

# flacNews

FREE LEGAL ADVICE CENTRES

## ‘Law put to the greatest possible use’:

### *South African freedom fighter and other public interest law heavyweights speak at PILA’s annual conference*

In late March PILA held a major public interest law conference in Dublin, which highlighted the growth in use of law by social justice organisations. Entitled *Using the Law to Challenge Injustice*, this is the fourth such conference that PILA has helped to organise since 2009. With nearly 400 legal and civic society actors in attendance, the conference was a summit of public interest law ideas and discussion.

The conference’s keynote speech was delivered by former South African Constitutional Court Judge Albie Sachs. Justice Sachs was an anti-apartheid activist, and is a pioneer in the constitutional recognition of human rights. A contemporary of Nelson Mandela, he was jailed for his involvement with the South African freedom movement and survived a car bomb assassination attempt in the late 1980s. As a judge, he came to international attention in 2005 as the author of the *Minister of Home Affairs v Fourie* judgment, which found that a bar against same sex marriage violated South Africa’s constitution.

The conference was opened by Ms Joan Burton TD, Minister for Social Protection. In her address she said that the use of law by Justice Sachs and his colleagues to overcome a tyrannical system is an “exhilarating example of the law put to the greatest possible use to the benefit of a persecuted, marginalised and disadvantaged people.”

In his keynote address, Justice Sachs spoke of his initial involvement with the South African freedom movement as a young lawyer, and the beginnings of the Free



L-R: FLAC director General Noeline Blackwell, FLAC Chairperson Peter Ward SC, Justice Albie Sachs, Minister for Social protection Joan Burton TD.

Nelson Mandela campaign. He also described how, after Mandela’s release from prison, activists rolled out legal strategies to quickly advance public interest law issues.

As a Constitutional Court judge, he was involved in several judgments that were ground-breaking for common law jurisdictions like Ireland’s, including *S v Makwanyane* (1995) which abolished capital punishment, the *Grootboom* case (2000) which found the state had a duty to provide adequate housing, and *Minister of Home Affairs v Fourie* (2005) which found it unconstitutional to prevent same-sex couples marrying. He also presided over the *Treatment Action Campaign* case (2006), where the South African government was forced to provide access to HIV drugs for pregnant women based on that country’s constitutional guarantee of the right to

healthcare.

PILA invited Albie Sachs to speak at this conference to inspire attendees; to tell them that anybody – not just the elites – can use law to change society, and ignite a passion for using the law to help disenfranchised communities. Justice Sachs and the other international and Irish speakers spoke with first-hand experience about how a state with limited resources can still prioritise human rights.

A plenary panel discussion after Justice Sachs’ address considered the potential of public interest law to create real social change. The members of that panel were FLAC Director General Noeline Blackwell; The PILS Project’s Gerry Hyland; FLAC Chairperson Peter Ward SC; Trinity College Dublin Associate Professor Gerry Whyte and Seanad Éireann Senator Katherine Zappone. The

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# Join us in running for Access to Justice!



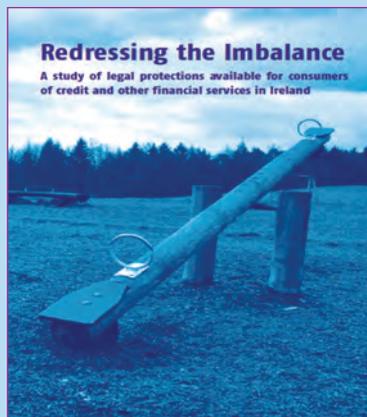
**J**oin Team FLAC on Monday 2 June for the 2014 Flora Women's Mini Marathon, the biggest all-women's event of its kind in the world! This year we hope to bring together a team of women committed to promoting access to justice in Ireland to walk, jog or run 10km along the streets of Dublin and to raise some valuable funds for FLAC.

We invite all our female supporters to join us at this annual event; the first step is to have signed up online through [www.florawomensminimarathon.ie](http://www.florawomensminimarathon.ie). The deadline for registration was 18 April so

hopefully you managed to get yourself registered on time! Get in touch to let us know and we will provide a FLAC t-shirt and materials to help you fundraise. Just 25 participants raising €200 each would bring in €5,000 – hugely valuable at this time where funding is more and more difficult to find. While this event is only open to women, we invite our male supporters to encourage the women in their lives to take part and, of course, to sponsor them!

For more information, contact Gillian Kernan at [gillian.kernan@flac.ie](mailto:gillian.kernan@flac.ie) or (01) 887 3600.

## New report says Irish consumers not adequately protected in financial services



**F**LAC has published an analysis of Ireland's legal protections for consumers availing of financial services and credit — and finds it in urgent need of extensive reform. Written by FLAC's Paul Joyce and independent researcher Dr Stuart Stamp, the report and an Executive Summary is available to download from the FLAC website at [www.flac.ie](http://www.flac.ie). More on pages 4-6 & on the back page.

# Civil legal aid trends

**F**or forty-five years FLAC has been campaigning towards the provision of a system of legal aid in Ireland that is sustainable and effective. Having successfully lobbied the then government, FLAC secured the establishment of the state-run Legal Aid Board in 1979 which was placed on statutory footing by the Civil Legal Aid Act 1995. This act conferred responsibility for appointments to the Board on the Minister for Justice and Equality, who is also responsible for deciding the conditions under which legal services are available. The Government remains under obligation to ensure that the scheme is as timely, effective and sustainable as possible, and FLAC will continue to apply pressure to this end.

Since the economic downturn in 2009, Ireland has faced huge challenges, with cutbacks to various state services. As disposable income dropped for more and more people, the numbers who became eligible for and in need of legal aid increased. This increasing pressure on the Legal Aid Board became evident as waiting lists in law centres around the country increased. The article briefly outlines the changes to the civil legal aid system in Ireland since 2009.

As illustrated above, there has been a staggering 198% increase in the number of people waiting for a consultation with a solicitor between 2008 and 2012. In response, the Legal Aid Board in 2012 piloted and introduced a 'triage' system whereby all applicants are seen by a solicitor for a brief 40-minute consultation within a month of applying for assistance. However, the reality is that in some law centres there is a waiting time of up to 50 weeks for such a triage appointment.

On 1 February 2014, there were 3176 people in Ireland waiting for their first consultation with a Legal Aid Board solicitor, and 1781 waiting for their second meeting.

As Ireland moves slowly towards the end of a prolonged period of economic instability and uncertainty, it remains vitally important that the government does not lose sight of those who cannot access justice because they cannot afford it. Although the scheme of civil legal aid in Ireland would appear at first to satisfy the basic requirement for a system to legally aid individuals of limited means, on closer examination, the continuing rise in the number of applicants, coupled with static funding, prevents the system from being effective, timely, or sustainable as it is also required to be.

## No of people waiting for first consultation with a solicitor



## The scheme of civil legal aid in Ireland

### So what is legal aid? S. 25 of the Civil Legal Aid Act 1995 states:

...representation by a solicitor of the Board or a solicitor or barrister engaged by the Board under section 11, in any civil proceedings to which this section applies and includes all such assistance as is usually given by a solicitor and, where appropriate, barrister in contemplation of, ancillary to or in connection with, such proceedings, whether for the purposes of arriving at or giving effect to any settlement in the proceedings or otherwise.'

## Some figures around civil legal aid in Ireland today:

- ▼ In 2013 there were 17,547 applications for legal aid made
- ▼ There are 4,957 people waiting for legal services in Ireland

▼ The average waiting time for a first consultation is 24 weeks (6 months)

▼ The average waiting time for a second consultation is 30 weeks (7.5 months) - note some law centres have a waiting time of 6 weeks, some have a waiting time of 70 weeks

Information correct as of 1 February 2014

# Redressing the Imbalance launch sees broad welcome for reform proposals

**F**LAG's latest report, *Redressing the Imbalance: A study of legal protection available for consumers of credit and other financial services in Ireland*, was unveiled on 7 March 2014 in Dublin's Buswell's Hotel. FLAG Director General Noeline Blackwell chaired the launch while report authors Paul Joyce, FLAG Senior Policy Analyst, and Dr Stuart Stamp, Research Associate with the Department of Applied Social Studies NUI Maynooth, presented an overview of the report's findings and recommendations.

The report's main premise stems from the belief that consumers are entitled to a high level of legal protection when availing of financial services and examines the



Report authors Paul Joyce & Dr Stuart Stamp



Noeline Blackwell, Director General, FLAG

evidence from the consumer's perspective as to whether this is actually the case in Ireland. It concludes that from EU consumer credit directives to the domestic system of complaint available to consumers unhappy with the conduct of their financial service provider and at many points in between, standards of protection leave very much to be desired.

When a consumer is unhappy with the conduct of a financial service provider and the complaint is not resolved internally, he or she will be directed to complain to the Financial Services Ombudsman (FSO). For the purposes of this report, FLAG interviewed a number of complainants and MABS money advisers who had contacted us in relation to complaints involving the FSO (see separate article by Dr Stuart Stamp on page 6). Some expressed dissatisfaction at the processes involved and the lack of independent assistance to respond to detailed documentation from well-resourced providers. The report notes that no external evaluation of the FSO has taken place since it was established and this should be remedied.

The report reviews the legislation establishing the FSO and concludes that it too should be overhauled in a number of respects. For example, consumers (or providers) wishing to appeal against an FSO finding must do so to the High Court. This is an intimidating prospect for any consumer and beyond the scope of most, given the high costs and the risk of an adverse costs award. See page ? for a full account of FLAG's concerns in the report by Paul Joyce. *Redressing the Imbalance* concludes with more than forty separate recommendations to improve and strengthen legal and administrative provisions for consumers at all levels.

At the launch, the large cohort of

individual MABS money advisers received the findings and recommendations very warmly. Katherine Finn from MABS National Development Limited welcomed the report on behalf of MABS, taking the opportunity to also call for an effective system of legal assistance in debt cases as a matter of urgency. Senior representatives from the Department of Finance, the Financial Services Ombudsman Office and the Central Bank attended the launch. Bernard Sheridan, Head of Consumer Protection with the Central Bank, said that the Bank would take a look at the report and would be willing to engage with FLAG on this issue in the future. This view was shared by Deputy Financial Services Ombudsman Jacqui McCrum and Antoine MacDonncha, Head of Legal Unit at the Department of Finance, who both echoed Bernard Sheridan's comment and pledged willingness to engage with FLAG on the issue in the future.

While the impact of the report will likely not be fully quantifiable for some time, it has already gained support from the public and politicians alike. Emer Costello MEP took to social media to congratulate FLAG and say that she will be pursuing recommendations at EU level for 'greater consumer protection'.

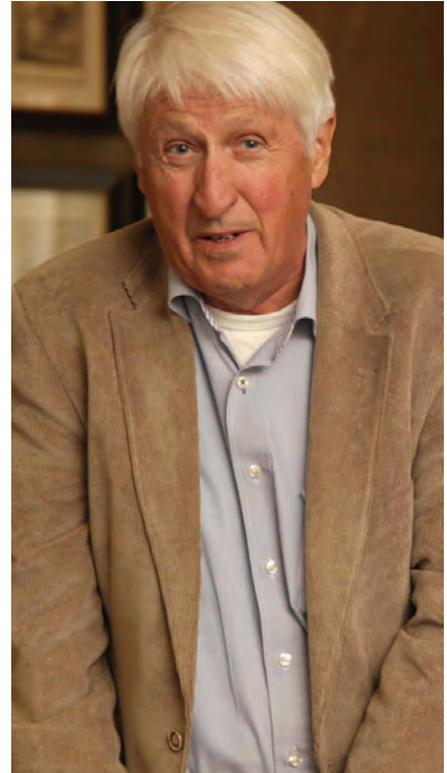
Senator Aideen Hayden mentioned *Redressing the Imbalance* in a Seanad Éireann Debate on 12 March and requested that the issue be brought to the attention of the Government and that



Key report figures: (back row) Julia Heffernan, Dr Stuart Stamp, Gwen Harris, Paul Joyce, PJ O'Reilly (front row) Lynda Sweeney, Betty O'Shea, Derek Teeling



Survey respondent PJ O'Reilly during the Q & A session.



Liam Edwards, formerly of MABS, during Q&A



Central Bank Head of Consumer Affairs Bernard Sheridan, Deputy Financial Services Ombudsman Jacqui McCrum and Head of Legal Unit with the Department of Finance Antoine McDonncha.



Emer Butler (FLAC); Saoirse Brady (Children's Rights Alliance) and Jackie Heffernan (FLAC)

there is a review of the legislation which is not fit for purpose in defending mortgage holders (the latter sentiment was subsequently echoed by Aodhan O'Riordain TD in an RTE interview). Senator Maurice Cummins replied to Senator Hayden, pledging to bring this matter to the attention of the Minister for Finance.

Overall, the report concludes that complaints resolution mechanisms, as currently constituted and administered, are inadequate to the task of redressing what FLAC believes to be the imbalance between financial service providers and the vast majority of consumers. The loud and public hand-wringing from banking and state quarters that followed our boom might have led many to believe that steps had been taken to prevent future reckless lending and provide proper channels of redress and remedy for people who had been poorly treated during the boom time. However this is not the case. In reality, the exact same thing could happen again and our legal protections would still not be fit for purpose.

Please keep an eye on FLAC's website for updates on our campaign to overhaul Ireland's legal protections for consumers of financial services and credit.

## FLAC Case Studies

### Case study A: Life insurance payment denied to widow

Person A's husband took his own life due to worries over money; she notified her life insurance company about the tragedy only to be told their policy had lapsed days before because of missed payments. The insurer claimed it had sent warning letters to both A and her building society but neither party had received these letters. Despite this Person A eventually received a finding of 'partially substantiated' on her complaint to the Financial Services Ombudsman. Her award was a tiny fraction of the amount she should have received in insurance payout. She says she could not have navigated the complaint process without the support of MABS as it was too complicated and lengthy, describing it as impersonal. Now facing extreme difficulties to meet mortgage payments, A cannot see how a complaint could be 'partially substantiated' as it is either right or wrong; and said the amount awarded was "an insult".

### Case study B: Bank refused to refund stolen money

Person B and partner had bank cards stolen and skimmed. The bank, of which B was a very long-standing customer, refused to refund the thefts. It had not detected any unusual card usage and even charged interest on the amounts stolen. B says the bank's delayed response to B's complaint also held up a Garda investigation. The Financial Services Ombudsman partially upheld B's complaint and awarded compensation of a fraction of the money stolen; it took over a year to investigate the case. B is unhappy primarily because of the 'partly' finding, which is unclear. B is very upset about the long delay in investigating the case; also, that an appeal is in reality impossible, as the only option is to go to the High Court, which B cannot afford given estimated costs of around €30,000. This is over and above the conduct of the bank, which B considers to have been very arrogant and dismissive.

## REDRESSING THE IMBALANCE

# If we don't ask, we won't hear:

## Incorporating consumer experience in *Redressing the Imbalance*

by Stuart Stamp

Independent Social Researcher & Research Associate, NUI Maynooth

**T**here is a compelling argument that both policy development and evaluation should include input from those individuals or groups upon whom such policies most directly impact. Although such input has been a feature of many aspects of social policy-making in Ireland in recent years, there is one realm where it has been notable by its absence, that of credit and debt policy.

As part of the initial desk research carried out for *Redressing the Imbalance*, we examined a range of administrative and statistical data on complaints made by financial service users, but could find no data whatsoever about the characteristics of the complainants concerned or their experiences of making complaints against their providers. We decided, therefore, to incorporate within the study the perspectives of a sample of such consumers together with those of their advocates (mainly MABS money advisors). For methodological reasons, we confined our study population solely to complaints which had involved FLAC in some way. As it transpired, a consistent narrative emerged from the field of 30 interviews; the consensus was that our findings may well reflect the experiences of financial service complainants more generally.

The qualitative component of the research added value to the study in a number of ways. It illustrated, for example, that there is a context to complaints, and that a better understanding of this context might inform a more user-appropriate system. We came across instances where capacity to even make a complaint in the first place was an issue, due to ill-health, family difficulty or literacy issues, a finding which suggests that many complainants will require specialist support in order to frame and see through their complaint. Further, several of the responses indicated that there are certain financial service providers engaging in practice in what can only be termed a war of attrition, apparently in the hope that consumers and their advocates will give up on complaints; this implies that regulation is not protecting these consumers as well as it should, and that more robust monitoring and enforcement is needed. The interviews also threw particular light on the Financial



Services Ombudsman's complaints procedure from a user/advocate perspective; the findings here evinced a cold, formal process based on (often multiple) exchanges of technical documentation, a process that favoured providers used to conducting business in such a way. Many respondents – including advocates – clearly found the process to be onerous and there were frequent reports of complainants contemplating giving up at some stage; indeed, many would have done so only for the advocacy and support provided throughout the process by their MABS money advisor, a finding which suggests that MABS may be the most appropriate home for the creation of a specialist advice service for complainants.

In addition, the qualitative findings offered likely explanations for trends we had observed in quantitative data. For example, we had noted in its annual reports that few complaints made to the FSO appear to be resolved by mediation; many of our respondents explained how they had actually opted for mediation, only to be met with a refusal to engage from their provider – the FSO subsequently confirmed that it is indeed provider refusal that is the main barrier to mediating complaints. We had also noticed that a large proportion of complainants to the FSO (around 40% over time) appear to give up after making an initial complaint to that office; the combination of provider delay and obfuscation cited by respondents, coupled with the welter of documentation involved

in the FSO process itself, may go a long way toward explaining this phenomenon.

Finally, interviewees who had gone right through the FSO process reflected upon how it might be improved and again, a consistent narrative emerged here which informed our recommendations as to how the complaints process as a whole could be made more consumer friendly. A more personal process, centred around oral hearings and mediation, could for example address the concerns of many who felt that their complaint had not had a fair hearing. The way the FSO categorises findings elicited particularly strong feelings; several respondents objected to the use of a 'partly upheld' category for complaints that they believed had actually been substantially rejected. Those who had contemplated appealing the FSO's finding spoke in depth about their various considerations before reaching a decision about what to do. It transpired that the risk of incurring liability for the potential costs associated with a High Court process was the major barrier to embarking on such an appeal, a concern which suggests that a more accessible forum should be found for potential appellants (like the Circuit Court).

These are just some examples of how the qualitative input to the study enabled us to better ground both our analysis and recommendations for reform from a consumer perspective. But of course, unless we ask consumers for their experiences and perspectives, we will not hear them, and a crucial dimension will be missing from policy development and evaluation in the arena of financial services more generally. In a biting satire of 'modern life' at the time he was writing, W.H Auden concluded his poem "The Unknown Citizen" with the following lines:

*Was he free? Was he happy? The question is absurd:*

*Had anything been wrong, we should certainly have heard.*

The findings contained within this study illustrate what we might hear if we do ask – but we need to take the trouble to do so first.



## PILA CONFERENCE

*Continued from front page:*

panel reflected on Albie Sachs' keynote address, and lessons that could be applied from the South African experience to Irish human rights and public interest law practice.

The afternoon session of the conference featured four breakout sessions, where attendees engaged in practical discussion and learning on pro bono, helping NGOs to use the law, ombudsmen and alternative routes to justice and clinical legal education. The conference concluded with refreshments and canapés and a lively round-up panel hosted by journalist and TV personality Vincent Browne.

The conference was a great success and, as with previous public interest law conferences that PILA has helped to organise, shows the strength of the public interest law movement in Ireland. The practical impact of PILA is unquestionable - over the past four years, its pro bono referral scheme has facilitated more than 200 legal referrals for organisations as well as arranging dozens of legal education sessions and law reform working groups focussed on using the law for the benefit of people living with disadvantage. In an uncertain funding future, attendees were left with a question of how to most sustainably develop the public interest law movement and the growing pro bono culture among lawyers.

The event was covered by major Irish print, radio and online news providers. Justice Sachs also took part in several other engagements during his two-day visit to Ireland, including a lecture at University College Dublin where he was awarded the highly prestigious UCD Ulysses Medal. He also took part in the unveiling of a commemorative plaque outside the late Kadar Asmal's home, where Albie helped the exiled activist and lecturer at Trinity College Dublin to write the first draft of the ANC's proposed Bill of Rights for a Democratic South Africa.

- Visit [www.pila.ie](http://www.pila.ie) to watch the keynote address by justice Sachs and other coverage of the event.
- An audio podcast will shortly be available with Justice Sachs in interview at [flac.ie](http://flac.ie) & [pila.ie](http://pila.ie)



L-R: Justice Albie Sachs, FLAC Chairperson Peter Ward SC, FLAC Director General Noeline Blackwell, Minister for Social Protection Joan Burton TD



Justice Albie Sachs

All photos by Derek Speirs



Breakout session on 'Mobilising NGOs to use the law' with (L-R) Deirdre Duffy (ICCL), Broden Giambrone (TENI), Marianne McKeown (PILnet) & chair Michael Farrell (FLAC).



Minister for Social Protection Joan Burton TD who opened the conference



Pia Janning of Amnesty Ireland at the Q&A session



Concluding panel session chaired by broadcaster Vincent Browne. Also pictured (L-R): Dr Carol Coulter, US lawyer Miriam Buhl, FLAC's Michael Farrell & Larry Donnelly of NUI Galway.



Bottom left: Breakout session on Ombudsmen & alternatives routes to justice with (L-R) Niall Muldoon, OCO Director; Carmel Foley, GSOC Commissioner; and Dr Carol Coulter, CCLR Director.



Left: Jim Winters of Inclusion Ireland during Q&A

## FOCUS ON FLAC:

# Galway Free Legal Advice Centre

**G**alway Free Legal Advice Services is run by the Galway Citizens Information Service in the heart of Galway city. It is a busy centre seeing close to 30,000 people annually in its Citizens Information Centre. The Galway Citizens Information Service is also responsible for the management of Tuam CIC, Clifden CIC, and Rosmuc CIC which serves an Irish-speaking community.

The Galway CIS involves volunteers in its work for long decades at this stage. Volunteers are not only involved in the legal advice side of things, but also in the Citizens Information Centre itself. There are some 78 people involved in the work of the CIC, including 23 lawyers who provide the free legal services. They also have a board of 7 people who volunteer their skills and time.

Mary Mulkerrin, Development Manager with Galway CIS, says that this committed board of management coupled with skilled staff and volunteers form a stronghold of good practice in providing information and advice.

### FLAC training held in Galway

FLAC organised a training event for Galway FLAC volunteers and their peers in November 2013. This event was strongly supported by both the Galway Citizens Information Service as well as by the Galway Solicitors Bar Association. With our local help, we were able to attract more than 40 participants for an inclement Friday afternoon in late November.

The first topic was on Civil Legal Aid, held by Maria Maguire, Solicitor from the Legal Aid Board's Law Centre in Galway at Seville House. Maria provided an overview on Civil Legal Aid in Ireland, including a brief history of the scheme, how the scheme works, the Legal Aid Board's specialised services as well as practical aspects of making an application for legal aid. She also spoke about recent changes in legal aid, such as the triage system, and about the recent amendments to fees and eligibility criteria.

The second part of the training was delivered by Paul Joyce BL, FLAC's Senior Policy Analyst, on the topic of "Moving out of Debt". Paul gave details on the revised Code of Conduct on Mortgage Arrears,



on Debt Relief Notices, the Debt Settlement Arrangements (DSA) and the Personal Insolvency Arrangement (PIA). Paul also dealt with key developments in relation to the Personal Insolvency Act and any questions related to the topic from our audience. Bankruptcy and questions related to the matter were also discussed in the presentation in great detail. To finish on a positive note Paul gave a short introduction to a number of organisations who are involved in supporting those finding themselves in difficulty of debts.

The feedback from the training event was great - participants describing the event as "very worthwhile attending, and [...] very clearly delivered in a user friendly manner", "very useful" and simply "brilliant".

### Free Legal Advice services provided by Galway Citizens Information Service:

- ✓ **General Free Legal Advice: 2nd and 4th Thursday of the month 7.30-8.30pm**
- ✓ **Free Legal Advice on Immigration law matters: 2nd Wednesday of the months 6.00-7.30 pm Appointments only**
- ✓ **Free Legal Advice on Family law matters: Every Thursday 2-4pm**
- ✓ **Free Legal Advice on Employment law matters: 2nd and 4th Wednesday of the month 6.00-7.30 pm**

FLAC is always seeking solicitors and barristers fully qualified to practise law in Ireland to join the Galway and Tuam free legal advice centres. Volunteers give free

legal information and advice to those most in need.

### What happens in a FLAC?

The FLAC service is voluntary and confidential. The advisors are lawyers and are happy to give callers what legal information and advice they can, but they won't be taking on a case, acting for or writing letters on callers' behalf. They cannot give second opinions on a legal issue where another lawyer is already engaged. The sessions last a maximum of 15 to 20 minutes and if callers need more help at the end of that time, the volunteer advisors may have to direct them on to the Legal Aid Board or to another service. FLAC volunteers have no client-solicitor relationship with callers to our centres. Thus while callers are welcome to use the service more than once, we do not and cannot guarantee they will see the same advisor. Equally, FLAC volunteers must not refer callers to their own, or any particular private solicitor's practice.

If you are interested in becoming a FLAC volunteer in Galway or Tuam, please get in touch with Zsé Varga, Volunteer and Centres Manager at FLAC (volunteers@flac.ie) or with Mary Mulkerrin, Development Manager, Galway Citizens Information Service (076 107 76 00)

### Help wanted !

If you are a solicitor or barrister, qualified to practise in Ireland, and would like to help the most marginalised in our society while using and extending your knowledge and skills, come and join one of our Free Legal Advice Centres. Contact Zsé Varga, Volunteer and Centres Manager, volunteers@flac.ie. Your role will be very much appreciated.

## FOCUS ON FLAC:

# Rachel Power, PILA Co-ordinator

**R**achel Power joined FLAC in August as the Project Co-ordinator of PILA (Public Interest Law Alliance). With a BCL degree from the National University of Ireland, Galway, Rachel had a broad interest in all aspects of law but was particularly interested in comparative disability law, taught in NUIG by Professor Gerard Quinn. In college Rachel was active in the events department of the Student Union; it was here that Rachel had her first interaction with the world of NGOs and charities. She quickly discovered how much she enjoyed working with charities within the university and organising fundraising events.

After completing her degree Rachel tutored in college on a variety of subjects, from company law to family law. She then spent some time overseas before starting her training to become a solicitor with Eversheds in Dublin. While Eversheds provided invaluable training, on qualifying as a solicitor Rachel felt the need to return to working within the charity and NGO sector.

Her next move was to the Irish Human Rights Commission working in the Enquiries and Legal Department. Building on this experience and wishing to pursue her interests in international development led her to help establish Irish Rule of Law International. This is the joint charity of the Bar Council of Ireland and the Law Society of Ireland, which seeks to develop and promote the rule of law in developing nations. Rachel managed projects in Africa, Eastern Europe and Asia developing training programmes for lawyers and



judges on a wide range of legal issues. She also ran projects that focused on grassroots rule of law development and advancement of clinical legal education for law students.

Rachel always followed the work of FLAC and PILA and when the opportunity arose to apply for the role of PILA Coordinator she was excited to become involved with the organisation. In fact Rachel had been a volunteer solicitor in the FLAC clinic in Rathmines while practising in Eversheds. Rachel explains "I have always admired FLAC's work in access to justice and especially the idea of bringing NGOs and lawyers together and trying to get them to work in innovative ways. There is huge potential for public interest development

in Ireland and PILA is very much the catalyst in driving this forward."

Rachel has a very defined view of what her role is within PILA and is constantly working toward the aims that she has set herself with the organisation. "My role is about the future of PILA – I deal with sustainability and putting together an infrastructure for public interest law and for PILA that will be able to withstand time and future funding challenges." This attitude towards the work of PILA means that Rachel has a clear vision of what she hopes for the Alliance: "I would like to see the increasing goodwill and enthusiasm of all of our stakeholders continue to grow and evolve, and see them continue to be carried by the energy that PILA has engendered."

Rachel's commitment to human rights extends well beyond her working life. In her free time she sits on the management board of Future Voices Ireland, which is an organisation that works with teenagers from disadvantaged backgrounds who are interested in law but who may feel that they are very far away from the legal system. Future Voices Ireland works to help them find their voice on social justice issues, while looking to remove barriers to progression in their studies and careers.

Rachel is really enjoying her time with PILA and the fast-paced, ever-changing challenges that she encounters on a regular basis. She looks forward to seeing what the future brings for PILA and public interest law in Ireland, and being part of its evolution and progression.

## FLAC student society round-up

With the college year ending and exams looming, some students have been burying their heads in books (others have just discovered their college library). Over the year, FLAC student societies around the country have been running campaigns, organising talks on legal topics and running legal advice clinics on campus. With many societies' AGMS falling around this time of year, in fact FLAC societies are now busier than ever co-ordinating events and clinics while accommodating committee change-overs.

In December 2013, FLAC student societies around the country came together in FLAC's head office for a first

roundtable to discuss progress. The main goal was to set up a simple and effective communication network to share society event details with their peers, co-ordinate joint college campaigns and even to share advice and information with one another. The network, primarily maintained via social media, has proven a success, allowing different FLAC societies to keep in contact, plan joint initiatives and stay in touch with the FLAC main office.

On 24 February 2014, FLAC societies again gathered. Now that they were already acquainted, the main aim was to discuss possible joint ventures for 2014/2015. Many great ideas for joint-

college ventures arose at the meeting, such as a "Know Your Rights" information booklet aimed at students, cross-college public interest law moot competitions, a joint college public interest and human rights blog and even larger scale events.

FLAC societies continue to provide students, staff and even members of the public with free access to legal advice. FLAC has high hopes for the college societies in 2014/2015 and with a network in place amongst the societies and the foundations for many joint projects already set, 2014/2015 is already looking to be a hugely successful year for the FLAC college societies.



public interest law alliance  
a project of FLAC

## PUBLIC INTEREST LAW ALLIANCE UPDATE

### Working Group on Assisted Dying convened

**P**ILA has convened a working group which is investigating the introduction of legal provisions for assisted dying in Ireland. PILA were approached by a euthanasia campaign organisation following the Supreme Court's consideration of Marie Fleming's case in 2013. Marie Fleming

The working group is working with the late Ms Fleming's partner, Tom Curran, and is working on a draft version of a legislative Bill. The working group first conducted a number of pieces of legal research comparing assisted dying legislation from a number of different jurisdictions. The draft Bill will then be used by campaign groups to lobby for legislative change.

If you would like more information about this working group, please contact Mairead Healy at [mairread.healy@flac.ie](mailto:mairread.healy@flac.ie) at or 01 872 8048.

### Seminar on *Amicus Curiae* proves popular

**O**n 26 February PILA held a seminar on the role of *amicus curiae* in court proceedings and its impact in advancing public interest law. Sinead Lucey of the Irish Human Rights Commission, Grainne Gilmore, BL and Elizabeth Mitrow, Solicitor KOD Lyons spoke at the seminar, with the panel chaired by Mr Patrick Dillon Malone SC. The seminar was very well attended with a cross section of legal practitioners, front line representatives working in areas such as disability, immigration, childcare and white collar crime and policy and advocacy officers.

The purpose of the seminar was to set the scene for the use of *amicus curiae*, for example what factors should an NGO consider in assessing whether to apply to intervene as an amicus, what impact, if any, it may have on other areas of its strategic work, potential cost implications and resource constraints. Similarly, practitioners were briefed on the jurisdictional considerations and applicable principles which have emerged from Irish case law. Attendees were also provided with guidance on suggestions as to the approaches which might be taken in an *amicus* application. The seminar was followed by a lively question and answer session with attendees engaging the panel in the role of *amicus curiae* to advance public interest law and the benefits and pitfalls of using this type of court application.

If you would like any more information about *amicus curiae* or to suggest future topics for PILA seminar please contact PILA Legal Officer Eithne Lynch at [Eithne.Lynch@flac.ie](mailto:Eithne.Lynch@flac.ie) or 01 887 3631.



At the afternoon session on 'Institutionalising pro bono in Ireland' at PILA's recent conference (L-R): session chair & pro bono counsel with US law firm Weil Gottschal & Manges Miriam Buhl; David Hilliard pro bono partner of Australian law firm Clayton Utz, Sara Moorhead SC, Eamonn Conlan of A&L Goodbody & Dara Robinson of Sheehan & Partners.

### PILA and partner NGOs hold Legal Education Sessions in Cork

**O**n Wednesday 5 March, PILA and NASC co-hosted 2 legal education sessions for a number of NGOs and voluntary organisations based in the wider Cork area. The sessions were presented by lawyers on the PILA Pro Bono Register. The day was very well-attended with full sessions for both events. Attendees came from around the country and included solicitors, as well as front line representatives from local organisations working in areas such as social housing, domestic violence and immigration.

The morning session, on Housing Law, was presented by solicitor Cian Moriarty. He discussed a number of different housing law issues particularly relevant to the organisations in attendance, including tenants' entitlements, anti-social behaviour and eviction orders.

The afternoon session on Family Law was presented by solicitor Claire McCarthy. She discussed topics including maintenance and access and custody rights, family law in relation to survivors of domestic violence, separation and divorce, legal representation and access to free legal aid and translation. After her presentation, attendees engaged in discussion about family law and human rights issues in Direct Provision centres. They also discussed questions about unmarried fathers, grandparents, trans-national families, child abduction, and more.

PILA organises a number of legal education sessions, as well as seminars and roundtables on issues related to law reform in addition to our Pro Bono Referral Scheme service. The aim of these services is to enhance organisations' capacity to use the law in promoting change. If you have any suggestions for future legal education sessions, please contact PILA Project Officer Mairead Healy at

[info@pila.ie](mailto:info@pila.ie) or 01 872 8048.

Photo by Derek Speirs

# Social Impact Assessment in Budget 2014: Must try harder

In February 2014, the Department of Social Protection published a research briefing that assessed the social impact of the main welfare and tax measures for 2014 introduced in the budget.

The research concluded that unemployed single people were most affected by changes introduced by Budget 2014, losing 3.8 per cent of their income. It found that income inadequacy increased for those dependent on social welfare increased for all family households from unemployed single people to lone parents and families with children. The impact of Budget 2014 is also disproportionately felt by unemployed couples without children; those in employment are least affected. Top earners were most affected by changes in DIRT and tax relief on health insurance. Property tax and welfare measures affected the poorest the most.

The Department's research evaluated both the incoming social welfare cuts as well as the new tax measures for 2014, aiming to provide an insight into the effects of budgetary decisions on various segments of society. The aim is to use this research to tackle poverty and to identify how State policies might avoid policies that disadvantage particular groups or increase social exclusion.

The report is interesting in itself, and as an assessment of how changes in welfare and tax policies change the situations of various elements of our society. The Department is to be commended for publishing this and similar reports. It would be equally fascinating to see such reports issued by other Departments – in particular the Departments of Finance and of Public Expenditure and Reform.

However, this assessment is one-sided. It takes the quantitative data available and does the sums to come up with its conclusions, including that combined welfare and tax measures for 2014 result in a loss of 0.8% in average household income. However, this assessment does not encompass the full impact of those changes. A report on social impact assessments commissioned by the European Commission focused on their use as a tool for mainstreaming social

inclusion and protection. It found that they had their uses, but that many challenges exist. Among these a stakeholder consultation was recognised as an essential factor in maintaining quality control and in gathering data and information on the impact analysis of policies. A full social impact assessment would identify the impact that further austerity measures in Budget 2014 had on our society, including the most vulnerable in that society.

In preparing this year's budget, the information in this report will be helpful. However, for a better understanding, more involvement of those who suffer the impact will be needed. The Department of Social Protection normally organises a forum in advance of the Budget. It did so again in 2013 where FLAC participated in the civil society consultation opportunity. However, budget decisions are not exclusive to that Department. There was no such forum organised by the inner cabinet who created and produced the budget – the Taoiseach, Tanaiste and Ministers for Public Expenditure and Reform and Finance. Nor was there any other opportunity during the budgetary processes for civil society and those impacted by austerity to see what proposals were being developed.



The Department of Social Protection briefing paper itself is not detailed enough to understand how the Department reached its conclusions. Nor is it clear what use will be made by the whole of Government of its findings. The Department of Social Protection and other governmental departments must invest time in carrying out thorough, participative social impact assessments before budget decisions are made and in conjunction with civil society and vulnerable groups to truly ensure that the impact of the budget is not shouldered by the weakest in society.

## Read more:

- ▼ You can download the Department of Social Protection assessment at <http://www.welfare.ie/en/downloads/SIABudget2014.pdf>

## German students visit FLAC



FLAC recently hosted a group of social work students from the University of Ingolstadt in Germany. The group was led by Tanja Kleibl and was keen to learn about approaches to social justice in Ireland.

# Making human rights enforceable at last?

## The Constitutional Convention and Economic, Social and Cultural Rights in Ireland

**T**he Constitutional Convention was a decision-making forum set up in 2012 to review proposed amendments to the Irish Constitution. It is made up of a hundred people, sixty-six of which are regular randomly selected Irish citizens with thirty-three parliamentarians from North and South nominated by their respective political parties, and a chairperson, Tom Arnold.

The last major review of the Irish Constitution was carried out in 1996 by the Constitutional Review Group. Its report led to the All-Party Oireachtas Committees on the Constitution (1996-97 and 1997-2002). These two Committees published ten Progress Reports on various aspects of the constitution between them. Given the changes that have occurred subsequently, it was decided that a further examination of the Constitution should be carried out and thus the Constitutional Convention was formed. The first eight issues for consideration were predetermined, but the group was free to address other issues once it had dealt with those. The Constitutional Convention accordingly chose Dail reform and the protection of economic, social and cultural (ESC) rights as its next two issues for consideration. In February 2014, it voted in favour of affording great constitutional protection to ESC rights. But what does this mean?

Ireland signed the UN's International Covenant on Economic, Social and Cultural Rights in 1973 and ratified it in 1989. However the Covenant has never been enacted in domestic legislation and the Constitution gives only limited provision to certain ESC rights afforded in the Covenant, such as education and . This makes it nigh on impossible to enforce such rights in Irish law, with International law having only a weak 'persuasive' role in the courts when not enacted domestically. Such rights may be legislated for directly, however it has been argued that unless enshrined in the Constitution, many basic human rights are open to abuse through repeal of such laws and lack of an effective remedy in the courts.

The Covenant protects a wide range of economic, social and cultural rights such as the right to work, in just and favourable

conditions, to form and join trade unions, to social security and an adequate standard of living, to protection and assistance for the family. The Covenant also covers rights that are not explicitly mentioned but that stem from those that are; for example, the right to strike arises from the right to form and join trade unions. The Covenant recognises that governments face resource limitations in protecting, promoting and fulfilling these rights. However it does require that states take immediate steps to meet their duty here by at least providing a minimum or core level of protection and to deliver the rights progressively over time. However as mentioned above this Covenant has never been given legal effect in Ireland therefore these rights are not adequately reflected in the Constitution currently.

The Convention on the Constitution met on 22 and 23 February 2014 to discuss the possibility of including economic, social and cultural rights in the Constitution. Over the weekend the Convention heard expert presentations for and against the idea, including from FLAC Board Member Dr Liam Thornton of UCD. The meeting also included a round table with presentations for and against the motion and a panel discussion. The Sunday session involved a ballot and a discussion of any other amendments, ending with the results.

Arguments against the proposition included fears of judicial interference in the elected power of the Oireachtas to decide how the state's resources should be allocated, and that the proposed amendment was so vague as to have many unintended, negative consequences into the future. However, supporters of the proposals stressed that it was vital to have all human rights, not just some, afforded full protection. They argued that naming the rights to be protected by the constitution in fact meant greater clarity for the courts on their role and also for the Oireachtas in terms of deciding legislation and policy goals and determining where to allocate scarce resources.

Ultimately, at this ninth and final meeting of the Constitutional Convention, members voted overwhelmingly (85%) in

favour of amending the Constitution to include economic, social and cultural rights. They were less in agreement on whether the convention wished to make recommendations now or whether the matter should be referred elsewhere for further consideration (fifty-six per cent and forty-three per cent respectively).

The Convention voted to insert into the constitution a provision "that the State shall progressively realise ESC rights, subject to maximum available resources and that this duty is cognisable by the Courts". The Convention further voted that the certain rights should be specified or enumerated in the Constitution: housing, social security, essential health care, rights of people with disabilities, linguistic and cultural rights and finally, rights covered in the International Covenant on ESC Rights.

A final report from the Convention should issue shortly and be submitted to the Government. This will mark the start of four months allocated to the Government to provide its position on the issues proposed.

FLAC has campaigned over the last three years on the issue of realising rights in a recession and the government's duty to meet its international human rights obligations despite straitened circumstances, up to and including allocating national budgets. We argued for that the only way to make decisions that respect people's basic dignity - even where hard and unpopular decisions must be made on policy and spending - is by basing them on human rights; in a nutshell, by assessing the impact of policies and laws from a human rights perspective. We hope now that the Constitutional Convention's work will bring us several steps closer to realising this vision.

### Read more:

- ▼ Read more about the Constitutional Convention at <https://www.constitution.ie/>
- ▼ FLAC's paper on 'Respecting Rights in a Recession' is at [bit.ly/RightsRecession2011](http://bit.ly/RightsRecession2011)

# Ireland's record on Social Rights: European Committee of Social Rights Examination 2013

**T**he Council of Europe is an intergovernmental organisation that promotes human rights, the rule of law and democracy and has 47 member states across Europe. It works through several component bodies, such as the Committee of Ministers (composed of the Foreign Ministers of member states) which is the Council of Europe's main decision-making body, and the European Court of Human Rights. Ireland has been a member of the Council of Europe since 1949.

The European Committee of Social Rights is the Council body responsible for monitoring each Member State's compliance with the European Social Charter, the Council of Europe's foundation treaty, which was ratified by Ireland in 1964 with revision of the Charter and subsequent domestic incorporation in 2000. Ireland also accepted the Collective Complaints procedure on the same date. The European Social Charter outlines a number of social and economic rights and freedoms for protection in the European context. Each Member State produces a national report, which the Committee examines to determine whether the state is acting in conformity with the Charter through its national law and practice. The Committee is composed of fifteen independent, impartial experts, elected by the Committee of Ministers for a six-year term of office, renewable once.

At the end of January just passed, the Committee of Social Rights published its conclusions on how Ireland is meeting its obligations under the European Social Charter for 2013. Article 3 (safe and healthy working conditions), Article 11 (the right to protection of health), Article 12 (the right to social security), Article 13 (the right to social and medical assistance), Article 14 (the right to benefit from social welfare services), Article 23 (the right of elderly persons to social protection) and Article 30 (the right to protection against poverty and social exclusion) were examined. The Committee noted four

conclusions of conformity and eight conclusions of non-conformity for Ireland. In the remaining seven situations, the Committee needed further information in order to carry out the appropriate assessment which Ireland did not supply at the time.

Ireland met its Treaty obligations on issues including the maintenance of a social security system in accordance with the European Code of Social Security, welfare payments for jobseekers, people with disabilities and tackling poverty and social exclusion. However Ireland was found not to be in conformity in relation to areas such as the minimum levels of social security payments, including employment, injury benefits and sickness benefits. As noted by Dr Liam Thornton, law lecturer at UCD and member of FLAC's National Council, Ireland was also seen not to be in conformity in relation to issues pertaining to migrants. In particular Dr Thornton points out that the insurance and employment periods within our system of social protection for EU nationals of other member states party to the European Social Charter was found to not be in conformity with the Charter. Shortcomings around access to healthcare for legal migrants and the application of the habitual residence condition were found to be non-compliant with the Charter. A recurring issue that the Committee had in relation to Ireland was the lack of information provided on many fronts, even after specific requests. Dr Thornton has also commented that the report was "not as damning as it could have been".

Ireland has a history of being the poorest country in engaging with the process, as noted by Ann Cahill of the Irish Examiner. The Council of Europe has observed that public policies across Europe since 2009 have been unable to combat a generalised increase in poverty and that austerity measures have had a negative impact on "effective respect for human rights and especially for social and economic rights". It would appear this trend continues beyond 2013.

## Read more:

- ▼ **Committee of Social rights assessment on Ireland 2013:** <http://bit.ly/1nEBVt5>
- ▼ **Human Rights in Ireland blog piece by Dr Liam Thornton:** <http://bit.ly/1nECjYC>

## Help make access to justice a reality for all

**A**s an independent human rights organisation, FLAC relies on a combination of statutory funding, contributions from the legal professions and donations from individuals and grant-making foundations to support its work.

Without this generous support, FLAC could not have provided free legal information and advice directly to over 25,000 people last year; we could not continue to represent Dr Lydia Foy in her ongoing struggle to secure a birth certificate; and we would not have the resources to monitor the implementation of the long-awaited reform of the personal insolvency system in Ireland.

As with most NGOs in Ireland at present, securing sufficient funding to maintain FLAC's services and campaigns at a sufficient level to ensure a real impact is becoming increasingly difficult.

We are always looking for ways to involve new donors and supporters; if you want to find out more about how you can support equal access to justice in Ireland, please contact [fundraising@flac.ie](mailto:fundraising@flac.ie)

# Consumers of financial services are being badly let down by the system

by Paul Joyce, FLAC Senior Policy Analyst

**A** consumer of financial services, whether borrowing money, buying insurance or investing funds, is a risk-taker who contributes hugely to economic growth in a society. Both the State and financial institutions rely upon such participation of consumers.

Accordingly, Free Legal Advice Centres (FLAC) believes that consumers are entitled to a high level of legal protection when availing of such services. But are consumers actually receiving the requisite legal protection, particularly consumers of credit whom we believe to be especially vulnerable, as the personal debt crisis has demonstrated?

FLAC's latest report, 'Redressing the Imbalance', examines the evidence from the consumer's perspective. It concludes that from EU consumer credit directives to the domestic system of complaint available to consumers unhappy with the conduct of their financial service provider and at many points in between, standards of protection leave a lot to be desired.

It could have all been so different. The Consumer Credit Act 1995, which implemented the first EU directives, came into operation in May 1996 and it went further in some ways than the directives required. However, it was poorly policed during the credit boom. Structural flaws, such as a complete absence of control over the rates of interest charged by prime or sub-prime credit institutions or any obligation to assess a borrower's capacity to pay, began to reveal themselves.

By then, the EU had a further revised directive in the pipeline but this directive took a 'maximum harmonisation' approach, meaning member states were not allowed to go further in terms of consumer protection. Crucially missing from this directive was any coherent attempt to curb irresponsible lending practices.

It also took eight years for this directive to get from first draft to domestic legislation – Ireland in 2002 was a very different place to Ireland in 2010.

To add complexity to inadequacy, the



transposition of the revised directive into domestic law was done in a less than user-friendly manner, leaving the Central Bank deciding to focus on enforcing its own Consumer Protection Code instead of the patchwork of legislation. The main problem here though is that this code only partially applies to credit agreements and does not apply at all to hire purchase (a form of credit making something of a comeback) or credit union loans.

It is also FLAC's view that the admissibility of these codes in law is doubtful. They are drafted, revised and amended uniquely by the Central Bank without any apparent parliamentary oversight and form part of neither primary nor secondary legislation. This is also the case for the Code of Conduct on Mortgage Arrears (CCMA) and the latest revision of that code is analysed in some detail in the report. Ultimately, we conclude that this revision leaves many struggling borrowers open to repossession without the necessary 'fair procedure' rights of full information and a proper avenue of appeal.

When a consumer is unhappy with the conduct of a financial service provider and the complaint is not resolved internally, he or she will be directed to complain to the Financial Services Ombudsman (FSO). Recent FSO annual reports suggest that success rates are low, however. For example:

- \* In almost one in three cases in 2012, nothing further was heard from the consumer after his or her initial contact.
- \* A further one in five complaints in 2012 was recorded as settled pre-investigation but it is unclear on what terms.
- \* Only one in four cases that proceeded to an investigation resulted in a successful finding.
- \* The average award of compensation in successful cases in 2012 was €2,150.

For the purposes of this study, FLAC also interviewed a number of complainants and MABS money advisers who had contacted us in relation to complaints involving the FSO. Some expressed dissatisfaction at the processes involved and the lack of independent assistance to respond to detailed documentation from well-resourced providers.

It is clear, however, that the service as an avenue of complaint for consumers is a good idea in principle. No external evaluation of the FSO, however, has taken place since it was established and this should be remedied.

We also conducted a review of the legislation establishing the FSO and concluded that it too should be overhauled in a number of respects. For example, consumers (or providers) wishing to appeal against an FSO finding must do so to the High Court. This is an intimidating prospect for any consumer (and many providers) and beyond the scope of most, given the costs and the risk of an adverse costs award.

The boom and the personal debt crisis it spawned has impoverished many households and left a deeply divided society. To prevent a recurrence, it is time that the role and the rights of consumers of financial services are properly recognised.

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