

# flacNews

FREE LEGAL ADVICE CENTRES

## Steady rise in need for legal supports revealed in annual report 2013

**F**LAC unveiled its annual report for 2013 on 7 July, revealing that alongside its advocacy and policy work, the organization had helped some 27,546 people directly with their legal problems through its national telephone information line and network of legal advice centres around Ireland.

Launching the report, Chief Justice Susan Denham said “My wish is that justice is done for the people of Ireland in terms of their access to the legal system. Rights are meaningless without access. FLAC is playing an important role in making rights a reality for thousands of people.”

Both the Chief Justice and FLAC’s chairperson Peter Ward SC highlighted the vital contribution made by volunteer lawyers who gave their time and expertise to the free confidential FLAC clinics run in partnership with Citizens Information Centres around the country. Chief Justice Denham said “Each lawyer is a representative of the profession. Each time they treat a client with courtesy, respect and professionalism, that is a victory for the justice system. I have no doubt that this is what happens in all FLAC centres across the country”.

FLACs 2013 Annual Report shows that there are free legal advice centres in 81 locations around Ireland of which 73 return data to the organisation. This data shows that there were at least 13,805 visits to FLAC centres in 2013. FLAC’s Director General Noeline Blackwell said that the overall increase in queries showed a continuing pressure for people to have timely access to the information and access they need to deal with the many legal relationships everyone has in our society.



*Chief Justice Susan Denham launching FLAC annual report for 2013*

The main questions that people raised were family problems, employment issues and debt worries. Calls to the telephone information service were up 10% over 2012. The line also saw a sharp rise in housing law issues, particularly the rights and responsibilities of landlords and tenants, recording an increase of 83% over 2012. Questions about neighbour disputes and breaches of contract also rose among those phoning for information.

A former FLAC volunteer herself, the Chief Justice commented that “it is quite obvious that the Great Recession, which has blighted the lives of so many Irish people, has created an increasing workload at FLAC.” Quoting what she

called ‘eye-opening’ statistics from the report, she went on to say that the rise in credit and debt queries to FLAC “is not surprising in these challenging times” and she noted that FLAC was “continuing its work advocating fairness for those on low incomes dealing with personal over-indebtedness in these very difficult times”.

FLAC Chairperson Peter Ward SC welcomed the Chief Justice to the FLAC offices, where the launch was held. He noted the hard work of the organization over the past year and particularly the massive contribution of the hundreds of legal volunteers.

An intervention from Columb Fortune, who works on the legal information and referral line, outlined its role in helping the almost 14,000 people who used it to access justice last year (see box on page 9). He underlined its role as a frontline tool for people to start addressing their legal problems.

FLAC Director General Noeline Blackwell thanked the Chief Justice and all present, noting that when Mrs Justice Denham had herself been a FLAC volunteer in the 1970s, in centres on Mountjoy Square and Molesworth Street, the legal problems coming into FLAC were broadly the same as today. Family law (then called ‘interpersonal relations’) and debt were among the main issues raised. She noted the increasing complexity of issues presenting on the phonenumber and in centres, reflecting the more complicated arrangements of people lives but also requiring much more time and effort from volunteers and phone line information providers.

She said “It’s not just the number of enquiries that we should note, but also that people seem to have more complex

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# Woman in Subsidiary Protection challenges refusal to backdate Child Benefit

A woman who was granted Subsidiary Protection in the State has been given leave by the High Court to challenge a refusal to backdate her Child Benefit payments.

Teresa (not her real name) arrived in Ireland with her husband in 2006 and applied for asylum. She gave birth to their son two years later. The couple's asylum application was refused but they then applied for Subsidiary Protection, which is provided for under an EU Directive dealing with qualification for refugee status or other international protection.

The Directive describes Subsidiary Protection as applying to someone "who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin ... would face a real risk of suffering serious harm..."

Teresa applied for Child Benefit in respect of her son but was refused on the grounds that she did not have a legal right to reside here and did not satisfy the Habitual Residence Condition (HRC). Eventually, in 2012, the couple were granted Subsidiary Protection and Teresa was later awarded Child Benefit dating from when they had been given Subsidiary Protection.

Teresa appealed that decision, seeking to have the payments backdated to when her son was born or when she first applied for benefit. She referred to a judgment by the High Court in 2011, which said: "The determination of an asylum application does not have as its purpose or outcome the discretionary grant or refusal of refugee status by the Minister ... An asylum seeker is a refugee as and when the circumstances defined in the Geneva Convention arise and apply. The determination of the asylum application is purely declaratory of a pre-existing state... [D (a Minor) v Refugee Applications

Commissioner [2011] IEHC 33].

That judgment had been quoted in a decision recorded in the Annual Report of the Social Welfare Appeals Office for 2011. The Appeals Officer in that case relied on the High Court judgment to hold that a woman who had been recognised as a refugee should have her Child Benefit payments backdated to when her son was born, some months after she arrived in the State.

Teresa, who was represented by FLAC, argued that Subsidiary Protection should be treated in the same way as refugee status and her entitlement to protection should be dated back to when she first applied since the eventual decision was based on the facts as they were when she first applied.

Her appeal was rejected without an oral hearing although she had requested one. The Appeals Officer relied on an amendment to the Social Welfare Consolidation Act that had been passed in 2009, after Teresa's first application for Child Benefit. The amendment provided that no-one in the asylum process could satisfy the Habitual Residence Condition, even if they were subsequently recognised as refugees or given permission to remain in the State, with the result that payments could not be backdated to cover periods in that process.

Teresa relies in her judicial review application on EU Directive 2004/83/EC, which says that persons recognised as in need of Subsidiary Protection should be entitled to the same "core" social security benefits as citizens of the host state, including "parental assistance" and argues that this should apply from the beginning. Her case should help to clarify the meaning of the Directive and the status and entitlements of other people in Subsidiary Protection.

# Recovery of costs from legally aided clients potentially inequitable

**T**he Civil Legal Aid Act 1995 governs the provision of legal advice, assistance and representation in non-criminal matters through the Legal Aid Board. Unlike criminal legal aid, civil legal aid (that is, for matters that do not relate to criminal law) is not free. People who are granted civil legal advice and/or aid must pay what is called a contribution to the Board, save in limited circumstances, such as a waiver for reason of hardship.

Where a person receiving legal aid successfully recovers money or property, the Legal Aid Board will seek to recover the costs it incurred in providing legal services to the person. Section 33(6) of the Act confers this right on the Board, subject to certain exceptions outlined in Subsection 8 of the same section.

Section 33(8)(a)(i) provides that “The Board shall waive any right to any money or other property to which it is entitled under this section, to the extent that such money or other property consists of a house or portion thereof... being the normal place of residence of the recipient of legal aid or advice concerned”.

From an initial reading of the legislation, it would appear that there are two possible interpretations of this provision. However, FLAC is concerned that the way in which the Legal Aid Board has chosen to interpret the legislation arguably gives rise to a serious inequity.

Section 33(8)(a)(i) is being interpreted in such a way that allows the Legal Aid Board to recover costs where the normal place of residence, or family home, is sold on foot of legal proceedings in which the Board was acting on behalf of the client.

If, for example, in family law proceedings a property adjustment order is made such that the family home is to be sold, then Section 33(8)(a)(i) would not prevent the Legal Aid Board from recovering costs from the proceeds of sale on the basis that the claim is not against the house itself (as the normal place of residence) but against the proceeds of sale of the house. This approach means that in the event that the family home is sold, the Legal Aid Board will be entitled to recover its costs from the proceeds of sale.

FLAC suggests an alternative interpretation that follows natural and constitutional

justice: that the section prevents a claim in respect of money realised from the sale of the family home, because the proceeds of sale of the family home constitutes a portion of the family home. We believe that as the family home is excluded for the purposes of assessing an applicant’s eligibility for legal aid, the family home should be exempt from the recovery of costs.

Unfortunately, according to the Legal Aid Board’s Circular on Legal Services (January 2007), the approach adopted by the Board is the one favouring the recovery of costs from family home sales:

“Sale of family home/proceeds are divided. Where the family home is sold, section 33(7) provides that the Board shall recover its costs from the proceeds of sale.”

This has significant implications for legal aid clients. In the event that a court orders the sale of the family home on foot of separation or divorce proceedings, the funds raised by this sale may be the only assets or capital available to the often vulnerable parties who are availing of civil legal aid. In this case, once the Board has recovered its costs, the legal aid client may be left with little or nothing.

The issue was most recently brought to FLAC’s attention when a legal aid client was referred to FLAC by a local TD. The Legal Aid Board was seeking to recover substantial costs from the client, which she found extremely difficult to meet. FLAC raised concerns with the Board about the way in which the costs had been calculated and the lack of clarity regarding its interpretation of hardship.

The decision of the Legal Aid Board to recover costs on foot of the court-ordered sale of the family home is a worrying one and, in addition, where there is clearly a situation of hardship created by this intention to recover costs, FLAC queries why the Board would fail to make use of provisions in the legislation that allow for a waiver.

FLAC is committed to ensuring that the basic human right of access to justice is respected, protected and promoted, and will seek to work with the Legal Aid Board to avoid inequitable practices or misapplication of protective procedures.

## Small advance for Trans teens, but still no date for Gender Recognition Bill

Minister for Social Protection Joan Burton announced Cabinet approval for new Heads of a Gender Recognition Bill on 17 June. This followed criticism of the previous Heads of the Bill by an Oireachtas Committee and in a Dail debate in May.

The new Heads of Bill (a skeleton version of the proposed Bill) would allow young trans people between the ages of 16 and 18 to obtain recognition in their preferred gender, but only with parental consent and letters from two doctors, and if a court agrees to exempt them from the overall minimum age limit of 18. The new draft also drops a provision that would have allowed trans persons to be excluded from competing in some sports.

These small steps forward are to be welcomed but there is still no change in the requirement that married trans persons must divorce as a pre-condition for recognition in their preferred gender. And, crucially, there is still no date set for when the finalised Gender Recognition Bill will be published,

The Heads of Bill have now been sent to the Parliamentary Counsel’s office to be worked up into the final version, which is a notoriously slow process, and there is no guarantee that it will be published, much less passed, before the end of the year.

Meanwhile the High Court has fixed a date for hearing new legal proceedings by Dr Lydia Foy on 4 November this

**Continued on page 7**

# Legal Aid Board conference focuses on Civil Legal Aid in a changing world

On Wednesday 18 June 2014 the Legal Aid Board held its annual conference in Dublin with the theme of 'Civil Legal Aid in a Rapidly Changing World', with speakers including FLAC Director General Noeline Blackwell.

Other speakers addressing the gathering were Legal Aid Board CEO Dr Moling Ryan, its Chairperson Muriel Walls, UK Professor Roger Smith, Canadian Dr Ab Currie and Mr Herman Schilperoort of the Dutch state legal aid body.

Muriel Walls discussed the policy and legislation underpinning the provision of civil legal aid in Ireland. She reminded attendees of the eligibility requirements and contributions to be made by legal aid recipients. In addition, she spoke about the remit of the Board under mandate, noting in particular that tribunals have become far more legalistic since the introduction of the Civil Legal Aid Act 1995. To date, the only tribunal for which legal aid is available is the Refugee Appeals Tribunal but, as noted by Ms Walls, this could easily be extended by Ministerial Order. She did, however, note that the Legal Aid Board does not have the capacity to deal with further tribunal work and additional resources would be essential were the remit of the Board to be extended.

Professor Roger Smith spoke about 'Technology as an Enabler of Legal Service Delivery' and outlined the need for the provision of legal services to move with the technological times and become more adept in an information age.

FLAC Director General Noeline Blackwell spoke on the right to legal aid and whether it is rigid or discretionary. In her presentation, Noeline spoke comparatively on the systems of criminal legal aid and civil legal aid in Ireland and on how the eligibility criteria for criminal legal aid is discretionary whereas the eligibility for civil legal aid is rigid. She drew parallels between the provision of health care by discretionary medical cards and civil legal aid and how a severe illness or disability often resulted in a discretionary medical card being awarded.

Noeline observed that FLAC had raised

## Noeline receives Honourary Doctorate from University College Dublin

FLAC Director General Noeline Blackwell receives her honorary doctorate from Professor Andrew Deeks, President of University College Dublin.



concerns in a pre-recession report that the number of solicitors operating the civil legal aid scheme across the country was far too low; that entire counties were relying on one small legal office. When the recession hit, it was clear that additional pressures would be put on the already stretched resources of the Board.

Noeline noted that, in civil matters, because the issue is not one of criminal defence, regardless of the gravity of the consequences, legal aid will only be available to those who can slot themselves in to a 'rigid, entirely inflexible framework'. She suggested that the tools are available to put a civil legal aid system in place that would vindicated the right to civil legal aid as part of the right of access to justice and that the way to go forward with this is the use the criteria in place for the (discretionary) system of criminal legal aid.

A theme that was constant throughout the conference was the need for more methods of alternative dispute resolution in family law cases. Noeline Blackwell spoke of the need for a closer linkage between mediation and law, and John McDaid, Head of Civil Operations with the Legal Aid Board, spoke at length about the need to adapt an integrated approach in facilitating the resolution of disputes in family law. Mr McDaid spoke of a new

pilot scheme the Board are operating in Cork that will require legal aid applicants in family separation and divorce proceedings to attend and information session on mediation, before they will be eligible for legal aid. Among others, the purpose of this scheme is to incentivise alternative routes to dispute resolution, and to dissuade applicants from turning to the courts as their first port of call for resolving legal issues. This, in turn, would alleviate some of the pressure on the Law Centres.

Dr Ab Currie spoke to attendees on the Canadian Legal Aid system and the reforms that it has seen over the past several years. Mr Herman Schilperoort of the Dutch Legal Aid Board also took attendees through a detailed description of how legal aid functions in The Netherlands, and outlined the system in place there called rechtsbijstand.

The conference offered much food for thought and highlighted again the need for the rights of those most marginalised in society to be respected, protected and promoted.

You can read Noeline Blackwell's paper to the conference at [www.flac.ie/news](http://www.flac.ie/news)

# Ombudsman: an alternative path to justice

by Peter Tyndall, Ombudsman & Information Commissioner

I was very pleased to be appointed as Ombudsman and Information Commissioner in succession to Emily O'Reilly, who, along with her predecessors, had developed a well regarded and effective Ombudsman service for Ireland. This year marks the 30th anniversary of the Ombudsman's Office in Ireland and will be celebrated with a conference later in the year in partnership with the IPA.

The Ombudsman and FLAC have considerable synergies, particularly where the individuals looking to pursue their concerns are in dispute with a provider of public services. With access to the courts increasingly difficult, and with the formal system of justice seeming intimidating to many, the Ombudsman offers a complementary route to redress which is inquisitorial rather than adversarial, and which has other distinctive characteristics, not least a concern about addressing systemic failings in services.

The Ombudsman is best understood as part of a system of administrative justice. When service users cannot resolve their complaints about public services, they need access to routes to redress. These can include courts, tribunals and Ombudsmen. For most dissatisfied service users, the Ombudsman offers a free, impartial route to redress.

All of the elements of the administrative justice system have one important characteristic in common, they are objective arbiters and not advocates for complainants or agents of service providers. In other words, they consider the facts of each case on its merits and decide whether something has been done wrongly, or whether something that should have been done has not been done, and if so whether the person complaining has suffered an injustice.

If the person complaining has suffered an injustice, some of the other distinguishing features of the Ombudsman come to the fore. Firstly, the Ombudsman will act to ensure that the individual gains redress. Often, the principle which underpins this is that the person who has suffered an injustice is put back into the situation they would have been in had the error not occurred. This might mean financial



redress in respect of any loss suffered or access to a service which had previously been wrongly denied. An Ombudsman's work does not stop with the judgement, unlike other systems of justice, but continues until the wrong has been righted.

The second aspect of an Ombudsman's work which distinguishes us from other aspects of the administrative justice system is the emphasis on identifying systemic faults, problems with services, systems or procedures which make it likely that the injustice suffered by an individual complainant may have happened to others. Many individuals come to Ombudsmen motivated by a desire to make sure that what happened to them will not happen to anyone else. They want the Ombudsman to put things right.

Failure can occur because of individual error, because of problems with training or systems, because of poor management or even, because the law has unintended consequences. My Office is skilled in identifying where problems are arising

from wider causes, and are likely to have affected other people, or to do so in the future. In these circumstances, our recommendations go beyond the individual case and look to bring about changes in the way that services are delivered to ensure that problems do not recur. I may also seek changes in the law, where this is itself leading to injustice.

A third important feature is that the Ombudsman goes beyond the law, to look at issues such as fairness and good administration. Even where a public service provider has acted in keeping with the relevant legislation, we can and do identify unfairness or inconsistency and go on to uphold a case.

So for those of you offering advice to callers to your centres, you may want to consider whether, in some instances, helping or encouraging individuals to complain to my office would be the most appropriate response. Usually, we will look at cases after the individual has already complained to the provider concerned and failed to get a satisfactory outcome. You can find out more about our work on our website, which also contains an on-line complaint form, or by calling 1890 22 30 30.

• Peter Tyndall was appointed Ombudsman and Information Commissioner in December 2013. The Ombudsman's Annual Report has just been published and is available to download at [www.ombudsman.ie](http://www.ombudsman.ie)



Bliain Á Chur Ina Cheart  
Years Putting It Right  
Oifig an Ombudsman  
Office of the Ombudsman

## What does the Office of the Ombudsman do?

The Office of the Ombudsman is an independent, impartial and free-to-use service. The Ombudsman examines complaints from the public against public bodies such as Government Departments, local authorities, the HSE (including public hospitals) and third-level education bodies. Before making a complaint to the Ombudsman, you must have tried to resolve your problem with the public body.

# O'Brien v Permanent TSB Finance (PTSB): Implications for people frustrated in their attempts to end Hire Purchase Agreements

**T**he most recent finding of the Financial Services Ombudsman (FSO) in the case of **O'Brien v PTSB Finance** in May 2014 will have implications for people who tried to end their Hire Purchase agreements and return the hired goods (usually a motor vehicle) over the past six years, only to be refused by the provider. However time is of the essence, as the clock is already running for people who may still be in a position to bring similar complaints to the Ombudsman.

## **Background: The Hire Purchase agreement and first attempt to end it**

In May 2008, some six years ago, David O'Brien entered into a 60-month Hire Purchase agreement with PTSB for a motor vehicle. Under the terms of this deal, if he made all the payments, he would own the vehicle at the end of the 5-year period. However, Mr O'Brien wrote to PTSB in November 2010, attempting to end that agreement under the terms of Section 63 of the Consumer Credit Act 1995. This section allows a Hirer to end a Hire Purchase agreement in writing, hand back the goods and pay the Owner the difference between what has already been paid (including any deposit) and half the HP price (the total amount owed including interest and charges).

In Mr O'Brien's case, at the time he tried to end the agreement, he was €681 short of having paid half the HP price. PTSB refused to accept the termination of the agreement and the return of the vehicle unless he paid this money in advance. Mr O'Brien was not in a financial position to pay this amount in one sum. Thus, he had no option but to continue the agreement and so resumed paying the instalments.

## **The Gabriel case and its implications**

In July 2011, the High Court had decided in the case of *Gabriel v Financial Services Ombudsman* (also an appeal brought on Ms Gabriel's behalf by FLAC against a decision of the FSO) that the proper interpretation of Section 63 of the Consumer Credit Act 1995 meant that a Hirer had a right to end a HP agreement in writing and the Owner could not insist

on payment up-front of any monies then owed. The Hirer would still have to pay whatever sum was owed, but not as a precondition to end the agreement. Crucially, this meant that the Owner would have to accept the return of the vehicle.

In September 2011, having become aware of this decision, Mr O'Brien wrote to end his HP agreement with PTSB a second time. This time PTSB accepted the return of the vehicle. By this point, Mr O'Brien had paid more than half the HP price, but he was in arrears with the payments and between this and an amount levied for alleged damage to the vehicle, he was billed for €847.12 by PTSB when the vehicle was returned. Unable to pay this amount in one lump sum either, an agreement was reached to pay 10 instalments of €84.71.

## **The complaint to the Financial Services Ombudsman**

In October 2011, Mr O'Brien complained to the FSO that PTSB had failed to reimburse him for the ten instalments he had paid under the Hire Purchase agreement between November 2010, when it incorrectly refused to allow him to end the agreement, and September 2011, when it finally came to an end. He claimed that he should be compensated for PTSB's mistaken interpretation of Section 63 of the Consumer Credit Act 1995, following the High Court ruling in the *Gabriel* case.

In April 2012, the Financial Services Ombudsman dismissed Mr O'Brien's complaint, finding that the decision in the *Gabriel* case "is not retrospective" and that PTSB "cannot be faulted for its behaviour as it was acting in accordance with the then widely accepted interpretation of Section 63 (2) of the Consumer Credit Act 1995".

## **The High Court appeal and re-investigation by FSO**

The following month, in May 2012, Mr O'Brien appealed this decision to the High Court – which is the only avenue of appeal from a decision of the Financial Services Ombudsman. In September 2012, solicitors on behalf of the FSO indicated

that it did not intend to contest this appeal, as it was not satisfied that it had taken sufficient account of the decision in the *Gabriel* case in reaching its decision in Mr O'Brien's case. The original Financial Services Ombudsman's finding was quashed and, by order of the High Court, the matter was sent back to the FSO to be considered afresh by a different investigator in that office.

Finally, on 21 May 2014, the Financial Services Ombudsman upheld Mr O'Brien's original complaint from October 2011, finding that in light of the High Court decision in the *Gabriel* case, PTSB was mistaken in not allowing Mr O'Brien to terminate his Hire Purchase agreement in November 2010.

In pursuit of his complaint, Mr O'Brien had sought compensation of €4690 (which equalled the extra 10 instalments of €469 each that he had to pay). The Financial Services Ombudsman awarded Mr O'Brien €3,000 of this amount, as it considered that he had also had the benefit of the use of the vehicle during the ten-month period in question and that he could have terminated the agreement earlier, at the point where he had paid half of the total HP price.

In addition, the Financial Services Ombudsman awarded an additional payment of €500 in recognition of the very long period that had elapsed during which Mr O'Brien had not had access to or the use of the money he used to pay the instalments. Therefore he received a total award of €3,500.

## **The potential application of this decision to other Hirers**

FLAC supported the *Gabriel* appeal in the High Court as a test case, aware that hundreds of hirers were being blocked in their attempts to end their Hire Purchase agreements and return a vehicle that they did not own to the rightful owner. This is a right enshrined in legislation. When Mr O'Brien, aware of the importance of the *Gabriel* decision, attempted to obtain redress and was frustrated by the decision of the Financial Services Ombudsman, FLAC similarly supported his appeal.

**One thing is now clear from the revised decision of the Financial Services Ombudsman of May 2014: Any Hirer who can show that she or he tried to end a Hire Purchase agreement in writing under section 63 of the Consumer Credit Act 1995, and who was not allowed to do so by the owner/lender, may have a legitimate right of complaint to the FSO.**

It is vital to note, however, that under the legislation establishing the FSO, a consumer is not entitled to bring a complaint **if the conduct complained of occurred more than six years** before the complaint is made – the so-called ‘six-year rule’.

If you were in a similar position to Mr O’Brien, you might wish to complain about the conduct of an Owner/Lender who failed to accept a termination in writing of a Hire Purchase agreement under Section 63 of the Consumer Credit Act 1995. However, at the time of writing – June 2014 – you could in theory only go back as far as a lender’s refusal to accept the termination of Hire Purchase agreements from June 2008 onwards.

With every month that passes, this time limit moves forward.

It is also important to note that in order to be awarded some form of monetary compensation by the Financial Services Ombudsman, you will likely have to show that you **sustained some financial loss as a result**, such as Mr O’Brien did by having to pay an additional ten instalments under his hire purchase agreement.

It is also very important to understand that in order for the Financial Services Ombudsman to deal with your complaint, **you must first have made a complaint to the financial service provider itself** and given it an opportunity to resolve the matter. Under the terms of the Central Bank’s Consumer Protection Code, the provider must attempt to resolve your complaint within 40 business days. If the provider does not meet this deadline, or if you are not satisfied with its decision, you may refer the matter on to the Financial Services Ombudsman. You can get further information on the relevant procedures at [www.financialombudsman.ie](http://www.financialombudsman.ie).

FLAC recommends that any complaints, whether to the provider or to the Financial Services Ombudsman or both, be **made by registered post**. You should keep copies of all documents and letters in an organised file and avoid phone contact with the provider as much as possible. If it is necessary to make any phone calls in relation to your case, you should note the time, date and content of the call and always look for matters to be followed up in writing.

- \* You can read more about Gabriel & Anor -v- Financial Services Ombudsman [2011] IEHC 318 at <http://bit.ly/GabrielvFSO>
- \* You can read the full text of the decision in O’Brien v Permanent TSB Finance at <http://bit.ly/OBvPTSB>
- \* For more information in relation to the above, please contact the FLAC information and referral line at lo-call 1890 350 250. You can also visit your local FLAC advice centre for a free consultation with a volunteer lawyer face to face – details of your nearest centre are at [www.flac.ie/help](http://www.flac.ie/help)

## ***Small advance for Trans teens, but still no date for Gender Recognition Bill (continued from page 3)***

by Dr Lydia Foy on 4 November this year. By then it will be just over seven years since the courts held that the failure to issue Dr Foy with a new birth certificate in her female gender was a breach of the European Convention on Human Rights (ECHR).

In her new proceedings Dr Foy is asking the court to take action to enforce its ruling in her favour made in October 2007, or to declare that the ECHR Act 2003, which was intended to make the Convention part of Irish law, is ineffective and should be amended.

This raises important issues about the lack of respect by the Irish authorities for the ECHR and the significance of the case is indicated by the fact that the International Commission of Jurists has been given permission to join in the proceedings to argue the need for effective remedies in Irish law for breaches of the ECHR.

The High Court will review the position in Dr Foy’s case on 9 October to see what, if any, progress has been made in the meantime but unless there have

been major developments, it will go ahead as scheduled on 4 November.

It is long past time to end the shameful treatment of transgender persons in

Ireland and for the Irish authorities to take seriously their responsibility to implement the ECHR in our domestic law.

### **Government ‘guarantees’ trans rights at international conference**

**The Irish Government signed an international Declaration in Malta in May promising to**

**“ 6. Guarantee the full legal recognition of a person’s gender identity in all areas of life, in particular by enabling the change of names and gender in official documents in a fast, transparent and accessible manner, and**

**“7. Remove abusive and disproportionate requirements for legal gender recognition”**

**Minister Kathleen Lynch signed the Declaration during a conference hosted by the Maltese and Swedish governments to mark International Day Against Homophobia and Transphobia (IDAHO).**

**There was no time limit by which signatories have to change their laws but next year’s IDAHO conference is expected to focus more on implementing the promises made in the Declaration, so Ireland will have questions to answer if the Gender Recognition Bill has not been passed by then.**

## FLAC ANNUAL REPORT LAUNCH



**Top left:** L-R: Mary Guy a former volunteer, Maeve Regan of Mercy Law Centre and Chief Justice Susan Denham  
**Top right:** L-R: FLAC Chairperson Peter Ward SC, Chief Justice Susan Denham and FLAC Director General Noeline Blackwell at the launch of FLAC's annual report 2013.  
**Bottom left:** L-R: Catherine Cosgrave, Director of the Law Centre for Children & Young People; Jennifer White BL; Moya De Paor Solicitor with Community Law & Mediation (formerly NCLC); and Naomi Keenan.  
**Bottom right:** L-R: FLAC interns Fredella Surjono, Esther Ham and Rose Gartland.

All photos by Derek Speirs

**Continued from front page:**

questions, with those in trouble finding their lives ever harder to manage. This is why, as well as giving people basic information and advice, FLAC also seeks changes to the legal system which would make it fairer and allow people better access to their rights. Sometimes, they just need to be able to talk to a lawyer but the structures and systems that exist often mystify people; they can't get justice because they can't negotiate the systems. Our work in 2013 involved getting information and advice to those who needed it and also challenging unfair systems where they hinder access to justice."

In this vein, Noeline also took the opportunity to launch another FLAC initiative: a new set of legal information booklets. Covering areas of frequent enquiry to FLAC centres and the telephone information line, the booklets

are free to download from FLAC's website and will also be available in Citizens Information Centres (see page 10 for more information). They were compiled with the invaluable help of volunteer lawyers who provided practical, insider insights to the legal areas covered.

The 2013 Annual Report showcases the organisation's policy submissions and research across its priority areas. These include laws affecting those on social welfare or hit by consumer debt, those needing consumer credit or access to the civil legal aid system, and the long-standing campaign for transgender recognition.

The organisation also advanced its goal of promoting a human rights and equality perspective to Government Budgets during the year through its Public Interest

Law Alliance project, PILA. Through PILA, the organisation also matched 50 social justice organisations needing legal support with *pro bono* legal assistance from law firms and barristers and delivered legal education sessions to more than 200 people in those organisations.

FLAC is grateful to all those who contributed to its work in 2013.



FLAC's annual report can be downloaded at [flac.ie/publications](http://flac.ie/publications)



L-R: PILA volunteer Katie Dawson BL, FLAC volunteer Susan Webster, and FLAC Volunteer & Centres Manager Zsé Varga.



L-R: PILA team members Rachel Power, Kim Watts, Ethine Lynch and Mairead Healy.

## FLACLINER STATISTICS

# Rise in calls to FLAC over lifetime of recession

During 2013, FLAC received 13,741 calls from the public to our telephone information and referral line. This was a 10% increase on the previous year, and trends show that the number of calls to FLAC has more than doubled since 2006. In addition to calls from the general public, FLAC also dealt with 222 more complex calls from organisations seeking second-tier advice in the areas of employment, debt and social welfare last year.

Free legal advice centres also saw a rise in attendance in 2013 with 13,805 people calling in to the 73 FLAC centres around the county participating in our data collection programme. This was just over a 6% increase on the previous year when data was collected from the same number of centres. A combination of increasing demand for FLAC's services, more centres participating in the data collection programme and new FLAC centres being set up, saw the number of recorded queries in FLAC centres treble since 2006.

Family law is the most common query on both the phones and in the centres accounting for one fifth of all calls and one third of all visits respectively. On the phones one-third of family queries were regarding a divorce or separation, one-quarter in relation to custody, access or guardianship of children and roughly one-fifth had a maintenance query. This breakdown is almost identical to family law trends the previous year. In the centres almost half of callers with a family law concerns were related to separation and divorce while 30% were concerned with custody, access and guardianship of children.

Legal services were the second most common query on the phone lines last year, with 81% of callers in this category looking for details of their nearest FLAC centre. Just over 4% were looking for a solicitor and 3% were looking for details of another organisation such as the Legal Aid Board.

Employment continues to be the second most common type of query in FLAC centres. One third of callers with an employment law query had a question about their contract with their employer, one quarter wanted to discuss a dismissal, while 16% were being made redundant

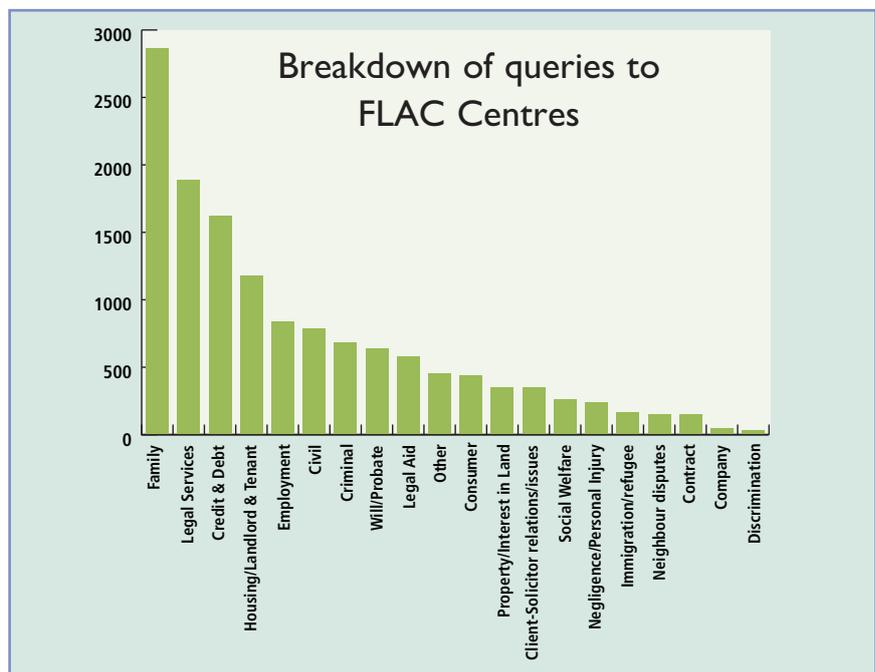
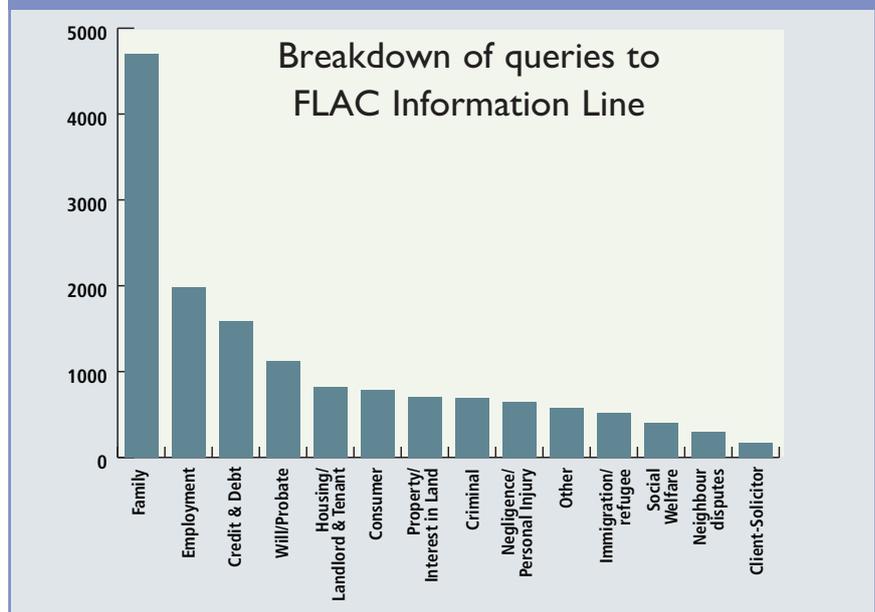
and just under 10% were experiencing discrimination in the work place.

Credit and debt queries remain high on the telephone information line (up 10% on the previous year) and in the centres (up over 26%). Just over half of all callers with a debt-related query were seeking help

with mortgage arrears.

Housing and landlord and tenant calls have increase significantly over the past two years, increasing by almost 84% on the phones last year alone. Sixty-five per cent of housing queries were disputes between landlords and tenants.

### FLAC Telephone Information Enquiries



## FLAC VOLUNTEERS:

# FLAC Volunteer Golden Pin Awards Scheme

Since it was set up in 1969, FLAC has always depended on the work of volunteers.

FLAC is truly grateful to all volunteers who provide this much needed and valuable service free of charge, out of good will. Without volunteers, in 2013 alone almost 14,000 people would have not been able to get the legal advice they needed to help them to begin to address their legal problems.

Our callers cannot afford to pay for private legal advice and many of them experience additional disadvantage and marginalisation. What FLAC volunteers do by giving their time and skills at the FLAC centres provides a bridge between the difficulties that people are facing in their lives and the beginning of the solution to these difficulties.

Although we have always valued the contributions of our volunteers, we want to formally thank you. To this end, we run our FLAC Volunteer Awards Scheme. The Award consists of enrollment on FLAC's Roll of Long Service Volunteers, a special Gold FLAC lapel pin and a certificate. We will make the presentation and acknowledge the qualifying volunteers at FLAC's annual Dave Ellis lecture in December 2014.

- \* To celebrate FLAC volunteers
- \* To acknowledge their commitment and support
- \* To let volunteers know that they make a difference in their local communities
- \* To encourage volunteering within the legal profession
- \* To raise awareness of the importance of the work FLAC volunteers carry out in the centres.

The award is presented to volunteers to recognise long-standing and continuous service and is given to volunteers who have volunteered regularly and continuously for at least the past 3 years. All long-standing FLAC volunteers country-wide as well as those contributing to the work of PILA are eligible.

Many Citizens Information Services around the country run legal advice clinics. While these are many and varied, FLAC is proud that most are still part of a countrywide network of FLAC centres through the nature and ethos of the

services and the tremendous work done by the volunteers, as well as taking part in the data collection programme. So we are inviting all Citizens Information Centres managers and staff as well as fellow FLAC volunteers to nominate those long-serving volunteers who meet the three-year continuous service criteria. If a nominated volunteer cannot attend the ceremony in December, it will be posted to their nominating Citizens Information Centre.

Our records are sometimes incomplete and we have missed out on some volunteers who have volunteered much longer than 3 years, so if you know anybody who should qualify for the award for their long and regular service, please

do let us know. We would not like to leave anybody out so we need your help!

We hope that your volunteering is a positive and rewarding experience and that you will continue to volunteer with FLAC for a long time to come. We thank you again so much for your time, skills and commitment to FLAC and to helping people in your community.

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

## New legal information booklets aim to make law more accessible

In July FLAC launched its new series of legal information booklets. These aim to provide the public with concise but informative guides on a variety of legal topics. Through queries to our Information & Referral line and legal advice centres, we have been able to pinpoint the key areas of law impacting on the lives of our callers. The publications are reflective of this research and so aim to provide legal information in focused areas.

FLAC has produced nine booklets, mostly building on previous FLAC publications. They cover Divorce, Separation, Maintenance, Domestic Violence, Family Law & Children, Wills & Intestacy, Probate and Enduring Power of Attorney.

We have also added a new leaflet on basic rights and duties in Landlord & Tenant law, to which we had valuable input from housing right body Threshold.

However chief credit for these guides goes to the group of wonderful volunteer lawyers who contributed their time and expertise to revising and expanding the leaflets. This is hugely valuable work which will benefit many people all over the country.

In line with our commitment to promoting access to justice, we hope the



FLAC's Amy Smyth pictured holding a selection of the nine new FLAC legal information booklets

booklets provide reader-friendly explanations of legal concepts and procedures. FLAC plans to expand this range of leaflets over the coming months.

The guides are free to download from [www.flac.ie](http://www.flac.ie) and are also available from local Citizens Information Centres.

## FOCUS ON FLAC:

# Columb Fortune

**C**olumb Fortune joined FLAC as legal information and civil legal aid intern in September 2013. He graduated from UCD in 2010 with a Bachelor of Social Science. Initially Columb wanted to work in the area of social policy, but in his final year he took several law modules, which led him to realise that his true passion lay in the law. He pursued this by completing a Master's Degree in Common Law in UCD, graduating in 2012. During this time Columb found that the advocacy side of law was something that really appealed to him so he decided to become a Barrister, being called to the Bar and graduating from the Kings Inns in 2013. Nonetheless Columb recognises the importance of his social science background within his chosen career.

In his undergraduate programme, Columb did a lot of policy work on issues around housing, health care, welfare and education which he feels really fed into this zest for social justice and how it can be underpinned and furthered by law: "I think it gave me a more rounded view of society and allowed me to explore law in a different way than if I had gone straight from school to study law". Columb really believes that a more holistic approach to law is important, particularly in the context of human rights and social justice. For Columb, sitting the Bar was a tough year but also extremely rewarding and he felt that you really get out of it what you put in. Meeting some really great people and engaging with the law in more hands-on way was the highlight of his time at the King's Inns.

Before he started his Master's programme, in 2010 Columb volunteered with Habitat for Humanity in New Orleans for 4 months



helping with the regeneration project set up to help after the devastating effects of Hurricane Katrina. He credits this experience, along with his involvement with the student legal services in UCD, with his interest in working in NGOs, in particular with FLAC.

Columb works specifically on the FLAC campaign area of civil legal aid and access to justice. He monitors and assesses trends in civil legal aid and assists with campaign work to improve access to justice, such as the current Legal Services Regulation Bill and strategic litigation opportunities. Through this work, he is able to help craft legal and policy submissions on how access to justice elements can be encompassed into legal frameworks. Columb chose this specific campaign area as he has always been interested to see how the rights of the poorest members of our society are vindicated, whether it is through institutions like the HSE or through local authority

housing. He saw that it was through the legal aid system that the most vulnerable members of society were accessing their legal rights and that was why he has chosen this campaign area within FLAC to work on.

In addition to his work on Civil Legal Aid and Access to Justice, Columb also works on FLAC's telephone information and referral line. This offers callers basic legal information for free and in confidence. This summer Columb is also the acting phone line manager. He says that issues of family law like divorce, separation and maintenance as well as landlord and tenant calls arise quite regularly when working on the phone line. Quite often his job involves talking individuals through court procedures or documents that may be quite alien to them.

Columb is also a FLAC volunteer offering free legal advice to the public in FLAC centres around Dublin in his spare time. He describes this as a great experience that gives him face-to-face time with the individuals that he is helping; he enjoys seeing the relief and clarity that people get from getting legal advice on an issue that is worrying them. Columb thinks that this one-on-one experience is invaluable because it has helped him develop both as a person and as a lawyer.

"Part of being a lawyer is being able to navigate your way through the emotional issues and find the real core legal matter that the person you are helping needs to address. Once you can tackle that, very often the person's emotion changes, they begin to realise that there are systems in place to protect them. They're not alone out there," he explains.

## FLAC Summer Squad – please help!

**W**hile many of us are away on our hard-earned summer holidays, the FLAC centres are just as busy as during the rest of the year. However, with many volunteers on holidays and the courts closed in August, we at FLAC face a shortage of volunteers.

This is the third year we have asked volunteers in Dublin and Cork to make an extra effort and join the FLAC Summer Squad. The aim of the Summer Squad is to keep the centres going during the summer.

We acknowledge that all our volunteers deserve a holiday after a busy year. However people need help on an ongoing

basis. Therefore **we ask our volunteers to help us to keep the centres going between June and September 2014.**

There are a few ways you can help:

- \* Sign up as a volunteer if you haven't done so yet
- \* When you plan to go on holidays, tell us in advance, so we can take into account your absence
- \* Volunteer a little extra time on top of your regular commitment
- \* Fill in at your normal centre
- \* Fill in only on certain weeks or days

- \* Fill in at a different centre to your normal one

Any of these or a combination of options will **help us enormously** to ensure that the services are still provided smoothly. Just email [volunteers@flac.ie](mailto:volunteers@flac.ie) or phone us on 01 887 3600, and we will be delighted to get you on board. Please do get in touch. We really appreciate it.

Last year we had a number of committed Summer Squad volunteers helping FLAC to successfully run centres in Dublin and Cork. We are so grateful to them.

Thank you in advance.



## PUBLIC INTEREST LAW ALLIANCE UPDATE

### PILA welcomes new Project Officer Eamonn Tansey

**P**ILA regretfully says farewell to Project Officer Mairead Healy in July. Mairead will leave PILA to focus her energies on her own organisation, Future Voices Ireland. Mairead has been vital to the operation of the PILA pro bono referral scheme as it exists and continues to grow today.

However, PILA is delighted to welcome Eamonn Tansey on board as its new Project Officer. Prior to joining PILA as Project Officer Eamonn worked as a Legal and Communications Assistant with FLAC and PILA. From September 2011 to May 2013 Eamonn worked and studied in the Netherlands. During this time he completed a master's degree in public international law at Utrecht University and worked with Greenpeace International in Amsterdam, providing legal support to their many campaigns.

Speaking about his new role, Eamonn said "Having worked with FLAC for the past nine months, I am fully aware of the amazing work being undertaken by the PILA team. I look forward to contributing to a project that provides such a valuable resource to NGOs and the disadvantaged and marginalised people they represent. Of course our work would not be possible without the generosity of our pro bono solicitors and barristers, who give their valuable time and expertise for free. To contribute to the further success of PILA for the betterment of Irish society will guide my approach to the role of Project Officer."



### PILA hosts EU Treaty Rights Legal Education Session

**P**ILA in conjunction with KOD Lyons held a legal education session on 25 June. The session focused on the area of EU Treaty rights, looking at issues such as family reunification, residency rights and access to social welfare. The education session was delivered by KOD Lyons solicitor Angel Bello Cortes, who has practised in this field for a number of years.

During the course of the session, the developing case law of the European Court of Justice was discussed including a number of ongoing preliminary references from the Irish Courts. Crosscare provided practical EU Treaty rights case studies based on their everyday work.

PILA organised this session following a request by Crosscare, and it was targeted at those with a high level of expertise in this area. Organisations that attended the session included Ruhama, Doras Luimni, Mercy Law Resource Centre and FLAC. Feedback from attendees indicated that it had been very positive session, and also provided practical advice on complex and legally uncertain matters relevant to their everyday work.

### High-level expert group on Access to a Lawyer

**J**une 30 saw the launch of a new Irish Council for Civil Liberties' (ICCL) project on the right of access to a lawyer in criminal proceedings. PILA has joined the ICCL's high level expert group, comprised of criminal defence lawyers from four jurisdictions, representatives of specialist NGOs and legal representative bodies.

The project was initiated to address the implementation gap between rights contained in the European Directive on Access to a Lawyer in Criminal Proceedings and existing legal defence practice in Ireland. Two timely developments have since redefined the role of the group: the recent Supreme Court decision in DPP v Gormley [2014] IESC 17, which established the right to have early access to a lawyer after arrest and the right not to be interrogated without having had an opportunity to obtain such advice; and the subsequent direction to Gardaí issued by the DPP on attendance of solicitors during interviews in Garda stations. The group will now look at ways to facilitate the smooth introduction of the practical exercise of the right of access to lawyer during Garda questioning.

The ICCL have also launched the 2nd edition of their 'Know Your Rights: Criminal Justice and Garda Powers' pack to reflect these changes to Irish criminal law and procedure. They are available at [www.iccl.ie](http://www.iccl.ie)

**pila**  
public interest law alliance  
a project of FLAC

**PUBLIC INTEREST LAW ALLIANCE  
UPDATE**



**PILA was approached by Robbie Sinnott of the Blind Legal Alliance earlier in 2014 to challenge the Irish State's failure to provide visually impaired persons with mechanisms to vote in secret. PILA placed the matter through its Pro Bono Referral Scheme and the Blind Legal Alliance was advised that a serious point of law had arisen. The right to vote in secret lies at the heart of democracy and should be fully protected.**

**On behalf of the Blind Legal Alliance, Mr Sinnott (see photograph on left) is challenging the State's failure to put in place mechanisms to enable him to vote in secret in the upcoming European and Local Elections on 23 May. The matter is currently before the High Court.**

I have a severe visual impairment. According to the 2011 Census, there were almost 53,000 people in the Republic of Ireland with a severe visual impairment – with approximately 52,000 being above the age of 18. This figure is set to rise significantly as the average life-expectancy increases (NCBI, 2010). Traditionally, this sector of the population has been relatively marginalised, disadvantaged and discriminated against: for example, the 2011 Census shows that less than 14% of this group is employed (putting them on a par with the Travelling Community). A report by AHEAD (2008) showed that students with a visual impairment are less likely than any other group, of 'normal' intellectual ability, to acquire places in third level institutes – because reading materials are prone to being inaccessible reading materials.

The revolution in information technology in recent years has created the potential for a level playing-field for people with a visual impairment vis-à-vis everyone else. And yet the inequalities persist, notwithstanding the Equal Status Act (2000) and the anaemic Disability Act (2005). One might expect the State, not least as the primary provider of information and services, to be the actor with greatest responsibility in realising our equality as human beings, but effectively, we remain second-class citizens, and the State shows no interest in effectively ending this.

In order to campaign for our Civil Rights (that is, that current laws be upheld and that new ones be promulgated), myself and Pat McCarthy founded the Blind Legal Alliance in 2011.

Our first action was to campaign for the right to secret ballot in elections and

referendums. Sighted people have had this right, as a norm in this jurisdiction, since the Ballot Act (1872). Secret ballot is not just an intrinsic component of liberal democracy, but symbolises that the voter is being taken seriously as an equal and dignified member of the community who has a right to participate in its decision-making. In this way, as the South African Supreme Court put it, "Literally, every vote counts". The Canadian Supreme Court recognised this symbolic importance of the vote when it cited its South African counterpart in a ruling involving votes for prisoners.

Currently, if a person with a severe visual impairment wishes to vote, they are expected to get someone else to vote for them (despite the Constitution and the 1992 Electoral Act prohibiting any person from having more than one vote). The blind voter must ask a 'trusted friend' or a presiding officer to vote on their behalf. The instructions are given verbally, in real time, further diminishing privacy. And it has happened to me, once the ballot-paper has been filled, that my preferences have been read aloud – broadcast – to all and sundry. We have no way of independently verifying our vote. If our proxy inadvertently spoils our ballot, we may never know.

Not only do developed countries such as Britain, Germany, Australia, Spain, and Austria facilitate secret ballot by all visually impaired voters, but Albania, Moldova, Uganda, Ghana and Tunisia are among the developing nations who have implemented accessible voting, and have, thus, demonstrated the seriousness with which they take the principle of democracy for all.

Mostly, a specialised system has been developed by which a template (or stencil) is placed over the print ballot paper, allowing the blind voter to mark preferences in the tactile spaces. But other systems are also in use. Spain uses a phone-voting system, which was pioneered in Australia. In keeping with the principles of universal design, Blind Legal Alliance would favour a multiplicity of systems, including a type such as is being used in Toronto and Australia, which gives blind and sighted people alike the choice of a secure browser or internet voting.

The current Irish system is totally insecure for the 52,000 voters in Ireland who have a severe visual impairment. Article 16 of Bunreacht na hÉireann gives us the right to secret ballot, as does the European Convention on Human Rights. Section 29 of the UN Convention on the Rights of People with Disabilities has the same guarantee, but since it has only been signed by the European Union, its relevance has yet to be tested.

The Irish State has been aware of this issue since at least 2006, but has not deemed it important enough to be a priority.

I am challenging the State's failure to put in place mechanisms to enable me to vote in secret so that all visually impaired people will have the chance to participate fully in the decision-making process in Ireland as is our democratic right. The case is currently before the High Court.

**You can keep informed of progress on this case by subscribing to the electronic PILA Bulletin – details at: [www.pila.ie/bulletin](http://www.pila.ie/bulletin)**

# Rent receivers: Unclear law means tenants caught in crossfire between banks and landlords

In the face of a potential repossessions epidemic, banks have begun to appoint rent receivers to take effective control of thousands of investment properties, thereby saving themselves from having to apply to the courts to repossess the properties. Lending institutions typically appoint a rent receiver when the owner of a private rented property, purchased using a buy-to-let mortgage, defaults in the repayment of that mortgage. They are usually appointed in cases where landlords are collecting rent but not passing it on to the bank to pay a mortgage in arrears. The receiver is employed to collect the rent from the property directly and pay it over to the bank or lending institution.

There are a number of problems arising surrounding the issue of rent receivers. Housing rights body Threshold has expressed concerns that “the current situation – whereby tenants are caught in the crossfire between landlords and banks when properties go into receivership – cannot be allowed to continue.” The lack of clarity in this area has led to confusion on part both of the tenant and of the rent receiver. When a property goes into receivership, the tenant is obliged to pay rent to the receiver, so it would appear the receiver is taking on the role of landlord. However, often the receiver fails to take on the responsibilities of the landlord, such as carrying out repairs to the property or maintaining minimum requirements. There is a lack of regulation and clear legislation in this area, with housing rights groups seeking a revision of the Residential Tenancies Act 2004 to stipulate that the rent receiver becomes the ‘landlord in law’ when they take over the property, thus taking on responsibility of landlord duties.

In the meantime, all parties must work within current law. Threshold has put together guidelines to help if a rent receiver has been appointed to the property you are renting, as follows:

1. Your tenancy continues and you have the right to remain in the property.
2. If you have a current lease, the receiver should honour the pre-existing tenancy terms and conditions.
3. There is a legal obligation on you to sign a new lease if you do not wish to do so.
4. Your tenancy can only be ended by serving of valid notice in accordance with the Residential Tenancies Act 2004.
5. The receiver must provide you with a deed of appointment for your accommodation.
6. Get the receiver to confirm whether they will take on the responsibility of returning your deposit at the end of the tenancy.
7. Get confirmation from the receiver that in addition to accepting the rent, they will take on responsibility for on-going tenancy issues such as maintenance and repairs.
8. If the receiver will not confirm that he/she has taken the place of the landlord, and/or the original landlord continues to demand rent or indicate that the receiver is to be ignored, seek further guidance from Threshold, FLAC or other body.

## Case Study A:

Several months ago, Caller A was notified that a rent receiver had been appointed to collect her rent in place of her landlord and since then has been paying her rent to the receiver. Recently, her landlord visited and stated that he hasn't been receiving rent from her and that he is owed several months' rent. This puzzled Caller A, as she had been paying the receiver. She rang the FLAC information line, where she was reassured that the landlord is not in a position to claim rent in this situation. Once the receiver takes her rent, she has met the obligations as outlined in her lease. However, the receiver should issue a receipt and it is important to keep that receipt as proof of payment. Once she can produce the receipt, her landlord cannot pursue her for further rent.

## Case Study B:

A similar case arose when Caller B's landlord started putting pressure on him to pay his rent directly to him. In this situation, the tenant is advised not to pay the rent to the landlord and to notify the receiver. If the situation escalates into harassment or threats, the tenant should notify a member of An Garda Síochána, and in some cases the receiver may seek a court order directed to the landlord to stop him or her interfering with the collection of the rent.

## Case Study C:

Another query arose when Caller C contacted the FLAC information line to ask whether he should address queries about repairs on his rented dwelling and in general to the rent receiver or the landlord. Although the receiver is not legally obliged to carry out repairs under the current legislation, tenants are recommended to contact the receiver and he/she may, with the bank's permission, use rent collected to carry out repairs.

## Case Study D:

Caller D rang FLAC wondering who was to refund her deposit - the landlord or the rent receiver. FLAC advised that, in general, the landlord remains liable to return the deposit, as the receiver is not liable to repay a deposit paid to the landlord. However, tenants are still advised to confirm with the receiver whether or not he or she will take on responsibility for repaying the deposit, as in some cases he or she may do so.

## Case Study E:

Caller E rang up to ascertain whether the recently-appointed rent receiver for his rented accommodation would be able to terminate his lease early. Normally, the rent receiver has the same rights as the landlord, for example, if the receiver wishes to terminate the lease, he or she must give advance notice, the length of which must meet the standards set out in the lease and the Residential Tenancies Act. However, FLAC told Caller E that there are certain exceptional circumstances where the bank has additional powers to terminate a lease; such as where the lease reduces the value of the bank's security or where the tenant is required to pay rent far below market value. Thus callers need to know whether they fall into this category if an early termination is suggested.

- For queries on rent receivers, you can get information for free and in confidence from FLAC's telephone information line on 1890 350 250.
- You can also download FLAC's new information booklet on Landlord & Tenant Law at: <http://bit.ly/LLandT14>
- Threshold offers comprehensive online information at <http://www.threshold.ie/advice/> where you can also find details of local advice services

# Social Welfare & Pensions Bill may put people at risk of destitution

On 28 May the Government published a new piece of draft legislation which will impact on many people in Ireland. The Social Welfare and Pensions Bill 2014 was nonetheless given limited debate in the Oireachtas. In general, FLAC is very concerned that the haste at which such important legal proposals are pushed through the houses of the Oireachtas means there is little time or space for adequate debate and participation, which we feel is integral to a well-functioning democracy.

The technical nature of the bill makes it difficult to read but this is exacerbated by the fact that legislators do not have access to an updated version of the primary piece of legislation referenced, the Social Welfare Consolidation Act 2005. There is a clear need for access to a Consolidated Act; that is, one which has all the latest changes in serial form, rather than consisting of references to a series of previous versions and other legislation which necessitates a time-consuming trawl through a host of documents. This could be put online through the Department of Social Protection's website. Indeed the Tánaiste and Minister for Social Protection, Joan Burton TD, as stated in Dáil debates that she "would broadly favour" publishing an "in-house guide on the various amendments to the Social Welfare (Consolidation) Act available to the public".

One change in the Bill is around Family Income Supplement (FIS). A separated parent applying for the supplement who does not have his or her child(ren) permanently residing with him/her will now not only have to be maintaining the child (or children) but also their former spouse/civil partner in order to be deemed eligible for the payment. FLAC and Northside Community Law & Mediation Centre made a joint submission raising concerns about this new element of FIS and the disproportionate impact that it could have on children of separated families to an adequate income standard.

The habitual residence condition (HRC) which is applied to any person seeking a social assistance payment and child benefit, is also being amended in the bill. FLAC's



Well done to all in Team FLAC who ran the women's mini marathon on the June bank holiday weekend. A big that you to all involved – pictured here are:

**Back row** L-R: Trina Dzionou, Mary Guy, Noeline Blackwell, Catherine Hickey, Yvonne Woods.

**Front row** L-R: Gillian Kernan, Niamh MacEvilly, Tope Osedola, Brigid O'Brien.

work has concentrated on the reform and improvement of its application in practice by the Department since its introduction in 2004. The reference to the "two-year rule" is finally being removed since it was struck down in a European Court of Justice Judgment in the Swaddling case in 2007. The bill does however create new powers of review which will allow a Deciding Officer/Designated Person to assess whether a person still satisfies the condition. The bill mentions a "worker" under the EU law definition of such and his or her need to satisfy the condition after the cessation of "worker" status. FLAC and NCLMC are concerned as to how this provision will be interpreted by decision-makers.

Finally, the bill will widen the Department's authority to recover overpayments, such that it will be able to seek repayment from lump sums such as

redundancies and other types of compensation. We are concerned that in some cases, this may potentially reduce a person's income below the basic minimum, exposing his or her to financial hardship or worse. A clear, robust appeals procedure must be implemented to safeguard against incorrect or unfair decisions.

Only one of NCLMC's and FLAC's concerns was taken on board, leaving already vulnerable people even more exposed to hardship than they were before this legislation.

- Read the joint statement from FLAC and NCLMC: [bit.ly/ULcrBK](http://bit.ly/ULcrBK)
- The text of the Bill is at: [bit.ly/lrmjcmv](http://bit.ly/lrmjcmv)

# Ireland's examination under ICCPR

**A**s this article goes to print, we await the conclusions and recommendations which the UN Human Rights Committee will give to Ireland. Ireland reported to the Committee, a group of international human rights law experts and was examined on 14th & 15th July under the United Nations International Covenant on Civil and Political Rights in Geneva. Ireland ratified this covenant in 1989 and later it also adopted two further additions known as optional protocols.

FLAC was part of a consortium of non-governmental organisations which came together to contribute to a report which 'shadowed' or mirrored the State's report to the committee. The group, headed by Irish Council for Civil Liberties (ICCL) published that Shadow Report on the progress of civil and political rights in September 2013 with an update, mirroring the State's update to the Committee, submitted for the Committee's attention in June 2014.

The delegation from the Irish Government was led by Minister Frances Fitzgerald and high level civil servants from the Department of Justice; other relevant departments also participated. Many of the non-governmental organisations who had contributed to the Shadow Report also attended.

The Human Rights Committee was chaired by Sir Nigel Rodley. The questioning from the eighteen Committee members focused on issues of effective remedies for victims of abuse, legal recognition of different groups in society including Travellers and transgendered people and the status of the human rights and equality institutions to name a few.

The Committee raised questions on the incorporation of the International Covenant into the domestic legal order and the possibility of the Irish Human Rights & Equality Commission invoking such treaties if necessary. The State's consistent response throughout the previous examinations has been that civil and political rights are already adequately protected under the Irish Constitution and Irish law.

The protection of women's health was a feature of the Committee's questioning

around Ireland's new abortion legislation. The Committee welcomed the limited progress on abortion but indicated that it would be looking for further change to bring Ireland into full compliance with the International Covenant. The Committee repeatedly returned to health and welfare issues for survivors of symphysiotomy and to their right to redress and to the need for accountability of this horrific medical practice for the victims of symphysiotomy and not just the establishment of a compensation fund.

One of the issues that particularly concerned FLAC, where we had made detailed contributions to the Shadow Report, was the issue of the legal recognition of transgender people in Ireland. Committee members questioned the slow progress of the State towards legal recognition. The State explained that they had set up a consultation process and a working group and had needed to consider its conclusions and recommendations and also elaborated at the Committee's request on how it is proposed to recognise transgender people under 18 years of age. Apart from concerns about delay, the Committee also raised questions about the possibility of

criminal responsibility attaching to transgender people simply by virtue of their identity .

FLAC also remains concerned that the State is failing to observe international human rights law when it comes to those who are unable to pay fines because of poverty. This issue was included in the Shadow Report and raised by the Committee. The State response referred to the introduction of the Fine Payments and Recovery legislation which is expected later this year to deal with this shortcoming. Meanwhile the deficit remains.

The examination proved to be a successful opportunity to objectively assess Ireland's compliance with international law on civil and political rights which it has committed to respect, protect and fulfil. There is clearly much remaining to be done but it was heartening to see that the State took the examination seriously, as indicated by the presence of the Minister, and equally heartening that civil society was so engaged in the process leading to a fruitful debate. The Human Rights Committee will publish concluding observation and recommendations on 24th July.

## Work progresses on Economic, Social and Cultural Rights Shadow Report

FLAC is coordinating a shadow report to reflect evidence from civil society on how economic, social and cultural rights – like housing, health, education, social security, employment and cultural life – are being respected in Ireland under the International Covenant on Economic, Social and Cultural Rights.

Public consultations have taken place in Galway, Cork and Dublin which resulted in a wide range of inputs. In Dublin there were two further specialised sessions, on the right to housing and the right to social security.

The research team has received a vast amount of information from organisations and individuals working on the ground on these fundamental human rights issues. We are hugely grateful for everyone's input to date.

A first draft of the report will be available shortly to all those that inputted already into the report and a final consultation is planned before the end of August to give feedback on the draft version of the Shadow Report.

# overmatter

Graph 1



Graph 2

