neglect and poverty in our society. He called for social, economic and cultural rights to be enshrined in the Constitution, as proposed by the Constitution Convention in 2014; a recommendation which is still awaiting a government response.

He also urged all political parties and candidates in the forthcoming election to:

- ▼ include a specific section in their manifesto on human rights,
- ▼ commit to holding a referendum to include social, economic and cultural rights in the Constitution,
- ▼ amend the ECHR Act 2003 to allow the courts to grant more effective remedies and to require governments

to act expeditiously on Declarations of Incompatibility, and

- ▼ ratify all relevant human rights treaties that they have yet to do.

Michael further suggested the establishment of an all-party Oireachtas Committee on Human Rights, which would discuss Ireland's response to its human rights obligations under international and European treaties, the European Court of Human Rights and the Court of Justice of the European Union.

However, even if all of these recommendations were followed, Michael pointed out that strategic litigation would still be a necessity. He stressed that as money becomes scarcer, there will be a 'need for much closer coordination between all those engaged in strategic public litigation'. He also urged them to begin a practice of sharing their information and experiences.

To finish, Michael considered the proposed repeal of the Human Rights Act 1998 in the UK, which incorporates the European Convention into domestic law, and its replacement with a British Bill of Rights.

He expressed his concern that if a state previously compliant with the Convention, such as the UK, were to distance itself from Convention standards on human rights, then it could potentially give other states with a patchy human rights record the justification to do the same. Such a move, he said, would 'remove a crucial source of hope for thousands of victims in those countries'.

In rounding off his speech, Michael said his daughter had advised him to finish on an up note: he gladly complied, citing again the opportunities for change and the enduring passion of all those working in the sector. In an echo of this sentiment, directly after his address the passion and dedication of some 82 solicitors and barristers who volunteer for FLAC and PILA was recognised, as they received a golden FLAC Pin to acknowledge and thank them for their remarkable contributions to promoting access to justice. 

- ▼ View a video of Michael's lecture at <http://bit.ly/DEM9mfclip> and a transcript is available at: <http://bit.ly/DEM9mf>

Department of Social Protection to launch review into lower social welfare payments for under-26s

In a welcome move in late November 2015, Tánaiste and Minister for Social Protection Joan Burton TD announced that her Department would initiate a review into the impact of lower social welfare payments on young people under the age of 26.

Following cutbacks introduced in 2009 and expanded in January 2014, rates for means-tested social welfare payments such as Jobseeker's Allowance and Supplementary Welfare Allowance were reduced for claimants under the age of 26. For young people aged between 18 and 24 years with no dependent children, the maximum payment is €100 and for persons aged 25 years, the rate is €144. As a result, young people under the age of 26 are expected to live on an income which is much less than what the Government considers the minimum acceptable "basic weekly allowance" of €186.

Since these measures were introduced, FLAC has consistently called for them to be reversed. In June 2015, FLAC raised its concerns and those of other Irish civil society groups with the top United Nations body in this area, the UN Committee on Economic, Social and Cultural Rights. PILA also convened an under-25 social welfare working group to examine the issue. In its briefing for candidates in next year's general election, FLAC has called for an end to discrimination on the grounds of age and for full restoration of social welfare payments for under-26s.

FLAC notes that the economic crisis has had a disproportionate impact on young people, especially as regards unemployment. During the recession, the unemployment rate for under-25s rose from 9% in 2007 to 28% in 2013. Inevitably, higher unemployment rates amongst this cohort led to a greater need for social welfare payments. In December 2015, there were 42,764 applications from under-25s on the Live Register for Jobseeker's Allowance.

Surveys carried out by the National Youth



Council of Ireland in 2014 revealed that almost 2 in 5 (39%) young people were of the view that the cuts to Jobseeker's Allowance had impacted significantly on their lives and had left them struggling to make ends meet. 1 in 4 stated that as a result of the cut to Jobseeker's Allowance, they could not afford to move out of their parent's home.

There appears to be an assumption by the State that all young people can live with their parents or family members. However, many young people, for a variety of reasons, do not have access to family supports. This is especially true of vulnerable groups such as LGBTI persons, migrants, persons with disabilities, Travellers and Roma.

FLAC is especially concerned that these cuts may have increased the vulnerability of disadvantaged young people to homelessness, given the housing situation and inadequate supports in this area. In July 2015, more than 570 people under the age of 25 were living in emergency homeless accommodation. Focus Ireland have also stated that young people accessing emergency homeless services can find themselves trapped in homelessness due to the reduced rate of social welfare paid to people under the age of 26.

The discriminatory nature of these cuts calls into question Ireland's compliance with international human rights law. The right to social security is enshrined in both the European Social Charter and the International Covenant on Economic, Social and Cultural Rights, both of which Ireland is bound by.

In its General Comment No.19, the UN Committee on Economic, Social and Cultural Rights notes that it is the obligation of States to guarantee that the right to social security is enjoyed without discrimination, including discrimination on the basis of age. The Committee notes that some distinctions can be made on the basis of age, for example entitlement to a pension. The key underlying principle is that any distinction on prohibited grounds must be reasonable and justified in the circumstances.

According to Minister Burton, the rationale for the reduced rate received by under-26s is to protect young people from "welfare dependency" and "to incentivise young Jobseeker's Allowance recipients to avail of education and training opportunities". It is unclear if this justification would satisfy the test laid down by the Committee.

The Committee also issued an open letter in May 2012 on the requirements of austerity policies. Here it stated that retrogressive measures must not result in discrimination and increased inequalities. Additionally, such measures must be temporary, covering only the period of the economic crisis, and they must be necessary and proportionate. Despite this clear guidance, and the Government's talk of an economic recovery, these measures remain in place in Ireland.

Furthermore, in its 2013 Observations on Ireland's compliance with the European Social Charter, the European Committee of Social Rights determined that the minimum levels of certain social welfare benefits, including unemployment payments, were not sufficient. Payments to young people under 26 fall below even these minimum levels.

As of yet, very little information has been provided on the format or timeframe of the review. FLAC hopes it will be carried out as a matter of urgency and that it will incorporate wide consultation with all those affected. ☀

Changes to landlord & tenant law come into effect

On 4 December 2015, significant changes were made to the law regulating Landlord and Tenant relations in the Residential Tenancies (Amendment) Act 2015. While most of the changes have yet to come into effect, some were instantaneous. Here is a quick summary of the changes that have immediate effect from December 2015, with the relevant sections of the Act:

Rent review process (Sections 25 & 26)

▼ Rent can only be reviewed every two years. This two-year period will run either from the commencement of the tenancy or from the most recent rent review. Note that this change is temporary – the 24-month required notice period will only be in effect for four years from the date of commencement of the amendment act. After this, in other words from 3 December 2019, the rent review period will revert back to 12 months.

▼ The notice period for a rent review has been increased from 28 to 90 days.

Examples:

1. Tenancy began in March 2015 at a rent of €725 per month. This rent cannot be changed until March 2017.
2. Tenancy began in July 2013. The rent was reviewed in August 2015 to €865 per month. This rent cannot be changed until August 2017.
3. Tenancy began in November 2010 and the rent is €550. The rent has never been reviewed. The Landlord now wishes to increase the rent to €700. The landlord must tell the tenant at least 90 days before the increase has effect. If the Landlord posts notice, in the prescribed form, to the tenant on 15 December 2015, informing them of the increase, the rent cannot be charged at the increased amount until the 15 March 2016.

Notice Periods (Section 31)

The required notice period for termination of a tenancy has been changed. The new notice periods are as follows:

Duration of Tenancy	Notice Period if Given by Landlord	Notice Period if Given by Tenant
Less than 6 months	28 days	28 days
6 or more months but less than 1 year	35 days	35 days
1 year or more but less than 2 years	42 days	42 days
2 years or more but less than 3 years	56 days	56 days
3 years or more but less than 4 years	84 days	84 days
4 years or more but less than 5 years	112 days	84 days
5 years or more but less than 6 years	140 days	84 days
6 years or more but less than 7 years	168 days	84 days
7 years or more but less than 8 years	196 days	84 days
8 or more years	224 days	112 days

These changes are not retrospective. That is, if a termination notice was issued before 4 December 2015, the previous notice periods apply. This is the case even if that notice period is still running. Below are three examples from tenancies beginning in 2010, 2009 and 2008.

Examples:

1. Tenancy began in March 2010 and the landlord, with sufficient reason, now intends to end that tenancy. The landlord intends to issue notice on 6 December 2015. The tenancy has been in operation for 5 years and 9 months. The Landlord must give 140 days' notice.
2. Tenancy began in July 2009. On 10 December 2015 (6 years and 5 months) the tenant wishes to end the tenancy. Assuming this is not a fixed term tenancy, the tenant must give 84 days' notice.
3. Tenancy began in July 2008 and the landlord decided to end the tenancy at the end of November (7 years and 5 months). The landlord issued a valid termination notice on 1 December 2015 for 112 days. Note that as the termination notice was issued before 4 December 2015, the previous notice periods apply. 

Facing up to the future – FLAC's

In its work, FLAC encounters many people who do not have equal access to justice in Ireland because of poverty and inequality. The period of austerity which prioritised the stability of the economic system over the needs of society has not ended. Today, many remain unable to access their fundamental human rights. State systems remain opaque and over-stretched; they continue to deny people a voice in decisions affecting them. People struggling with debt or trying to use the legal system frequently cannot get the legal support they need to obtain fair decisions. People dependent on social welfare face significant hurdles in securing fair outcomes on decisions. There is little evidence that the state is systematically considering even the most basic rights in its day-to-day decision-making, despite legal obligations to do so and, perhaps more importantly, even though it would ensure the people of Ireland are better served by the state.

FLAC is asking candidates for Election 2016 to consider the following issues that would help achieve better access to justice for people in Ireland and include them in their own election manifestos.

I. Addressing the current housing/homelessness crisis:

Homelessness is growing, spanning social groups and housing types. In particular,



FLAC highlights the danger of homelessness arising from the number of mortgage accounts in deep arrears. Thousands of properties are currently at risk of repossession; this includes both principal private dwellings and the 'buy-to-let' properties in the hands of receivers which are also homes for those who rent them.

The long-promised full suite of measures to tackle the arrears crisis has still to be delivered, so that 7 years on troubled borrowers still lack sufficient supports. The list is long: the only legal option open to borrowers in arrears trying to avoid

largely inadmissible in repossession proceedings. There is a new and very limited independent appeals mechanism in place for insolvency decisions, no Public Insolvency Practitioners for those who cannot afford one privately and no fully rolled-out countrywide Mortgage-to-Rent scheme for those whose mortgages are truly unsustainable. The following measures could bring some clarity and balance to a very uneven playing field for borrowers in Ireland:

- ▼ Access to legal advice and representation for all who need it in their dealings with creditors, both during negotiations on sustainable and affordable restructures and in repossession proceedings.
- ▼ Ensure more timely & effective review by the courts of insolvency arrangements that are rejected by creditors.
- ▼ Access to free legal advice and representation for people petitioning for their own bankruptcy.
- ▼ Review the Code of Conduct on Mortgage Arrears to ensure people in mortgage arrears have access to a fair appeal on decisions made by the lenders.
- ▼ Introduce a scheme of Public Insolvency Practitioners for people who cannot afford a private PIP.
- ▼ Expand the mortgage-to-rent scheme country-wide in order to enable

FLAC Centres Throughout Ireland



FLAC Centres in the Dublin Area



repossession and/or insolvency is the Code of Conduct on Mortgage Arrears; FLAC believes this mechanism does not serve borrowers well, with its lack of accountability for bank decisions on loan sustainability and lack of appeals mechanism; the Code has, in any event, been found by the Supreme Court to be

election briefing for candidates 2016

owner-occupiers with manifestly unsustainable mortgages to become tenants of their local authority/housing association.

2. Fair support for those in receipt of social welfare payments:

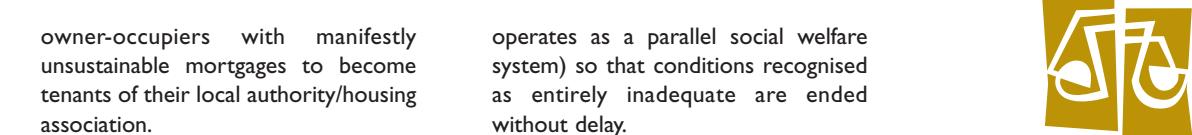
Social welfare payments are designed to give people a minimum income to meet reasonable expenses; often, this may fall far short of an adequate income. FLAC has identified a lack of effective, timely and fair processes within the social welfare system which put people at risk of poverty. In some circumstances, people may find that payments are delayed, reduced or denied in ways that leave them without the minimum income required to maintain their life in dignity. For example, the state's justifiable focus on eliminating welfare fraud has had an unfortunate side-effect of denying payment to some people who are innocent of wrong-doing and who must enter the labyrinthine, slow-moving appeals system to seek justice. Younger people are struggling to survive on a lower rate of social welfare. The current Direct Provision system, discredited by FLAC's 'One Size Doesn't Fit All' report in 2009 and pronounced in need of thorough reform by the recent government-appointed Working Group, remains unchanged. FLAC urges candidates to commit to:

- ▼ Ensuring that fair procedures are in place when seeking to recover overpayments and that a person's income is not reduced below the basic minimum rate set to ensure an adequate standard of living in making deductions from social welfare payments or from wages.
- ▼ Ending discrimination on the grounds of age by restoring full social welfare payments for under 26s.
- ▼ Allocating sufficient resources to the Social Welfare Appeals Office to ensure that appeals against refusals of benefit or assistance are heard quickly, fully and fairly and people are not denied rightful payments for extended periods.
- ▼ Implementing within a specified, stipulated timeframe the recommendations of the Working Group report on Direct Provision (which

operates as a parallel social welfare system) so that conditions recognised as entirely inadequate are ended without delay.

3. Equal access to the legal system:

Ensuring everyone has access to the courts and to the legal supports necessary to achieve equal access to justice is a core priority for FLAC. While funding for civil legal aid services has increased slightly in recent years, people desperately in need of legal help still face significant delays and long waiting lists for accessing services. Other barriers to accessing the legal system include prohibitive costs, restrictive eligibility criteria for civil legal aid and the narrow remit of the Legal Aid Board. FLAC urges candidates to commit to:

- ▼ Recognising that legal aid is an essential part of the fundamental human right of access to justice and ensure that all individuals who need legal representation in judicial or quasi-judicial proceedings can effectively access this right.
 - ▼ Allocating sufficient funds to the Legal Aid Board to ensure the provision of an efficient, accessible and sustainable civil legal aid scheme.
 - ▼ Ensuring timely enforcement of court decisions to minimise delay in the protection of rights and administration of justice.
 - ▼ Making provision for courts to limit the costs charged against litigants who seek to take cases in the public interest against the State and other powerful institutions.
 - ▼ Committing to a speedy consideration of Law Reform Commission recommendations on the introduction of multi-party litigation or a class actions procedure.
 - ▼ A human rights based approach to government:
- Ireland is obliged to meet clear international human rights standards, set by international treaties, in many important areas of life – standards which, if fully implemented, will guarantee that people can live a life of basic dignity. Yet at UN examinations, the State continues to fall short of required benchmarks in areas like housing, social security, health care and education. There is no adequate domestic system to measure the state's compliance with its international obligations. Indeed, while Ireland readily and strongly champions human rights standards and mechanisms abroad, at home those organisations which admit to promoting human rights as their primary aim are precluded, by law, from qualifying for charitable status. We continue to deny people in Ireland access to mechanisms such as the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights which would allow them to enforce basic human rights, such as health, housing, social security and education. FLAC urges candidates to commit to:
- ▼ Amend the Charities Act 2009 to recognise that the promotion of human rights is beneficial to the community in the same way that promotion of civic responsibility and the relief of poverty are already recognised, thus allowing charities to have this as their main purpose.
 - ▼ Establish systems to allow the Oireachtas to monitor Irish state commitments for the protection and promotion of human rights under treaties Ireland has ratified.
 - ▼ Ratify the Optional Protocol to ICESCR to enable individuals to enforce basic human rights.
 - ▼ Take account of the effect on human rights of decisions on public spending, policy or services that affect the lives of people – particularly poor and marginalised groups – through systematic impact assessment.
 - ▼ Consult regularly with civil society and relevant stakeholders on policy-making, including through establishing an effective consultation mechanism.
 - ▼ Conduct a review of all austerity measures as soon as possible and ensure that they are phased out, with services restored in line with post-crisis economic recovery. 

FOCUS ON PILA



PUBLIC INTEREST LAW ALLIANCE UPDATE

Oireachtas Justice Committee hears findings from public interest law seminar series

The Oireachtas Committee on Justice, Defence & Equality recently heard findings from a unique series of seminars examining the connections between legal action and social change in Ireland, including the impact of public interest law and litigation and the associated need for reforms to facilitate greater access to justice.

The 'Changing Ireland, Changing Law' series was organised by Dr Mary Rogan, Head of Law at Dublin Institute of Technology (DIT) and Professor Ivana Bacik of Trinity College Dublin, in partnership with the Public Interest Law Alliance (PILA), a project of FLAC. Dr Rogan and Professor Bacik addressed the Justice Committee along with Rachel Power of PILA on the series findings, following a presentation in the AV room of the Oireachtas for other members.

The series saw innovative input on how law has affected Irish society, showcasing public interest campaigns on women's rights, LGBT rights, immigration and asylum and public interest litigation. This included many of the individual litigants who took landmark cases in their own right to advance wider change, such as Dr Lydia Foy on Transgender recognition and Máirín de Búrca on women's rights, as well as lawyers, academics and civil society organisations such as the National Women's Council, the Gay & Lesbian Equality Network and the Immigrant Council of Ireland.

At the briefing, PILA's Rachel Power outlined key barriers to public interest litigation identified through the series and made the following recommendations:



Speakers at CICL lecture on 'Public Interest Litigation – does it work' held 16 October 2015: L-R: Kevin Brophy, Rachel Power (PILA), Lydia Foy, Prof Gerry Whyte (TCD), Maeve O'Rourke (JFM).



CICL team at Leinster House to speak before Oireachtas Committee L-R Noeline Blackwell (FLAC), Dr Mary Rogan (DIT), Rachel Power (PILA), Prof Ivana Bacik (TCD) and Seanad Eireann, Micheline Sheehy Skeffington and Dr Mark Bell (TCD).

- ▼ The review period mandated within the Legal Services Regulation Bill should be used to assess whether the new legislation is facilitating access to justice through speedy and efficient administration of justice and, if not, resources should be applied to identifying current inefficiencies.
- ▼ The state must ensure effective and timely implementation of judgments to prevent excessive delay in protecting, promoting and defending the rights of its people.
- ▼ The courts must be specifically authorised to take into account the public interest nature of a case and legislative provision made for the granting of Protective Costs Orders in public interest law cases.
- ▼ The legal aid scheme should be extended to allow for the taking or funding of test cases, which can be contracted out to private law firms or independent law centres.

An edited collection of papers from the series will be available in 2016

PILnet Pro Bono Forum focuses on refugee crisis

In November 2015, PILA's Project Officer Eamonn Tansey travelled to Rome to participate in PILnet's 9th Annual European Pro Bono Forum. The forum provides an annual platform for pro bono lawyers, pro bono clearinghouses and NGO leaders to share their strategies and knowledge in using the law to achieve social justice. In addition to offering this annual platform for idea and strategy sharing, the forum has greatly contributed to building support for pro bono legal assistance across Europe and in regional centres around the world.

In addition to a series of interactive workshops and plenary discussions on the fundamentals of pro bono, this year's forum had a particular focus on the ongoing refugee crisis emanating from the Middle East and northern Africa. In this regard, participants were encouraged to develop pro bono solutions and strategies to counter the myriad of legal and social issues arising from the crisis including the involuntary detention of refugees on arrival in Europe, rising levels of xenophobia and racism across Europe and the seemingly inhospitable European legal landscape facing genuine refugees seeking refuge in EU states.

On the opening day of the conference, Eamonn delivered a presentation to the European Pro Bono Alliance on pro bono survey development and use, drawing from PILA's recent experience in developing a nationwide survey in order to measure the attitudes and appetite for pro bono amongst Ireland's legal community. On the final day of the conference, Eamonn presented to a variety of stakeholders as part of a session entitled 'Pro bono in Europe: Meet the Clearinghouses'. The session was a great opportunity to promote the past and present work of PILA and to recount some of the more significant successes achieved following its establishment in 2009.

Pro bono under the spotlight



Pro bono in action: St Vincent de Paul (SVP) and McDowell Purcell produce energy efficiency research

PILA's Pro Bono Referral Scheme has yielded another very successful result recently in the form of the partnership between law firm McDowell Purcell and national anti-poverty group the Society of Saint Vincent de Paul (SVP).

Through the Pro Bono Referral Scheme, a legal team within McDowell Purcell prepared a research report on the law in relation to the Energy Efficiency of Rental Accommodation in Ireland. The study highlights the requirement for specific legislation to progressively realise energy efficiency in private rental accommodation.

The research found that no specific provision is currently made in legislation for the rating of energy efficiency of private rental accommodation in Ireland. While a number of physical standards for rental accommodation have been introduced since 1992, these do not apply retrospectively and do not specifically promote energy efficiency.

The study recognises that under the Government's Construction 2020 programme, a working group exists which will investigate the feasibility of introducing minimum thermal efficiency standards for rental properties. Such standards for rental properties if introduced would serve to reduce energy poverty, improve health and minimise emissions from the private rented sector.



L-R: John Mark McCafferty, SVP; Noeline Blackwell, FLAC; David McKechnie, (McDowell Purcell).

While legislation aimed at improving energy efficiency in rental accommodation will not take families with inadequate incomes out of energy poverty, such legislation would go a long way towards reducing their energy bills, increasing the comfort levels in their homes and enhancing their overall health and wellbeing.

At the launch of the report on October 1st, David McKechnie, Associate at McDowell Purcell and leader of the pro bono research team, highlighted the importance of engaging in such pro bono work:

"McDowell Purcell views pro bono work as an integral part of Corporate Social Responsibility and is delighted to have worked with PILA on this important study. Through working with PILA, we were confident that any project undertaken would be satisfying a genuine and worthy need. We therefore had no hesitation in committing to this project to assist St Vincent de Paul with its work in this

important area."

John Mark McCafferty, Head of Social Policy SVP also commented how the study highlights the fact that greater co-operation between the Departments of Environment and Social Protection with the Department of Energy is necessary to ensure energy affordability for people on low incomes.

PILA Legal Officer Eithne Lynch said that PILA had seen first-hand the added value of legal research to a particular issue. "In our experience, this kind of research can build upon and be beneficial to an organisations' policy and advocacy work, which is why we are so happy to see this project come to fruition. It has become a valuable resource for other organisations working in the area," she commented.

The report is available on the SVP website at: bit.ly/1ZclIUz



Justice delayed is justice denied: Legal Aid Board Annual Report 2014

According to the Legal Aid Board's recently published Annual Report for 2014, demand for its legal services fell last year by approximately 8% over 2013 figures. However, while the 2014 figure of 16,433 applications represents a decrease in the number of applications received during the economic crisis, which peaked at 19,636 in 2011, it remains considerably higher than pre-recession levels.

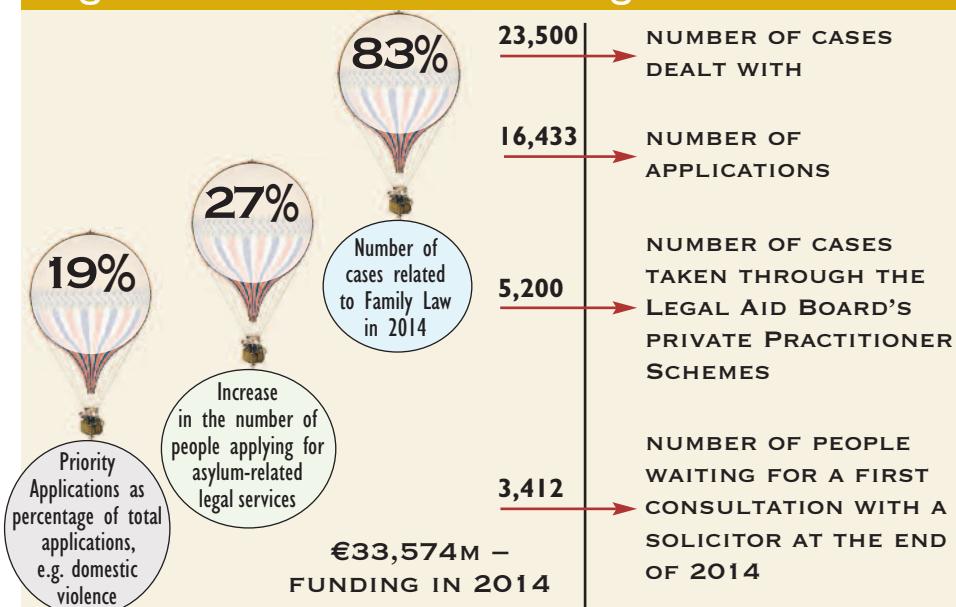
One noteworthy trend identified in the report is that the number of people seeking asylum-related legal services from the Board rose for the first time since 2008. In total, 902 people sought asylum-related legal services from the Board in 2014, which represented a 27% increase on 2013 figures. According to the Board, this rise is consistent with the increase in the number of people seeking asylum in the State. However, demand for asylum-related services from the Board remains significantly lower than pre-2010 levels.

The Legal Aid Board has made considerable progress in reducing the number of people on waiting lists. As detailed in the report, while 5,067 people were waiting for a first consultation with a solicitor on 1 January 2014, this figure had fallen to 3,412 on the same date in 2015. The number has since fallen to under 2,700 as of 1 October 2015. While the Board must be commended for the efforts undertaken in this regard, especially in light of low staffing levels and under-funding, the number of people on waiting lists remains too high.

By contrast, while significant headway has been made in reducing the number of people on waiting lists, waiting times continue to be unacceptably long. The waiting time for a first appointment with a solicitor for matters not deemed priority was in excess of four months in 13 of the Board's Law Centres at the end of 2014. Waiting times for an initial appointment in some Law Centres, such as Tallaght, were as long as 10 months.

This is despite the fact that the Legal Aid Board has committed to ensuring that no one waits longer than a period of four months for a consultation with a solicitor from the date of full application. Clearly, more needs to be done to ensure the provision of timely services.

Legal Aid Board numbers at a glance for 2014



Cases related to family law continue to dominate the work of the Board. In 2014, 83% of cases handled by the Legal Aid Board were in the family law area. By contrast, family law queries accounted for about 20% of all calls received by FLAC's information line in 2014.

There were a number of interesting developments in 2014. Firstly, in response to the growing volume of child care cases, the Board initiated a pilot involving the use of private solicitors to represent parents in applications by the Child and Family Agency, Túsla, to have children taken into its care.

The use of private practitioners in these cases, which are typically sensitive, complex and time-consuming, should, if properly structured, ease the burden on Legal Aid Board solicitors dealing with child care cases. This measure should also go some way towards addressing concerns raised by the Director of the Child Care Law Reporting Project, Carol Coulter that "there may be parts of the country where the Legal Aid Board is very under-resourced and where it is quite difficult to get representation" in child care proceedings.

In addition, there was a very limited resumption of usage of private solicitors for certain family law matters in the Circuit

Court. By the end of 2014, 10 certificates had been granted to Private Practitioners for such cases. This scheme had been suspended in effect in recent years "for budgetary reasons".

In October 2015, the Minister for Justice and Equality, Frances Fitzgerald, announced an increase in funding to the Board for 2016. She stated that the additional resources were to be used to increase staffing levels and to make additional use of the Civil Court Practitioner Scheme to deal with applicants seeking legal services for either a judicial separation or a divorce.

In summary, the 2014 Annual Report shows that progress has been made in addressing some of the obstacles which people seeking to access services from the Board encounter. However, barriers to accessing justice remain, in particular, due to long waiting times, the low visibility of the civil legal aid scheme and the narrow remit of the Board. Moreover, funding levels have not yet reached pre-recession levels, despite much greater demand.

Undeniably, more must be done to ensure equal access to justice in Ireland through the state provision of an effective, accessible and sustainable system of legal aid. FLAC remains committed to achieving this goal. 

Child Care Law Reporting Project: final report

The ground-breaking Child Care Law Reporting Project released its final report on 30 November 2015, presenting a raft of recommendations for state action from its three years of operation, including a call for a dedicated family court.

The project analyses data from cases involving care applications for children and has reported on over 1,200 child care cases before the District and High Court over a period of 30 months. It examines issues such as why child care orders were sought by the Child and Family Agency (CFA), the ethnic background and family status of the families involved, the ages of the children and whether they have any special needs, any issues affecting parents such as disability or addiction, how long the cases ran for and their outcomes.

Statistics from the CCLRP's final report have shown that children from ethnic minorities are seven times more likely to be involved in child care proceedings before the courts. 26.4% of the cases involved families where at least one parent was from an immigrant background, while 4.4% of the families involved were Travellers.

The study also highlighted that one in three children involved in child care cases have special needs, while mental health and cognitive disabilities were extremely common among parents. This high representation of vulnerable and marginalised parents in child care cases was noted by the reporting team, with project director Dr Carol Coulter commenting that "[i]t's really important we realise when we have inadequate service for parents with a disability. It impacts on their families and it impacts on their children."

Launching the report, Chief Justice Susan Denham drew attention to the need for these vulnerable parents to be given



Noeline Blackwell, FLAC; Chief Justice Susan Denham; Dr Carol Coulter, CCLRP.

'appropriate supports' to break the cycle of neglect and abuse involving their children.

"The report highlights a lack of availability of suitable and appropriate services for vulnerable parents," said Mrs Justice Denham. "It sends the clear message that parents with mental health problems, intellectual disabilities, parents from minority ethnic groups or those who have been in care themselves or have addiction issues, and those who struggle with a child with mental difficulties, absolutely need suitable and integrated supports."

The availability of resources was also examined in the report, with a finding that while in major cities such as Dublin, Cork, Limerick and Waterford there were dedicated child care judges and court days devoted to hearing child care cases, the same could not be said for other parts of the country. The report notes that in many courts, there may be as many as 100 cases on the court's list, meaning that these child care cases simply cannot be given the attention needed by the courts.

The Project's report makes a total of 24 recommendations, which included the establishment of a dedicated family law court to hear child care cases to help

alleviate the overcrowded lists and huge delays in hearing urgent cases. This recommendation was reiterated by Chief Justice Denham, who stated "The establishment of dedicated family courts to hear both public and private law is a matter of urgency."

In the second phase, the project will examine a number of complex and highly contested cases over a period of two years. It will consider why some cases become so fraught and complicated, and consider the ways in which this can be resolved. Commenting on how this second phase will be carried out, Dr Coulter explained: 'This reporting will be combined with qualitative research into the reasons why certain cases become very difficult and protracted, which can adversely affect the children at the heart of the proceedings'.

FLAC has provided administrative and communications support to the project since its inception and will continue to support it through its second phase of enhancing access to justice in Ireland.

The project went on to release its fourth and final volume of cases for 2015 on 14 December 2015. All its published reports and volumes of cases are available on the project website, www.childlawproject.ie

Left: Judge Marie Quirke,
District Court President
Her Honour Judge
Rosemary Horgan, Judge
Brendan Toale.

Right: The Hon Mrs
Justice Catherine
McGuinness, Kevin Healy
BL & Dr Carol Coulter.



All photos by Derek Speirs

FLAC VOLUNTEERS

International Volunteer Day and FLAC Volunteer Golden Pin Awards



FLAC and PILA volunteers who received the Golden Pin award on 3 December

The UN named 5 December as International Volunteer Day to celebrate the vast and invaluable work done by volunteers around the world. FLAC is proud to have such committed and professional support from volunteers from the legal profession and we cannot be grateful enough.

Since FLAC was set up in 1969, it has always depended on the work of volunteers. FLAC volunteers are involved with FLAC's work in a number of ways. They support some of the most disadvantaged people in our communities, and assist them to realise their right to access justice. The PILA Pro Bono register depends on the volunteers who offer their services to the NGOs striving to effect social change, through providing pro bono legal help, offering educational sessions and through various other working groups and initiatives. FLAC's own National Council - our board - is also made up of volunteers!

Volunteers are therefore truly at the core of FLAC, and FLAC is committed to supporting and celebrating all of its dedicated volunteers.

FLAC is running close to 1,500 clinics a year in its Dublin and Cork city branches alone. There are another 1,350 clinics yearly countrywide, run by the local Citizens Information Centres, with local solicitors and barristers providing free legal advice. In these centres, first-stop legal information and advice is given to those who cannot afford to pay for such services. At least 14,000 people seek

advice from these invaluable local resources each year.

This could not happen without the volunteers. We now have over 350 amazing volunteers using their professional skills to help those most in need in their local communities.

So on this year's International Volunteer Day, we celebrated the volunteer legal advisors and assistants who offer their time and services to help make our services possible.

Whether you have been volunteering with us for 10 years or 10 days, you are part of what we believe in; promoting equal access to justice for all. Thank you for your support and Happy International Volunteer Day! We couldn't do it without you!

FLAC also runs a Volunteer Awards Scheme to recognise long-standing and committed volunteering. This year's awards ceremony took place on 3 December at FLAC's Ninth Annual Dave Ellis Lecture. We awarded an unprecedented 82 volunteers on the night.

The aims of these awards are:

- ▼ To acknowledge the commitment and support given by volunteers,
- ▼ To let volunteers know that they do make a difference in their local communities,
- ▼ To celebrate all our volunteers,
- ▼ To encourage volunteering within the legal profession,

▼ To raise awareness about the importance of the work volunteers carry out.

Volunteers from all over the country who have been regular volunteers or volunteering for more than 3 years received a Golden FLAC pin, a Certificate and a mention on the FLAC Roll of Honour.

Volunteers attended from Dublin, Galway, Leitrim, Sligo, Kildare, Kerry, Cork, and Meath. We were delighted to be able to acknowledge so many of our volunteers.

We are also delighted to see that so many of the local Citizens Information Services have nominated their local volunteers, so that they get national acknowledgement as well.

Volunteers are unpaid not because they are worthless, but because they are priceless

If you are interested in becoming a FLAC volunteer, we are currently seeking fully qualified solicitors and barristers in the following areas to volunteer one evening a month:

Arklow, Balbriggan, Ballymun, Blanchardstown, Bray (employment), Lucan, Navan, Newbridge, Port Laoise, Stillorgan (day time), Swords, Tallaght.

**For more information on volunteering, contact Zsé Varga,
Volunteer and Centre Manager:
volunteers@flac.ie**

FOCUS ON FLAC

Jo Kenny, FLAC Council

Jo Kenny is the one of the newest members of FLAC Council, having joined in November 2014. FLAC Council, which acts as the organisation's board, is made up of a diverse mix of people, including Chairman Peter Ward SC, Don Crewe, Julie Herlihy and Joanne Hyde. Jo says she is honoured to be serving on FLAC's Council, and remarks that she is learning a huge amount from her role and her colleagues.

Indeed Jo is no stranger to FLAC, having volunteered in legal advice centres before joining FLAC staff in 2009 as the first Legal Officer with the PILA project until 2011. Jo was involved in establishing PILA's landmark Pro Bono Referral Scheme, which matches the unmet legal need of civil society organisations with lawyers and law firms willing to give pro bono assistance.

FLAC's work simply could not happen without the barristers and solicitors who get involved. I am always impressed by their commitment and hard work, whether it's through a FLAC evening clinic or a PILA pro bono project

After completing her law degree in St Andrew's University in Scotland, Jo spent time working in Madrid as an English teacher. She then decided to pursue her human rights interest further by undertaking a Masters in International Human Rights Law in the UK. Following this, Jo qualified as a lawyer and practiced in both London and Dublin, in the public and private sector. Currently, Jo is working with the office of the Information Commissioner in dealing with Freedom of Information appeals, a role which she describes as "varied, challenging and interesting".

Jo has always been interested in voluntary work, and has spent time working with the Citizens' Advice Bureau, in hospitals, and teaching English to asylum seekers. It was when she returned to Dublin that she became involved with FLAC for the first time. "A friend suggested I contact Noeline Blackwell about volunteering with FLAC, which I did!" says Jo. "I felt very lucky to get a job with the nascent PILA two years later".

Speaking about the Irish pro bono landscape, Jo notes that it has changed



fundamentally since 2009: "There is much more of an expectation that law firms do pro bono and many law firms now make it part of their identities. I think FLAC offers lawyers the opportunity to use their legal skills to make a real impact: both at an individual and at a wider, strategic level." She explains "FLAC's work simply could not happen without the barristers and solicitors who get involved. I am always impressed by their commitment and hard work, whether it's through a FLAC evening clinic or a PILA pro bono project."

I think FLAC's work makes a difference in areas which matter to people, like personal debt, mortgage arrears, social welfare and of course gender recognition

Jo remembers her time at FLAC fondly, remarking that she is inspired by the quality, quantity and energy of the work undertaken, as well as its wider impact: "I think FLAC's work makes a difference in areas which matter to people, like personal debt, mortgage arrears, social welfare and of course gender recognition."

In looking to the future of FLAC, Jo hopes that the organisation can continue "to be in a position where it can make an impact in the more challenging areas for Irish society and be a reliable source of free legal information and advice." She also hopes that pro bono lawyers continue to be creative and innovative as they set about using the law strategically to effect change. 

Calling all volunteers: Join our FLAC volunteer survey!

FLAC is conducting a survey to better understand the needs and experiences of volunteers in the free legal advice centres around the country.

The answers are anonymous and will be used to get a better picture of volunteering in a legal role in Ireland today.

This survey looks at five areas, so there will be a better picture of:

- ▼ Who is volunteering today in legal advice clinics – age, gender and occupational profile of legal advisers in Ireland;
- ▼ Volunteering experiences – why and how long advisers have volunteered;
- ▼ Support – what kind of support they avail of, if any, while volunteering;
- ▼ Information sources – what resources they use / know of when giving advice;
- ▼ FLAC – volunteers' familiarity with FLAC's work and how it may be of use in centres.

Completing the FLAC Volunteer Survey should take no longer than 10 minutes – it's online and mobile-friendly. You can find a link on our website in the news section. Thank you in advance!

<http://www.flac.ie/news/latest-news/2015/12/03/volunteer-survey-2015-launched/>



Make a New Year's Resolution – join the Friends of FLAC

FLAC had another busy year in 2015 – between delivering free legal advice services to thousands of people as well as basic legal information over the phone, witnessing the final fruits of success in the Lydia Foy transgender rights case, leading a civil society response to the UN's examination of Ireland's record under the International Covenant on Economic, Social and Cultural Rights (ICESCR), and maintaining advocacy work across a number of core areas including debt and consumer credit, social welfare law and access to civil legal aid, we have worked hard to push for more equal access to justice for all people in Ireland, regardless of their financial circumstances.

Our volunteers continue to provide the backbone of the organisation's work, contributing their legal skills and expertise in a spirit of generosity and a commitment to the core beliefs and values of FLAC. As we begin 2016, for those not currently in a position to volunteer with FLAC, or indeed for those who are volunteering but who wish to provide additional support, we would ask you to consider joining the Friends of FLAC programme. Having a secure financial base is crucial for FLAC to be able to plan for the future and to take on ambitious and important projects such as our work on the International Covenant in the past 18 months.

The 'Friends of FLAC' scheme enables supporters to committed to making a monthly donation, or a single annual donation if that is easier. If just 100 supporters commit to giving €21 per month, with tax efficient giving that would equate to over €36,000 – enough to run our Telephone Information Line for half a year.

Goodbye to FLAC colleagues



We are sorry to say goodbye to two colleagues who are leaving FLAC at the end of the year, Michael Farrell, Senior Solicitor and Eamonn Tansey, PILA Project Officer. We will miss them both for their dedication and commitment to access to justice and we wish them both well in their future plans.

Please consider supporting FLAC in 2016 – you'll be helping achieve access to justice for thousands of people all over Ireland and contributing to a fairer society through our advocacy and policy work. Join us as a Friend of FLAC!

Launch of report on clinical legal education in Ireland

A report examining clinical legal education in Ireland was launched on 16 October at NUI Galway. The report, entitled 'Clinical Legal Education in Ireland: Progress and Potential', was written by Larry Donnelly, Lecturer and Director of Clinical Legal Education at the School of Law in NUI Galway and commissioned by PILA. The launch was presided over by retired High Court Judge Brian McMahon.

The report includes statistics on clinical legal education programmes in Ireland, interviews with those directing clinics in Ireland, a look at two clinical programmes in the UK and interviews with students and supervisors who participated in clinical programmes. It concludes with some reflections on the findings of the report and a series of recommendations as to how clinical legal education programmes in Ireland should be expanded and enhanced in the future.



Pictured L-R: Professor Donncha O'Connell, Head of NUI Galway School of Law; retired High Court Judge Bryan McMahon; Larry Donnelly, NUIG Lecturer and Director of Clinical Legal Education; and PILA Project Officer Eamonn Tansey.

▼ You can download the report by clicking [here](#) ■ or by contacting Larry Donnelly at larry.donnelly@nuigalway.ie.