

# flacNews

FREE LEGAL ADVICE CENTRES

## Personal insolvency conference examines government debt proposals

**O**n 19 April FLAC held a full-day conference around the government's plans for a scheme dealing with personal debt in Ireland. Entitled 'Legislating for Personal Insolvency in Ireland: International Developments and Domestic Issues', the event provided a first public forum to discuss the draft scheme of the personal insolvency bill since its publication on 25 January. The conference featured contributions from renowned national and international experts in their respective fields, both economic and legal. The aim of the conference was to examine the draft scheme in the light of best practice in other jurisdictions and to get a better insight into how similar systems operate elsewhere.

Minister for Social Protection Joan Burton TD opened the conference and in her address referred to 'the twin evils of debt and unemployment' affecting so many in Irish society. FLAC's Paul Joyce commented on the shortcomings of the draft scheme and the inherent difficulties in trying to introduce this complex piece of legislation in the midst of an economic crisis. FLAC was extremely fortunate to be able to draw on the expertise of renowned personal insolvency expert, Professor Jason Kilborn, of Chicago's John Marshall Law School, to give a keynote address. Drawing on his extensive comparative research of personal insolvency regimes across the EU, Professor Kilborn reached the conclusion that the proposed personal insolvency scheme falls significantly short of 'the state of the art' in the area – that is to say the most progressive and effective approaches of other jurisdictions.

Professor Kilborn added that many of its



FLAC Director General Noeline Blackwell, Minister for Justice Alan Shatter TD and FLAC Chairperson Peter Ward SC outside FLAC's offices before the launch of FLAC's annual report for 2011.

Full report: page 4.

provisions were 'counter-productive'; furthermore, he singled out France as having debt settlement law *par excellence*. Importantly, Professor Kilborn discussed effective personal insolvency legislation as being conducive to a better economic outlook. Far from being an exercise in bank-bashing, it was about maximising

individuals' potential and productivity and encouraging the kind of healthy risk-taking that was necessary for economic progress, he said.

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### NEWS FLASH

As *FLAC News* went to press, the Personal Insolvency Bill was finally published on June 29. This long-awaited piece of legislation represents a legal milestone in providing debtors with out-of-court debt settlement options and updating the law on bankruptcy. FLAC is relieved that the Bill has been published but has some concerns, including the lack of an appeals mechanism for debtors and the retention of the creditor veto in Debt Settlement Arrangements and Personal Insolvency Arrangements. See our website [www.flac.ie](http://www.flac.ie) for more information – the next issue of *FLAC News* will also react to the Bill and its provisions

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# Changes to interest supplement 'unfair' to overburdened mortgage holders

**F**LAC is gravely concerned at the introduction of a Commencement Order for changes to Mortgage Interest Supplement outlined in s.12 of the Social Welfare and Pensions Act 2012. The order was laid before the Oireachtas without any public announcement and the changes came into effect on 18 June 2012. The rushed introduction of this measure fails to take into account any of the misgivings expressed by FLAC and the Northside Community Law Centre (NCLC) in their joint submission on the Social Welfare and Pensions Bill 2012, which centred on the proposed changes to Mortgage Interest Supplement (MIS) flagged in this year's budget. FLAC also supported the '7 is Too Young' campaign led by OPEN (the national network of one-parent families), Barnardos and the National Women's Council of Ireland.

In the joint submission which they put forward in April, FLAC and NCLC recommended that no proposals to further limit Mortgage Interest Supplement be enacted, at least until an overall package of supports is available. This would include changes to the 30-hour rule and also removing the prohibition on putting a house up for sale while MIS is being paid. Mortgage Interest Supplement should be aimed at people with sustainable mortgages who can potentially meet their mortgage interest payments with some assistance and their individual circumstances should be taken into account.

Under the provisions of the Social Welfare and Pensions Act 2012, a person will now not be entitled to Mortgage Interest Supplement unless they are deemed to have made reasonable attempts to engage with their lender and are complying with a payment agreement for a period of at least 12 months. In effect, these individuals will be denied access to state support for the first year of their involvement with the Mortgage Arrears Resolution Process (MARP).

During the debate on the Bill, the Minister for Social Protection, Joan Burton TD, stated that one of the purposes of the proposed changes was to ensure that MIS

is a short-term measure utilised alongside the MARP to resolve a mortgage arrears problem as opposed to becoming a long-term payment with no solution in sight. She explained that part of the Department's motivation for the amendments was to ensure that the "lender has to engage with the process".

However, FLAC is concerned that the onus in the legislation places too heavy an obligation on the consumer and too little on the lender. Legislators are operating on the assumption that the solution proposed by the banks will be a fair one. It does not allow for a situation where the lender has been unreasonable. In addition to this, the Act lacks any provision whereby the banks are compelled to offer any repayment option – even under the Code of Conduct on Mortgage arrears the possible options must be merely explored.

Under the new law even at the end of a 12 month engagement with MARP, access to MIS is not guaranteed. The Department of Social Protection must then determine whether it is "reasonable to award a supplement having regard to the amount of any arrears outstanding on the loan". The interpretation of what constitutes a reasonable mortgage may present an additional barrier to MIS.

These issues were raised by opposition TDs from Sinn Féin, Fianna Fáil, the United Left Alliance and members of the technical group on the foot of the FLAC and NCLC submission.

At best, the commencement of this regulation is premature. It has the potential to make mortgages unmanageable for many people who are currently struggling. Some will be pushed over the limit if this provision comes in now in this way. FLAC is urgently requesting the government to defer the implementation of these MIS changes until they put in place an adequate protection scheme for those in mortgage distress. Without practical and fair changes to the MIS scheme, FLAC believes that the existing mortgage arrears crisis will deteriorate further and people with sustainable mortgages may fall deeper into debt.

# Behind the mortgage arrears figures

**R**eactions to the latest set of Central Bank quarterly figures on residential mortgage arrears and related legal proceedings demonstrate just how centre-stage this issue has moved. Preceding the release of the latest figures, the *Sunday Business Post* published an article predicting that the level of cases arrears in the 90 days plus category would break the psychological barrier of 10% (or one in ten) for the first time.

Earlier this year, An Taoiseach Enda Kenny TD declared mortgage arrears to be “the single biggest issue currently facing Irish people,” yet he was upbraided by the leader of Fianna Fail for the delay in introducing personal insolvency legislation. This is coming from a political party that did absolutely nothing in legislative terms on the settlement of personal debts over 14 years in power, despite the writing on the wall from as far back as 2003, when FLAC first publicly called for debt settlement legislation. We now have a total of eleven sets of quarterly statistics from the Central Bank on residential mortgage arrears. Amongst them are some interesting facts:

- ❑ At the end of September 2009 (Q.1), 26,271 accounts were in the 90 plus days arrears category.
- ❑ Exactly two and a half years later (Q.11) there are 77,630 such accounts. That is an increase of over 50,000 households, averaging well over 1,700 new cases per month.
- ❑ The average amount owed in arrears per household has increased from €13,490 in September 2009 to €16,704 in March 2012.
- ❑ 2,408 new cases to repossess family dwellings were brought between July 2009 and the end of March 2012.
- ❑ 1,205 Possession Orders were granted during this period, but only 411 houses were actually repossessed on foot of a court order.
- ❑ On the other hand, during the same period, 932 houses were voluntarily surrendered or abandoned, which is well over twice the number repossessed.
- ❑ The number of family homes returned to lenders has increased from 331 to 961 during this time.

At the end of the first quarter of 2012, 77,630 accounts (or 10.2% of the total of 764,138) in Ireland were in arrears of 90 plus days with 65 houses being repossessed during this period. In the UK,



Photo by Derek Speirs

on the other hand, at the end of the first quarter of 2012, approximately 134,000 residential mortgage accounts had arrears greater than 2.5% of the outstanding balance (the measurement of distress used by the Council of Mortgage Lenders in the UK) but the number of properties taken into possession during this quarter was 7,900. Therefore, compared with the UK our arrears problem is seven times worse, but the rate of court-ordered possession in the UK is ten times greater.

Some might say that this is a good thing and mortgage lenders in Ireland may argue that it shows that the forbearance being offered to borrowers in distress is working. Another explanation might be founded in the reality of negative equity and the fear of lenders that in repossessing, they will crystallise a sizeable shortfall that will be very difficult to ever recover, in addition to swelling the number of unshiftable properties on their books. It is worth noting that despite the low level of legal proceedings, mortgage lenders now have over 600 more properties on their hands compared to September 2009.

It will be suggested that the low level of repossessions is proof of the success of the Code of Conduct on Mortgage Arrears (CCMA), with its mandatory Mortgage Arrears Resolution Process (MARP). How long can you kick the can before you run out of road, however? It is notable in this respect that of the 79,712 residential mortgage accounts that are currently rescheduled, some 41,054 (52%) are also in arrears. In addition, 35% are paying interest only, 14% less than interest only and 4% are paying nothing at all. Then there is the impending catastrophe that is the buy-to-let market; the figures due (for the first time) later this year are likely to make grim reading.

In short, a potential repossessions time bomb may be staring us squarely in the face unless we put in place measures to alleviate it. Already we have seen the possibility of split mortgages, a revolutionary concept two years ago, being advoca-

ted openly by one lender in particular. However, earlier this year a spokesperson for the Irish Banking Federation (IBF) remarked at its Annual Conference that the mortgage arrears resolution strategy process had concentrated the mind of lenders on the problem of unsustainable mortgages. Mortgage lenders are no doubt intently focused on personal insolvency legislation looming on the horizon, with mandatory write-down of mortgage debt becoming a real possibility if they do not deal more realistically with the problem.

FLAC has been campaigning for a decade now for the introduction of proper debt settlement legislation. A lot of wrongs have been perpetrated upon unfortunate borrowers during that time. The Government may express frustration at the lack of progress, but the delay is of its own and its predecessor's making. For the thousands of families suffering severe financial distress, the ongoing failure to act is intolerable as we still await a coherent cross-departmental strategy.

What can be done? A more robust voluntary restructuring of mortgages with eventual write down where appropriate is essential. This must be backed by a formal personal insolvency scheme that will take out unsecured debt within a reasonable timeframe for those who are insolvent and will also allow for the compulsory restructuring of mortgages where lenders refuse reasonable proposals. With the taxpayer as well as the banks on the line for large sums, there are no winners in this process; but **the personal and mortgage debt mess has to be cleaned up for economic as well as social justice reasons.** In the eyes of people who continue to honour their financial commitments or who never availed of ‘easy’ credit in the first place, the write-offs or write-downs of debt for their neighbours may appear to be unjust and unfair. International evidence, however, suggests that it is in the long-term interest of society as a whole that formal processes to resolve over-indebtedness in a coherent and structured manner are put in place.

FLAC's recent conference on personal insolvency and the proposed state scheme (see pages 1 and 8) highlighted innovative approaches to the kind of problems we face that have been tried and tested in other jurisdictions. It also concluded that while the Irish scheme as currently drafted is a step forward, it falls far short in some key areas. With its new deadline of the end of June, FLAC urges the government to act swiftly and decisively.



# FLAC annual report 2011 launch:

**O**n June 18, FLAC unveiled its *Annual Report 2011* at an event in the organisation's headquarters on Dublin's Dorset Street. Minister for Justice, Equality and Defence, Alan Shatter launched the report, acknowledging the organisation's work on legal services and personal debt law reform and complimenting FLAC on "a fine body of work completed in 2011".



*Minister Shatter launching FLAC's annual report*

As the report outlines, this work was based around three interconnecting cogs of advice & information, analysis and advocacy. In particular, FLAC focused on the support systems available to people in need of help, in terms of legal assistance, fairness in social welfare and personal debt. FLAC's contact with people on the ground has revealed that many are finding themselves in situations where they need state support, whether short or long-term, through no fault of their own, with very little notice and inadequate personal reserves. Thus the organisation has been working to ensure the fairest, most transparent support systems possible – systems that respect basic human rights and decency even and especially in recessionary times.

In 2011, FLAC answered **12,923 telephone line calls** – this is an **increase of 39% over 2010**. This includes increases in queries around credit and debt (up 68.6%), neighbour disputes (up 77.6%), negligence/personal injury (up 70.9%) and contract law (up 93.5%). Our telephone information line provides basic legal information over a lo-call telephone line at 1890 350250.

In terms of legal advice centres, we have worked hard to improve our network so that we **now offer free legal advice at 80 locations around Ireland**. In 2011, FLAC recorded some **13,362 queries** from participating centres, **an increase of almost 22%** over 2010. This included greater queries around credit and debt (up 47%), employment (up 30%), neighbour disputes (up 85.7%) and client -solicitor relations (up 48.6%). In this area FLAC is deeply grateful to the more than 700 volunteer lawyers around the country, and is also hugely indebted to the Citizens Information Centres which host FLAC's advice work and whose staff facilitate and administer the legal advice clinics.

In its **key areas of work**, FLAC has concentrated on providing practical, useful legal information to the public and to support other bodies working with the public, on monitoring the state's duty to respect, protect and realise basic human rights, and on promoting legal reform that is progressive, fair and that advances social justice. This includes:

- clarifying consumer credit rights around Hire Purchase in the Gabriel case
- working with other organisations on a set of basic principles to overcome personal debt,
- preparing **guides** on topics like the Code of Conduct on Mortgage Arrears, the Social Welfare Appeals process and the Civil Legal Aid system,



*FLAC Chairperson Peter Ward SC presenting Minister Shatter with photo from his time in FLAC*



*Former Chairperson of the Legal Aid Board Anne Colley sharing some memories with Minister Shatter over their days as student activists with FLAC*



*FLAC General Director Noeline Blackwell with Independent TD for Dublin Central, Maureen O'Sullivan*

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# the issues behind the statistics



Members of independent law centres with Minister Shatter. Pictured L-R: Noeline Blackwell, FLAC; Brian Barry, Mercy Law Centre; Minister for Justice Equality and Defence Alan Shatter TD; Moya De Paor, Northside Community Law Centre; Bernie Walsh, Mercy Law Centre; Mikayla Sherlock, Ballymun Community Law Centre.



FLAC volunteers Mark Murphy and Laura Monk with Citizens Information Board CEO Tony McQuinn (centre)



FLAC Chairperson Peter Ward SC, Muriel Walls, Legal Aid Board Chairperson and Brian Gallagher, solicitor

- campaigning for the recognition of transgender people and the rights of deaf people to serve on juries,
- advocating for a fairer and more transparent social welfare system, and
- progressing public interest law in Ireland via our Public Interest Law Alliance project (PILA) which provides legal training and *pro bono* legal assistance and support to NGOs from its register of lawyers and legal firms, as well as disseminating information on legal developments through its e-Bulletin and revamped website.

On behalf of the board and staff, FLAC Chairperson Peter Ward SC welcomed invited friends of FLAC to the launch, saying the report marked FLAC's work and achievements of the past year in a difficult economic climate. Launching the report, Minister Shatter touched on several of FLAC's core issues, stressing that key legislation on personal insolvency would shortly be published (the bad news being that the bill would exceed 200 pages in length) and that legal services delivery in Ireland would also see major reform. He singled out the system of social welfare appeals as "needing further work", especially in relation to transparency. The Minister also noted the continued involvement of law students in FLAC's advice work, and the massive growth in the number of people FLAC assists, commenting that "behind these impressive statistics lie the everyday issues that concern us all which are FLAC's real success story."

Director General Noeline Blackwell said the event was an occasion to not only thank FLAC's volunteers, staff and interns, but also to pay tribute to the "important partnerships" FLAC has with other organisations, statutory bodies, funders and campaign allies with whom FLAC had worked throughout the year. She acknowledged that FLAC was under increased pressure in these straitened times, pointing out that the organisation had handled well over 83,000 queries since the start of the recession in 2008.

At the launch, Minister Shatter was presented with a framed press cutting from December 1972. The cutting featured a photo of the late David Molony (then Chairperson of FLAC and later a TD), with Anne Colley (then FLAC Secretary and later a TD and Chairperson of the Legal Aid Board), and Alan Shatter himself at a FLAC event highlighting the need for family law reform. In fact, as a law student, Minister Shatter had been Director of the Crumlin FLAC Centre and a Council (Board) Member of FLAC throughout 1973 and 1974. He was elected chairperson of FLAC in February 1975 and served as chair until August of that year, when he left to take up studies abroad.

The FLAC annual report 2011 is available online at [bit.ly/annrep2011](http://bit.ly/annrep2011)





## FLAC helps 'Zambrano' mother receive back-payment of Child Benefit

**A** caller to FLAC's telephone information line recently informed us of how FLAC's information and guides to the social welfare system helped her to take her own successful social welfare appeal. She first came to Ireland as an asylum seeker in 2003. Her baby was born here and she applied for Child Benefit but left before her application was fully processed.

She returned to Ireland in 2006 and lived in direct provision accommodation. At this point she was informed by fellow residents that there had been a change in social welfare law and she would no longer be eligible for Child Benefit because of the introduction of the Habitual Residence Condition (HRC). It was not until 2007 that she became aware of FLAC's Child Benefit campaign; then, equipped with the knowledge she had gained from FLAC's information leaflets, she reapplied for Child Benefit in 2008. Her application was initially refused as at that time the Department of Social Protection (formerly Social and Family

Affairs) exercised a blanket exclusion of asylum seekers. At this point FLAC suggested she make a Freedom of Information request for her social welfare file and she used the information to appeal the negative decision to the Social Welfare Appeals Office.

The initial Appeal's Officer's decision was negative as was a subsequent review of the file by the Chief Appeal's Officer in April 2011. However, after being granted leave to remain in July 2011 the claimant again contacted FLAC for help. An information provider explained the operation of the HRC and referred her to the FLAC Guides to the Habitual Residence Condition and Making a Social Welfare Appeal. The claimant said she found the guides to be clear and easy to understand and they were a useful support to the information she received over the phone in terms of understanding how she would be able to demonstrate her links to Ireland for purposes of fulfilling the Condition. Also in this case an important point of law seems to have been

established. The claimant was granted leave to remain on the basis that her child is an Irish citizen following the landmark judgment by the European Union Court of Justice in the *Zambrano* case (C-34/09, judgment of 8 March 2011). Under this ruling, she had a right to reside in Ireland as the parent of an EU citizen child. This had an important impact on her social security entitlement, as the Appeals Officer in her second social welfare appeal decided that the claimant had fulfilled the Habitual Residence Condition from the date she claimed Child Benefit in 2008 rather than from the date she was granted leave to remain. This decision is significant as the Appeals Officer appears to apply the *Zambrano* judgment retrospectively in this case.

Contacting FLAC again in April 2012 to let us know her appeal had been successful, she told the social welfare team that she would not have been able to access her welfare entitlement without FLAC's help. FLAC hopes to test this point of law in a small number of ongoing strategic cases.

## Tri-City project on EU migrants experience of accessing social welfare moves to next level

**T**he last FLAC News reported that FLAC had partnered with the AIRE Centre in London and independent Dutch consultant Lize Glas in a EU Commission-funded Tri-City project on EU migrants' access to special non-contributory benefits. Unlike other social security payments, such as family benefits, special non-contributory benefits have the characteristics of social assistance payments and are not exportable or transferable from one EU Member State to another. In the Irish context these include Jobseekers' allowance; State pension (non-contributory); Widow's (non-contributory) pension and widower's (non-contributory) pension; Disability allowance; Mobility allowance and Blind Pension.

Special non-contributory benefits are rooted in a complex and evolving area of social security and free movement under EU law, which has posed difficulties for the legal frameworks of some EU Member States. Moreover, since the UK and Irish social security systems are currently developing plans to introduce a single payment based on ability to work,

the question of exportability of benefits will become very relevant in both jurisdictions. This issue was highlighted by leading UK practitioner Adrian Berry BL at a recent Law Centre NI training event.

The rationale for the project arose from the AIRE Centre's observations that problems related to accessing special non-contributory benefits impact disproportionately on low-income individuals. They are unlikely to have access to quality legal advice and services, which is particularly important given the complexity of this area of law. In FLAC's experience, migrants are often unaware of their entitlements and in most cases unsure of where they might access information. The project will run until March 2013, ending with a report and a closing conference in London. Project partners have developed five specific activities to assist them in providing information on special non-contributory benefits. Two of those activities, namely monitoring developments in the area and providing advice to migrants, will take place throughout the life span of the project. FLAC has also designed a

checklist to help monitor case law available at [bit.ly/noncont\\_list](http://bit.ly/noncont_list).

The first few months of the project have focused on networking activities with roundtable events in the three partner cities. The roundtables provided an excellent opportunity to share experiences and the last of the roundtables was held in the Dutch city of The Hague on 14 May 2012. This was attended by a representative of the European Commission, who was keen to hear about networks created during the project's first phase, which will greatly enhance the final report. The next step in the project will be to develop information notes specific to each partner country for EU migrants and their advocates and these will be distributed and translated into different EU languages.

**For more information, please contact FLAC Policy & Advocacy Officer, Saoirse Brady. Materials from all roundtables are available on FLAC's website at [bit.ly/noncont\\_list](http://bit.ly/noncont_list)**

# On the frontline of human rights: Aryeh Neier visits Dublin

**T**wo giants of the international human rights community took centre stage at a lecture in Dublin on 7 June.

Aryeh Neier, President of the Open Society Foundation, chaired the event which was entitled 'Five Decades on the frontline: Reflections on what the human rights movement has accomplished'. It was chaired by Mary Robinson, former President, former Executive Director of Human Rights Watch and National Director of the Mary Robinson Foundation for Climate Justice. The event was organised by Front Line Defenders and the Irish Times in association with FLAC and the Irish Society of International Law. It allowed Mr Neier to share thoughts and opinions garnered throughout his long career in the international human rights arena.

While Mr Neier's speech focused predominantly on civil and political rights, a fervent counterbalance was provided by Mary Robinson, a lifelong advocate for rights in the economic, social and cultural sphere. Mr Neier began by praising Front Line Defenders and the work it carries out as an organisation, in addition to the countless individual campaigners physically on the front line themselves. Those that toil on the frontier of the human rights movement are responsible for any progress that is made, he said.

Mr Neier traced the development of global equality movements that he felt had most heavily influenced the human rights debate. He described the anti-slavery movement as a pioneering force that was differentiated from self-serving campaigns by its altruistic nature. The overall aim of the movement was not about giving rights to those who curiously demanded them but rather about seeking equality for the most disadvantaged.

He touched upon the influential role played by international human rights principles in bringing about regime change in the late 1980s and early 1990s. Mr Neier reflected on the experience of Latin American states, in particular the emergence of Argentina from the shadow of a military dictatorship. While not the sole factor, human rights were also seen as an essential feature in making the transition from military government to quasi-democracy in several countries in East Asia.



L-R: Noeline Blackwell, Mary Lawlor, Aryeh Neier, Mary Robinson & Chris Martin

Mr Neier conceded that the link between economic prosperity and political freedom appears more tenuous in the face of the global financial crisis. Rapid growth and expansion in China appears in stark contrast to financial decline in Western Europe and the United States. However, he argued that human rights still have the potential to influence societal change. Burma's recent by-elections demonstrate how the country is attempting to navigate its way towards a more democratic, open system of government following half a century of rule by military junta. Sierra Leone, Liberia and the Cote d'Ivoire were cited by Mr Neier as examples of the human rights progress being made in African states.

Three specific scenarios pose the greatest challenges to the human rights movement today, according to Mr Neier. The first was to address abuses that occur during armed conflict. The main difficulty here is in accurately distinguishing who is an active combatant in the conflict from ordinary civilians. He mentioned the increasing use of unmanned drones as a concern in this respect also.

The second challenge confronting the human rights movement is around holding to account those guilty of gross abuses. Mr Neier mentioned the relative success of ad hoc tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY). The ICTY has successfully brought every individual indicted before it, most recently Goran Hadžić, the former President of Serbian Krajina.

Counter-terrorism and acts carried out in the name of the 'war on terror' constituted the final concern for Mr Neier. The question of how to investigate and subsequently prosecute terrorist offences is highly problematic for the international human rights community. As Mr Neier concluded, the work of human rights will never be done; there will always be fresh challenges and concerns.

Mary Robinson, in her role as chairperson for the evening, then presided over a lively question and answer session. Topics raised by the audience and Ms Robinson herself included the possible emergence of human rights internally in China; the importance of non-governmental organisations in disseminating human rights information; the importance of socio-economic rights as well as civil and political rights; and the division of human rights into first, second and third generations and whether this defies the universal, inter-dependent nature of the right themselves.

Interestingly, Ms Robinson began by mentioning Pakistani lawyer Asma Jahangir. Ms Jahangir had been scheduled to speak at the PILA/PILS Project conference taking place in Belfast on the same day as the Frontline lecture (see page 14 for more on the joint conference). However, she was unable to leave her home due to threats on her life. The story underlined the significance of Front Line's work and it gave us a stark reminder of the perennial dangers faced by those who stand up for human rights when it may not be popular or indeed safe to do so.



# Personal insolvency conference examines government debt proposals

[continued from front page]

The second keynote speaker, Norwegian lawyer Egil Rokhaug, drew on his first-hand experience of writing the law that included secured debt in personal insolvency legislation. Norway, with a similarly high rate of home ownership to Ireland, had been through a housing bubble and bust in the late 1980s and early 1990s.

The collapse of house prices in Norway thus had a similar outcome to our own situation, with high personal debt and worrying levels of mortgage arrears. Egil explained how the Norwegian Debt Settlement Act 1993 offered debtors a second chance and allowed for secured and unsecured debts to be written down where an individual is found to be insolvent. He also stressed that the perceived danger of moral hazard – which has been advanced in the context of the draft scheme also – has not materialised. In this regard he emphasised the onerous qualifying criteria for debtors under the Act. The final keynote speaker, Athens-based consumer rights lawyer Melina Mouzouraki, outlined Greece's nascent 2010 debt adjustment law, which has paved the way for write-down of personal debt in certain cases. Though still in its infancy, Melina referred to a number of helpful case studies in which the legislation has been applied.

In an earlier session, Tom McDonnell, an economist with local think-tank Tasc, explained the economic reasoning behind including secured debt in any settlement scheme. Professor Gerry Whyte of Trinity College Dublin went into some of the constitutional arguments, concluding that that claims in favour of protecting property rights would be over-ruled by “the exigencies of the common good”, as laid out in the constitution. The day ended with a questions and answers session and ensuing debate, comprising short inputs from a variety of commentators, from MABS advisors to personal debt journalists to insolvency practitioners to law reform commissioners.

On the whole, the conference provided a platform for reflection on the draft scheme, which comprised submissions from consumer advocates and credit industry representatives alike. The conference also evinced how out of step Ireland is with other EU jurisdictions in this area, and highlighted the pitfalls which Ireland must avoid to ensure an effective system with the capacity to address the overindebtedness at its root – not a scheme which is destined to fail from its



Top left: Professor Jason Kilborn, John Marshall Law School, Chicago

Top right: Paul Joyce, FLAC Senior Policy Researcher

Middle: Paul Joyce, Minister for Social Protection Joan Burton TD, FLAC Chairperson Peter Ward SC, and Noeline Blackwell

Bottom: Greek consumer rights lawyer Melina Mouzouraki, FLAC Director General Noeline Blackwell, Norwegian lawyer Egil Rokhaug, Minister for Social Protection Joan Burton TD, FLAC Chairperson Peter Ward SC, FLAC Senior Policy Researcher Paul Joyce and Professor Jason Kilborn

outset. It also concluded that society must drop the outdated notion that debtors have done wrong and must be punished. Separately, FLAC notes that the publication of the personal insolvency bill has now been delayed until the end of June. While this potentially allows for the views expressed at the conference to be taken into account by the drafters, FLAC – through its front line services – remains all too aware of the inexorable rise in mortgage arrears and of the scale of

indebtedness in society. It thus goes without saying that the introduction of the legislation cannot come soon enough. That said, an effective, balanced and comprehensive bill should not be compromised for the sake of expedition.

Read more at the dedicated micro-site: [www.flac.ie/debtconference2012](http://www.flac.ie/debtconference2012)



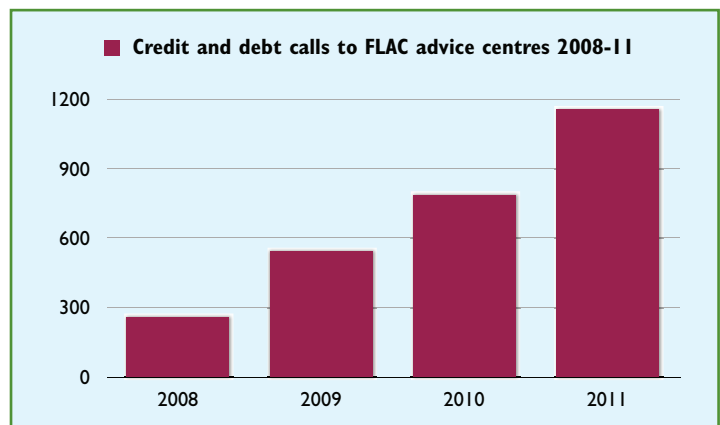
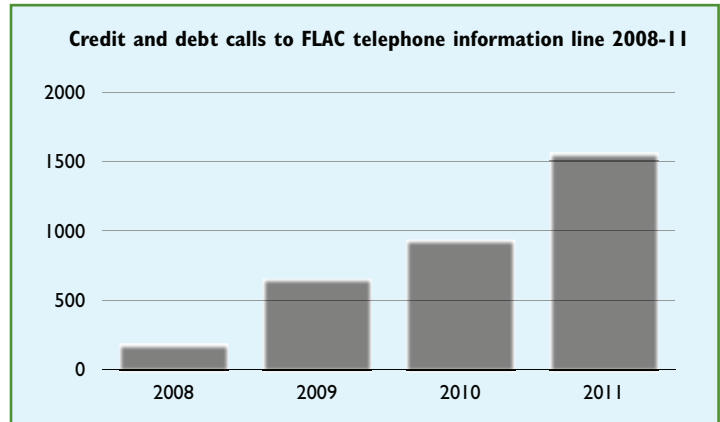
## Debt queries to FLAC still growing

The number of people contacting FLAC with debt queries continued to rise in 2011. More than 1500 people called FLAC's telephone information line last year with a debt-related query, accounting for 12% of all calls received throughout the year. This is compared with just 1.7% of calls in 2008, at the start of the current recession. This was a 68% increase on the number of debt calls received in 2010 and a massive 873% increase in the number of debt-related calls since 2008.

In addition to the calls from the public, FLAC also advised on 277 queries from MABS for second tier legal advice provided by our credit and debt law expert, Paul Joyce.

Similarly, in the legal advice centres, some 1157 people came to FLAC in 2011 with a debt-related query, or 9.1% of all callers to FLAC centres, contrasted with 3.6% in 2008. Debt queries were up 47% on the 2010 figures and up 346% on debt queries to FLAC centres in 2008.

Increases in debt-related calls can be seen across all centres nationwide, from Letterkenny to Wexford to Bantry. A breakdown of debt-related queries in FLAC's centres shows that almost 40% of queries were on mortgage arrears, some 24% on debt collection procedures and some 22% on personal loans.



## Foy Case delay undermines ECHR Act

The Government's failure to bring in transgender legislation nearly five years after judgment in the Lydia Foy case is starting to undermine the European Convention on Human Rights Act, 2003 (the ECHR Act).

The whole idea of the ECHR Act was to enable people to get a remedy for breaches of their European Convention rights from the Irish courts instead of having to go to the Court of Human Rights in Strasbourg.

But in Lydia Foy's case the High Court ruled that the failure to recognise Ms Foy in her female gender was a breach of her rights under Article 8 of the ECHR. The Court granted a declaration that Irish law was incompatible with the ECHR. That was supposed to trigger Government action to change the law but, despite repeated promises, nothing has happened so far.

If the Government does not act quickly to allow for transgender recognition, it will send out a message that this mechanism is ineffective and that people who believe that their ECHR rights have been violated would be better off taking their cases to Strasbourg than seeking a declaration of incompatibility from the Irish courts.

That would also undermine the Government's commitment at the recent Brighton Conference on the future of the European Court of Human Rights, where it signed a declaration that Council of Europe member states "must effectively resolve violations at the national level".

The main stumbling bloc to changing the law seems to be a fear that if it recognised gender change by transgender persons who are already married and want to stay married, this would amount to recognising same-sex marriage. The

Government's working group on the issue recommended that people in this situation must get a divorce before they could be recognised in their acquired gender. This was opposed by almost everyone who made a submission to the working group.

FLAC has pointed out to the Department of Social Protection, which is responsible for this area, that pressuring couples to divorce would appear to be in breach of the constitutional protection of marriage – the very institution the advocates of 'forced divorce' say they want to protect. We have also pointed out that under Irish divorce law, this would require loving and caring couples to perjure themselves by claiming in court that the marriage was irrevocably broken down, and would require them to live apart for four years

[continued on page 10]

## FOCUS ON FLAC:

## Emer Butler, Executive Officer

**E**mer Butler joined FLAC in June 2010. As Executive Officer, her role involves providing support to FLAC's management and Council (or governing board) which encompasses a broad range of areas including: funding, governance, risk management, event management, monitoring and evaluation, reporting against FLAC's strategic plan and data management. In this capacity she is based at the organisation's headquarters on Dorset Street. In her two years in FLAC, Emer's role has evolved in line with the needs of the organisation and in particular has an increased emphasis on funding and fundraising.

Before joining FLAC, Emer worked with a consultancy firm, Prospectus, which specialises in strategy development and does a lot of work with NGOs and voluntary bodies. There she worked mainly with non-profit clients. As she says, "It was great exposure to the challenges being faced by organisations who are working for social change and equality in Ireland. Among other things, I did quite a bit of work with organisations in the LGBT sector and also the older people's sector and especially enjoyed this." Emer also completed an internship in Irish Aid, the Irish Government's programme of assistance to developing countries, and spent two years working with Suas Educational Development where she managed their overseas volunteer programme. Interestingly, her academic background is in psychology: "I actually originally started doing a law degree but then switched to science



© Photo by Derek Speirs

where I ultimately specialised in psychology, so there is some irony in my ending up working in FLAC!"

Emer sees the question of funding as the number one issue facing FLAC now and into the future. To date, the organisation has been very fortunate in receiving funding from a mixture of sources including statutory funding, donations from the legal profession through the Bar Council and Law Society, individual donations and philanthropic funding. "This funding allowed us to provide direct support to well over 25,000 people last year, not to mention those who received information through our website and publications, and all those who benefit from FLAC's strategic litigation and campaigning work," says Emer.

The future looks more challenging as the Atlantic Philanthropies prepares to wind down its operations. Atlantic is a limited life foundation that has generously funded FLAC, as well as a wide range of other organisations working for social change, for the past number of years. Yet, Emer remains optimistic: "It will be a challenge, certainly, and it is sometimes harder to 'sell' access to justice as it often doesn't mean anything until a person has directly experienced a legal difficulty themselves. However FLAC's long-standing reputation and positive impact speak for themselves and I'm confident that there are lots of people and organisations out there who will be interested investing in FLAC's work".

Emer is keen to highlight the importance and value of having both service delivery and campaigning functions in the organisation, noting that this means that the policy and advocacy work is directly connected to the experiences of people all around Ireland, strengthening and adding credibility to any calls for reform. What she enjoys most about her work, however, is the opportunity to contribute to an organisation that is actively seeking positive change for people living in Ireland:

"FLAC's focus on systems – whether that be systems related to social welfare, legal aid, or debt – and people having access to fair and equitable systems really appeals to me. It mightn't always sound very exciting, but the impact of even a small change can be really significant for huge numbers of people."

## Foy Case delay undermines ECHR Act (continued)

before the transgender partner could get recognition.

The German Constitutional Court dealt with this very issue in 2008. German law also required 'forced divorce' and had similar conditions for divorce: separation for a substantial period (three years) and irrevocable break-down. The German Court said this requirement

"makes the realisation of one fundamental right contingent on renouncing the other. This leads the persons concerned not only to a virtually unsolvable internal conflict, but also to an unacceptable

impairment of fundamental rights. [The law] is hence unconstitutional because it does not afford to a married transsexual the possibility to obtain legal recognition of his or her new gender affiliation without having to terminate his or her marriage."

A FLAC volunteer translated this German judgment and we have sent a copy to the Department of Social Protection in the hope that they will drop this unnecessary and unworkable suggestion.

In the meantime, the Government has appointed an advisor to recommend whether to pay compensation to Lydia

Foy for the breach of her rights. There is a provision in the ECHR Act for compensation to be paid on a discretionary basis where a court makes a declaration of incompatibility with the ECHR and this is the first time this provision has been used.

FLAC has welcomed this development but has pointed out that any compensation offered must be significant in order to make this an effective sanction. And we must stress that compensation is no substitute for changing the law to give Lydia Foy and other transgender persons the legal recognition which is their right.



## FOCUS ON FLAC:

# Inside the Centre: FLAC @ Pearse Street

**B**ased in St Andrew's Community Centre in South Dublin city centre, Pearse Street FLAC offers a weekly general legal advice clinic every Thursday. In 2011, there were 111 legal queries recorded at the clinic. The most common areas of enquiry were around employment law, family law and credit and debt issues. Of the callers who sought advice at Pearse Street, 99% of these did not have a solicitor of their own.

"Pearse Street is different. I've volunteered at a few different FLAC centres around Dublin, more suburban ones, but you can never tell who will walk in the door at Pearse Street or what their query will be" says FLAC volunteer Derek Charles. Derek has been volunteering for the organisation for five years at a range of FLAC centres, including Tallaght, Crumlin and Dundrum. However, he found the real variety of clients at the Pearse Street centre surprising. "The difference is people will travel to Pearse Street, not just from other parts of the capital but from all over the country. It's very accessible and people who may be too shy to seek advice from a local, rural advisor feel they can come to Pearse Street in confidence".

The geographical variety of those using the Pearse Street centre also means that the FLAC volunteers there are exposed to a broad spectrum of legal queries. Derek notes that this "certainly keeps you on your toes" which adds to the positive experience of being a volunteer. "It's important for



FLAC volunteer advisor Lorraine Lally at Pearse Street FLAC

solicitors to experience a wide range of questions and topics too. But it's vital to give something back and that's why I believe that volunteering with FLAC is incredibly important".

This is a sentiment shared by Lorraine Lally. Lorraine has volunteered with FLAC for just over a year after being introduced to the idea by a colleague of hers. She gives legal advice at several FLAC clinics, an exercise which she says is incredibly useful for a young solicitor. She says that volunteering with FLAC requires legal practitioners to explain legal matters in plain English without descending into complex technical terms and legalese. The whole point of the exercise is to make law accessible for everyone. "It's all about information. If you don't understand the law, then how can you possibly know about your rights or enforce them?"

Lorraine also praises the ability of FLAC volunteers to effectively refer callers to the legal advice centres on to other suitable organisations. The complex, nuanced queries often means that people require the assistance of several bodies. "Referrals are really important for people who have overlapping concerns. FLAC volunteers have a good knowledge of support groups and services that can complement the legal advice that our centres give". In 2011, some 49 callers to Pearse Street FLAC were referred to another agency for additional assistance.

Pearse Street FLAC has become an invaluable and trusted resource for those seeking legal advice from Dublin and further afield. The ongoing work of the volunteer solicitors and barristers ensures that the role played the FLAC centre within the Pearse Street community can continue for years to come. As Lorraine Lally says, "FLAC's work is vitally important as the volunteers, by making the law clearer, give an element of empowerment to people".



Pearse Street FLAC hosts general legal advice clinics every Thursday from 7.30pm-8.30pm in St Andrews Community Centre, Dublin 2.

For more information and a list of all FLAC centres, visit [www.flac.ie/gethelp](http://www.flac.ie/gethelp)

# 'Experience of a lifetime' opens windows on social justice in US

by: Dearbhail McDonald \*

**O**n 25 June, the US Supreme Court issued an historic ruling in *Miller v. Alabama* and *Jackson v. Hobbs* holding that mandatory life-without-parole sentences for all children 17 or younger convicted of homicide are unconstitutional.

The ruling was a resounding victory for human rights lawyer Bryan Stevenson, Executive Director of the Equal Justice Initiative who represents Kuntrell Jackson and Evan Miller – two 14-year-old boys sentenced to mandatory life without parole.

More than 2,500 children are serving life without parole in America for crimes they committed while a juvenile including children as young as 13.

I had the privilege of visiting Bryan and his staff at the Equal Justice Initiative in Alabama as part of an extraordinary, exhilarating and exhausting journey across America with the Eisenhower Fellowships.

One of twenty-one fellows from around the world, my Eisenhower Fellowship was dedicated to the future of journalism, investigative journalism and advocacy in the digital age.

"This took me into the heart of the *Washington Post*, the *Wall Street Journal*, the *LA Times*, the *Huffington Post* as well as CBS and a host of new media companies that pose a threat to traditional news and business models."

But I also reserved space in my itinerary to explore the *modus operandi* of dynamic



© Photo by Dearbhail McDonald

Dearbhail McDonald pictured with human rights lawyer Morris Dees at the SPLC's headquarters in Montgomery, Alabama

organizations that promote social justice and human rights. Over the course of 100 meetings in 13 states in less than 8 weeks, I also met with organizations and individuals dedicated to overcoming conflict via leadership, music and the arts.

A final objective, to cure a lifelong fear of driving – I just passed my driving test last year – was accomplished by a white-knuckle, solo drive from Los Angeles to San Francisco along the stunning Big Sur.

I started out in Philadelphia, before taking in Washington DC, Florida, Texas and Chicago. Then I headed south to

Montgomery after FLAC's Noeline Blackwell – and Northside Community Law Centre's Colin Daly (now a District Court judge) – encouraged me to visit civil rights lawyer Morris Dees at the Southern Poverty Law Center.

A day spent in Morris' company was a timely reminder of how many parts of America, especially the Southern States, have yet to recover from the legacy of the civil rights era.

I discovered this when I witnessed the security at the SPLC's headquarters in Montgomery. I knew that Morris's work is usually accompanied by security 24/7 while in the US. As well as the Klu Klux Klan, he has taken cases against the Aryan Nation and other organizations.

But when I struggled to open the 300lb door of his armoured car, I had all the proof – if ever it were needed – that hate crime is still a potent force in some parts of American society.

Alabama still bears huge scars of race and poverty. I witnessed this when I met with cellist Laura Usiskin, the founder and director of the Montgomery Music project, which brings highly skilled musicians to some of the poorest areas of the State to teach children string instruments.

My meeting with Laura led to a performance of Mahler's Symphony Num-



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Eisenhower Fellows 2012 (L-R) Dearbhail McDonald, Dr William Crawley and Dr Valerie Cummins



ber One with the Montgomery Symphony Orchestra, one of the highlights of my fellowship. That evening alone at the Davis Theater, sight-reading Mahler, was well worth hauling my violin across the States for almost three months.

Senior Counsel Turlough O'Donnell is responsible for some of the worst jet lag and near death experiences I encountered on my fellowship. Turlough directed me towards Guatemalan lawyer Robert Garcia, the director of Los Angeles' City Project.

This meant an epic trek back across the flyover states and driving in downtown LA, a feat that would scare the life out of most Americans and maybe even rally drivers. It was worth all the stress: the City Project is one of the most amazing legal advocacy projects I have come across.

For the last ten years work The City Project has focused on equal access to park, school, and health resources throughout Los Angeles and California and Garcia is an extraordinary ambassador for those with little or no access to justice.

As a volunteer with the Fighting Words project in Dublin ([fightingwords.ie](http://fightingwords.ie)), my jaunt north to San Francisco brought me to 826 Valencia, the creative writing project for children founded by the writer Dave Eggers. There I also got to visit The Beat Within, an inspirational creative writing project for children and young adults detained in prisons across California. I was overcome by the power of those young prisoner's words, a must read for anyone involved in devising policy and managing juvenile crime.

During my fellowship I visited world-class foundations committed to advancing social justice through the medium of film including the Ford Foundation and Sundance. I also spent a day in Beverly Hills with Participant Media (*The Help*, *An Inconvenient Truth*, *Waiting for Superman*) to see how they are using film to generate social justice campaigns. The results were astounding.

And it is fascinating to see how organisations committed to social justice

## About the Eisenhower Fellowships

The Fellowships, currently chaired by General Colin Powell (Retired), aim to foster emerging leaders from around the world who have the potential to make important contributions to their society.

The Fellows come from a wide range of corporate, government, and private sector backgrounds and all have demonstrated outstanding leadership in their fields.

For more information on the Eisenhower Fellowships, go to [www.efworld.org](http://www.efworld.org).

# Campaigning continues on civil legal aid

FLAC's work in the area of civil legal aid continued apace this spring. The Legal Aid team provided training to the Citizens Information Board (CIB) in Criminal and Civil Legal Aid as part of the Board's national calendar of training events. The legal aid training took place in Ballyowen Castle Community Centre, Lucan in April and in the CIB headquarters in Dublin city centre in May. A total of 45 participants attended the two sessions. FLAC has received very positive feedback from the two sessions.

Team members attended the Legal Aid Board's family law conference in June which focused on mediation and alternatives to litigation. The courts are heavily overburdened and thus parties in a dispute are being increasingly encouraged to explore the mediation route rather than taking to litigation as of rote.

are not just surviving but thriving in the digital age; bypassing "traditional" media to generate publicity and engage audiences they might have previously struggled to reach.

Almost 2,000 people worldwide have completed an Eisenhower Fellowship and almost all whom you meet say that it will take years to digest the experience. I haven't even begun to.

But I am indebted to FLAC and the many homegrown social advocates who assist me in my daily endeavours as a journalist and helped me sculpt the experience of a lifetime I will ever forget.

**\* Dearbhail McDonald is Legal Editor of the Irish Independent and a 2012 Eisenhower Fellow.**

FLAC has also been writing to TDs on a constituency basis, highlighting current waiting times of the Legal Aid Board law centre in their area with a view to raising awareness of the problems facing the Board with a significant increase in demand for its services in recent years. The waiting times in some counties for people to gain access to a solicitor through the Legal Aid Board can be up to 12 months. In addition we are providing TDs with the FLACsheet on Civil Legal Aid (abridged version) and details of the FLAC centre(s) in their area so as they are aware of our service for their constituents.

- ❑ The abridged FLAC sheet on Civil Legal Aid is available on the FLAC website at <http://bit.ly/CLAAbridged>
- ❑ A longer version of this FLAC sheet with more in-depth information is also available online at: <http://bit.ly/CLAFACsheet>

## DCU FLAC chair wins President's Award

Congratulations to DCU FLAC Co-Chair Rebecca Townsend on receiving a special commendation in the DCU President's Awards for Civic Engagement 2012.

As founder and chairperson of the free legal advice clinic on campus, Rebecca has introduced a valuable information resource to the students of DCU. The awards were first presented in 2010 and they recognise the ongoing commitment to public service and involvement in community work made by the staff and student body at the university. Individuals who displayed a dedication to civic engagement were nominated by their fellow students and their achievement acknowledged at an awards ceremony in the Helix in May.

Congratulations must also go to Rebecca's Co-Chair, Elaine Marum who has assisted in making DCU FLAC such an effective on-campus service. Well done to Rebecca on her prize and all at DCU FLAC for their commitment.



# PUBLIC INTEREST LAW ALLIANCE UPDATE

## Conference offers innovative examples on using international law

The PILA/PILS Project conference held on 7 June in Belfast showcased practical and innovative ways to incorporate international human rights standards in strategic legal challenges. The conference was attended by over 100 people, including a wide range of legal practitioners and representatives of non-governmental organisations from Northern Ireland and the Republic.

The title of the conference was 'Using international standards beyond the European Convention on Human Rights' and was scheduled to feature Asma Jahangir as keynote speaker. Unfortunately Ms Jahangir, a renowned international human rights lawyer and activist from Pakistan, had to cancel her appearance after she received serious and credible death threats shortly beforehand.

Dr Gordon Anthony BL, also a Reader at Queen's University Belfast, spoke about how unincorporated treaties can play an indirect role in domestic UK proceedings. This potential to use international standards indirectly was mirrored by Michael Lynn BL's presentation. He gave the example of the Convention on the Rights of Persons with Disabilities (which Ireland has ratified), and how it can assist courts with the interpretation of Irish constitutional rights. FLAC Senior Solicitor Michael Farrell stood in for Asma Jahangir, and his presentation considered other opportunities to use or promote international standards through Council of Europe and United Nations instruments. Examples of these instruments are the European Social Charter (Council of Europe), and visits and reports by international rapporteurs and commissioners.

In the afternoon there were three breakout sessions that enabled attendees to flesh out and debate the practical ideas from the morning presentations. These sessions were focused on using international human rights law to protect and advance economic and social rights, to protect and advance non-discrimination and



© Photo by Harrison Photography

Michael Farrell, FLAC Senior Solicitor addressing the joint PILA/PILS Project conference.

equality; and on how lawyers and NGOs can collaborate to increase the use of international human rights law in the courts.

Feedback from the conference was overwhelming positive, including many comments on the usefulness of the speakers' comparisons of the different situations in the North and South.

PILA is particularly grateful for the contributions of the speakers from the Republic who travelled to Belfast for the event – our thanks go to Eilis Barry BL, Moya de Paor, Michael Farrell, Michael Lynn BL, Elizabeth Mitrow and Judge Tom O'Donnell.

Papers from the conference will shortly be available at both [www.pila.ie](http://www.pila.ie) and [www.pilsni.org](http://www.pilsni.org).



Ciara McKenna BL, Alan Brady BL and Lorraine Lally at the launch of PILA's Progress Report.



Gearoid O Cuinn (Ceartas), Carol Balfe (Amnesty International Ireland) and Maeve Regan (PILA Legal Officer) at the launch of PILA's Progress Report.



## PILA and Barnardos co-host seminar on aftercare

**F**On 23 May 2012, PILA co-hosted a seminar on aftercare with Barnardos. The popular seminar was attended by around 90 people, including an advisor to the Minister for Children. The issue of aftercare is significant as “young people leaving the care system are falling through the gaps because of inconsistencies in the availability and quality of services across the country.” Barnardos say that the issue needs to be urgently addressed and a legislative framework must be implemented.

The seminar was held in round-table form with a panel of experts, including Geoffrey

Shannon, Norah Gibbons and Susan Carey BL, giving succinct clear presentations on the law on after-care here and possible reform. PILA had previously set up a working group of lawyers for Barnardos to research the law in relation to aftercare in other jurisdictions. The report of the working group then formed the basis of this seminar. Susan Carey BL presented the findings of the group to the seminar. Barnardos is calling for reform of the law so that there is an obligation on the State to provide after-care to young people leaving the care system.

## Progress Report shows huge *pro bono* developments since 2009

**I**n May, PILA was delighted to publish its Progress Report, which details the project’s work and achievements since 2009. The Report was presented at an event on 10 May that also officially launched PILA’s new website, which has been live since March 2012. The event also gave lawyers and organisation staff who work with PILA the opportunity to meet one another in a friendly and informal setting.

The Progress Report explains PILA’s work and operations as well as its guiding principles and provides testimonials from organisations and lawyers involved with the project alongside practical case studies. It also features key facts and figures; between 2009 and May 2012, PILA has facilitated over 100 legal advice and litigation support referrals, 13 law reform working groups and 24 legal education sessions. Some 521 NGO staff have attended PILA’s legal education

## More practitioners sign up to PILA *pro bono* register in 2012

PILA issued a call in May through its Bulletin for new lawyers for its *Pro Bono* Register. PILA has already received a great response to the call, with solicitors and barristers with varied expertise and skills getting in touch shortly after the Bulletin went out. PILA now has over 100 lawyers on the register. The call from organisations with which PILA works continues to grow steadily and PILA is always delighted to hear from lawyers who would like to be on the register. Please email [maeve.regan@flac.ie](mailto:maeve.regan@flac.ie) if you’d like more information about the *Pro Bono* Referral Scheme and Register, or visit [www.pila.ie](http://www.pila.ie).

Since March, PILA has made around 30 referrals for legal advice, pre-litigation advice, law reform working groups and legal education sessions. The referrals were made to solicitors in large law firms, specialist non-commercial firms and barristers. Trainee solicitors have also become involved in law reform working groups. The number of requests for advice continues to grow as organisations get a greater sense of the kind of support PILA can provide to them.

sessions and there are now over 1500 PILA Bulletin readers. To subscribe to the fortnightly Bulletin, simply email [bulletin@pila.ie](mailto:bulletin@pila.ie).

The May event featured an interesting and entertaining presentation by Joss Saunders, General Counsel of Oxfam GB. Joss described innovative ways that lawyers can contribute their skills *pro bono* domestically and internationally, using examples from Oxfam’s work. He also commented that in his view there are three different “waves” of *pro bono* practice – the first being lawyers giving advice on any topic (on which they might not be expert), the second being lawyers giving advice on their specialist topic and the third being lawyers giving strategic advice that to advance the law in the public interest. PILA thinks it is noteworthy that, using Joss’ example, FLAC (through its Legal Advice Centres, specialist clinics and PILA) is directly responsible for all three waves of *pro bono* in Ireland.



Joss Saunders (General Counsel at Oxfam GB) giving his presentation on innovative ways lawyers can work *pro bono* at the launch of PILA’s Progress Report.

## Judicial appointment for FLAC Council Member



FLAC is proud to learn of the nomination of Iseult O'Malley SC for appointment to the High Court. Iseult has a long association with FLAC, first volunteering in 1985 at the former office in North Earl Street while still a law student. Since then she has remained actively involved with the organisation, most notably in her role as a member of FLAC's National Council since 1990. The High Court appointment is testament to Iseult's distinguished legal career, primarily in the field of criminal law. Iseult was called to the Bar in 1987 following her legal education at Trinity College, Dublin and the King's Inns, and was made Senior Counsel in 2007.

FLAC would also like to congratulate Managing Solicitor of Northside Community Law Centre, Colin Daly, on his recent appointment as a judge of the District Court. Both Iseult and Colin will be greatly missed by colleagues and friends at FLAC and NCLC, but we wish them both success in their new roles.

Congratulations are equally due to Paul McDermott SC and Colm Mac Eochaidh SC on their respective appointments to the High Court, both of whom have generously given their time to FLAC and to PILA over the years.

## 2012 women's mini-marathon team – FLAC

FLAC is very grateful to the runners, joggers and walkers who took part in the 2012 Women's Mini-Marathon to raise funds for FLAC. Under the banner "improving access to justice – one step at a time", they braved the sweltering June heat (the only hot day that month!) over 10 km of Dublin's streets.

A big thank-you goes to Team FLAC 2012: Mary Guy, Niamh McEvelly, Catherine Moran, Brid O'Brien, Aine Walsh, Lorraine Walsh, Eileen Woods and the others who ran for FLAC. We rely on voluntary work and donations to maintain our service so the money and goodwill raised by this elite team is so appreciated. Well done!

## UN human rights expert on extreme poverty issues follow-up report after Ireland visit

In June 2012, Magdalena Sepúlveda Carmona, the UN Special Rapporteur on Extreme Poverty and Human Rights, presented her follow-up report on country visits to the UN Human Rights Council. Ms Sepúlveda visited Ireland in January 2011 and her initial report reminded the Government of its obligations to comply with human rights standards, viewing the crisis as "an opportunity for Ireland to put human rights at the heart of the recovery". She recommended that the Government incorporate international human rights instruments into domestic law as well as strengthening the social protection system and infrastructure so people could access their economic, social and cultural rights.

The Special Rapporteur then issued a country-specific questionnaire to the Irish government and relevant civil society stakeholders to assess any progress made on her recommendations. FLAC's response outlined the changes made in Budget 2012 and the lack of progress on issues including delays in accessing civil legal aid, problems relating to the administration of the social protection system and the lack of action on personal debt issues.

In her statement to the UN Human Rights Council, Ms Sepúlveda noted that the follow-up report on her country visits did not reflect the Irish Government's late response but that the response and the Government's comments on the draft report "will be central to future engagement". She commended the

Government on raising the lower threshold for payment of Universal Social Charge in Budget 2012 but noted with concern the increase in Value Added Tax which she felt would impact on people with lower incomes.

Ms Sepúlveda also raised concerns about cuts to social protection as well the apparent lack of any human rights impact analysis. She noted the "threat" that the application of the Habitual Residence Condition posed to the "enjoyment of human rights by members of vulnerable groups, particularly people experiencing homelessness, Travellers, asylum-seekers, migrant workers and returning Irish migrants". Consequently, she called for a review of the impact of the condition. In relation to direct provision system for those seeking asylum, while noting that her recommendation for a system review had not been followed, she welcomed the proposed introduction of a single determination procedure in the upcoming Immigration, Residence and Protection Bill to reduce delays and urged the Government to keep this commitment and "ensure the new system is grounded in human rights principles".

The follow-up report of the UN Special Rapporteur on Extreme Poverty and Human Rights is available online on the website of the UN Office for the High Commissioner for Human Rights at: <http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>.



ERA coalition members presenting a petition to Minister for Justice, Alan Shatter on 10 May. The petition called on the Minister to ensure that the new Irish Human Rights and Equality Commission (IHREC) is a renewal of the country's human rights infrastructure, not a regression.

In related news, FLAC Senior Solicitor Michael Farrell presented a paper to a seminar of the European Committee against Racism and Intolerance (ECRI) in Strasbourg, just prior to the publication of the draft IHREC bill which outlines the history of both bodies; the background to the merger and the Working Group's recommendations. The paper is available to download at [bit.ly/1MAa0Ky](http://bit.ly/1MAa0Ky).