

flac News

FREE LEGAL ADVICE CENTRES

Child poverty must be government priority

State must restore universal Child Benefit

Prior to May 2004, Child Benefit was a universal non-contributory payment paid to the parent/guardian of every child in Ireland. The uncomfortable prospect of so-called welfare tourism surrounding EU enlargement in 2004 led to the introduction of an additional qualifying procedure for all social assistance payments: the *Habitual Residence Condition*. Despite being found to be in breach of EU law in relation to family payments, it continues to create financial hardship for some of the most vulnerable people in Ireland's diverse community.

Guidelines are available to determine whether an applicant may be considered habitually resident. These are loosely drawn from EU caselaw, and include such factors as length and continuity of residence, length and purpose of absence, nature and pattern of employment, applicant's main centre of interest and future intentions. These considerations are not exhaustive and the presumption of non-compliance in the Social Welfare Act 2007 makes it even more difficult for people to access their entitlement.

The Irish government made a commitment in the National Anti-Poverty Strategy of 2003 to eliminate child poverty by 2007 and lift children out of

a state of social deprivation. The operation of the HRC since May 2004 in relation to Child Benefit, therefore, appears to be contradictory in that it has the effect of driving certain children into poverty. It has created an anomaly in the law and engendered delays and inconsistent decisions on application and appeal due to uneven application within the Department of Social and Family Affairs.

It is a central objective of FLAC that social welfare law be reformed to protect the most vulnerable people in the State. Child poverty diminishes life opportunities and creates social problems into the future. This issue is however a matter of policy and principle; any change would require very little in the way of legislative amendment.

In a Dail debate in January 2006, An Taoiseach Bertie Ahern TD defended the importance of Child Benefit as a mechanism to combat child poverty. When faced with the prospect of denying this payment to qualifying migrants children who were resident abroad in order to save 1 million out of a 350 million budget, he said:

So we were going to be real Scrooges and change a 36-year-old regulation to save 1 million in a calendar year. We did not do that.

If we did, there would be people in here calling me the biggest racist that ever was.

Yet surely the same principle is applicable when we speak of the 864 children in Ireland denied the payment in 2006 on the basis of their parents immigration status. If the numbers are so small, why continue to penalise children who arrive in Ireland involuntarily? Is it merely to save the State some 1.5m out of a 350m budget?

The pre-election manifestos of the major political parties this past spring are interesting in this regard. The Labour Party warns that child poverty results in incalculable loss of human potential, and stores up problems for which society continues to pay for decades, but remain silent on the issue of universal Child Benefit. Only the Green Party takes a solid stance, making an unequivocal statement of their intention to reintroduce Child Benefit as a universal payment. The Fianna Fail election manifesto states a commitment to quadruple the Child Benefit payment. This clearly shows that it is not a lack of funds which perpetuates the current system and may be another indication that the new government will revisit the issue.

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Child poverty must be government priority

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The Department of Social and Family Affairs estimates that 1% of applications are denied at the appeal level because the claimant does not satisfy the HRC. On the issue of asylum seekers being denied Child Benefit, the Department unfortunately provides very little in the way of concrete numerical data.

The integrity of the Child Benefit Register must be ensured for reasons other than solely the needs of recipients. Research to be carried out over the next seven years which will influence future government policy on children living in Ireland intends to draw infant study participants exclusively from the register. This will exclude the voices, needs and opinions of specific groups of children and parents resident in this country.

Growing Up in Ireland is a study commissioned by the Department of Health and Children in association with the Department of Social and Family Affairs and the Central Statistics Office. It is to be carried out by a consortium of researchers from the Economic & Social Research Institute and Trinity College Dublin. The information, gathered by following the progress of 18,000 children of various ages over seven years, is designed to assess their social, economic and cultural development. Former Minister for Children (and newly appointed Minister For Justice) Brian Lenihan TD said of the study that it is an exciting and important project which will provide us with information to improve our understanding of children's lives.

The commissioning of the first ever national longitudinal study of children is to be commended if it provides a sound evidence base for the development of future policy. Unfortunately recognition is not given to the fact that using the current Child Benefit Register as a random child selection mechanism will provide only skewed evidence as it denies participation to children and par-

ents who are not on the register and likely to be most affected by change in policy. Again the same children who pay a high price for maintaining our immigration policy are those deemed sufficiently irrelevant to take part in the research. In effect these are the children of almost all asylum seekers, of undocumented and exploited workers, of those awaiting a decision on their residency status and other vulnerable groups.

The recently announced programme for government includes a commitment to fully implement the UN Convention on the Rights of the Child. Article 26 states that every child has the right to benefit from social security. This right, in accordance with Article 2 applies to all children without exception. Further, Article 3.1 requires that the best interests of the child shall be a primary consideration where children are to be affected by a decision.

Child Benefit must be restored as a universal payment without discrimination. It is time to see whether political promises are to be honoured, and if so, whether serious efforts are to be made to put children's rights first. In the words of children's author JK Rowling (who is quoted by the Labour Party in its manifesto), poverty is a bad place to live on your own, but the worst place on earth if you have a child with you.

Here in Ireland our record of protecting children and childhood ranks among the worst in Europe. Surely it is time that, in this country, children's rights no longer have to be contingent on those of their parents. Denial of Child Benefit leads to exclusion and discrimination and forces children into poverty; it therefore must be restored immediately as a universal payment.

See also:
www.oireachtas.ie
www.welfare.ie/publications/naps
www.growingup.ie

Lawyer calls for support for rule of law in Pakistan

On Friday 27 April Sardar Latif Khosa, an Advocate of the Supreme Court of Pakistan and a Senator with the Pakistan People's Party, addressed a group of lawyers and others interested in international human rights at a lunchtime seminar in the Law Society buildings in Dublin. The event was supported by FLAC's Public Interest Law Network and the Law Society's Human Rights Committee.

Senator Khosa has been deeply involved in the protests against the removal from office of Chief Justice Mohamed Iftikhar Chaudhry in March 2007. Pakistan's president, General Pervez Musharraf, attempted to force Chief Justice Chaudhry to resign in March, accusing him of misuse of office. When the Chief Justice refused to comply, he was placed under house arrest and dismissed from office.

Lawyers took to the streets to protest this treatment of the Chief Justice, but the demonstrations were violently suppressed, with many of the protesting lawyers — including Sardar Latif Khosa himself — being beaten by the police. Up to eighty lawyers were arrested and charged with terrorism and public order offences.

At the seminar, Sardar Latif Khosa emphasised the need to see the events in Pakistan in a global context and spoke passionately about the need for the rule of law to be supreme for the sake of civilisation.

The supreme status of the rule of law has been eroded in recent times, particularly post 9/11 with the invasion of Iraq without a UN resolution, and the assertion of a pre-emptive right of self-defence by the US and UK. Senator Khosa feels that the whole of humanity is affected when the rule of law is not respected and sees lawyers as having a particular duty to unite and defend the rule of law wherever it comes under threat.

Turning to the situation in Pakistan, Senator Khosa drew attention to the (il)legal means through which President Musharraf has attempted to strengthen his hold on the presidency. These measures included:

- ▶▶ holding a referendum to give legitimacy to his presidency, but presenting no alternative candidate;
- ▶▶ having the Supreme Court give the President a mandate to amend the Constitution, when in law the Supreme Court does not have the power to delegate power to

amend the Constitution;

- ▶▶ and, finally, the President's suspending the Chief Justice, despite having no legal power to do so, as the Chief Justice is not subordinate to the President.

In the months leading up to his dismissal from office, the Chief Justice had angered the government by raising questions regarding the disappeared — people abducted and held without trial by the security forces — and by overturning the privatisation of a state-owned steel mill due to allegations of corruption.

Senator Khosa underlined, however, that the protesting lawyers in Pakistan were not fighting for just one man and his position, but for a nobler cause: that of the independence of the judiciary.

Sardar Lhatif Khosa concluded by calling on the Law Society to petition for the re-instatement of Chief Justice Chaudhry and the dropping of all charges against those arrested during the protests against his dismissal.

See also:
www.liberalforumpakistan.org/
www.supremecourt.gov.pk/
www.lawsociety.ie/



Stephen Collins, solicitor and Sardar Lhatif Khosa, advocate of the Supreme Court of Pakistan



Sardar Lhatif Khosa and Alma Clissmann, Secretary of the Law Society Human Rights Committee

Photo © FLAC

Advocacy: A legal lifeline, but no legal aid

When people hear the word advocate they usually think of a lawyer — someone formally trained in the law who will stand up in court to put forward your case. However there is a new breed of advocates in Ireland today, trained in all manner of disciplines with the common goal of enabling their clients to effectively voice their needs and wishes, to access their entitlements and to assert their rights.

Advocacy has developed from a recognition that people are entitled to be in control of their own lives. However this may not always be possible, perhaps due to financial constraints, disability or social attitudes. Thus some people find themselves in need of an intermediary, someone who will help them to identify their needs and enable them to fulfil them.

Advocacy involves a range of activities, from providing people with the necessary information to be able to speak for themselves, to actually speaking on their behalf. Generally their role is to work in partnership with the person they represent and to take their side.

However, non-legally trained advocates frequently have to carry out what is, technically, legal representation, as there is a shortfall between the need for representation in legal matters and the availability of legal representatives for those of limited means. The primary reason for this shortfall is the limitations on our current system of civil legal aid.

Civil legal aid is not available in Ireland for certain types of cases which are excluded by law from the remit of the Legal Aid Board, such as some types of disputes involving a right or interest over land. Many landlord and tenant issues are excluded.

Also, legal aid is currently only available for cases which are due to come before the District, Circuit, High or Supreme

Courts. This scheme can also be extended to proceedings before any prescribed tribunal. However this has only been done in respect of the Refugee Appeals Tribunal. Thus civil legal aid is not available in proceedings before any administrative tribunals, most notably the Social Welfare Appeals Tribunal, the Equality Tribunal and the Employment Appeals Tribunal.

The rationale for this is that administrative tribunals should be relatively informal, and thus legal representation is not only unnecessary, but unhelpful, in that it drives up the tribunal costs and leads to the increased legalisation of proceedings.

Nonetheless many participants in these tribunals do engage legal representation. For example, in the 2005 annual report of the Employment Appeals Tribunal, the total number of cases involving claims under the Unfair Dismissals Acts 1977-2001 is given as 1,414:

- ▶▶ 769 employee parties (84.41%) were represented (126 by trade unions, 586 by legal representation and 57 by other persons).
- ▶▶ 655 employer parties (71.9%) were represented (44 by employers associations, 488 by legal representation and 123 by other persons).

This creates an inequality of arms, working against those who cannot afford legal services. The balance is tipped further in favour of already stronger parties, and to the disadvantage of potentially vulnerable groups, such as lower paid employees and social welfare dependents. To remedy this, a number of groups have developed advocacy services on their own initiative.

The Citizens Information Board (formerly Comhairle), for example, is currently involved in improving the availability of advocacy services. It has developed accredited training, commissioned

research, coordinated projects already in operation and resourced advocacy projects.

Threshold is an example of a non-profit, independent organisation that has developed advocacy services. Threshold represents tenants in the private rented sector. It intervenes on behalf of tenants in their dealings with landlords and, since 2004, with the Private Residential Tenancies Board (PRTB) which now has responsibility for dealing with cases involving landlord/tenant disputes. Typical PRTB hearings concern a threatened eviction, invalid notice, rent arrears or the standard of accommodation.

The PRTB applies the law laid down in the Residential Tenancies Act 2004 and the underlying legal concepts of landlord/tenant law. The format of the hearings is the same as that in a court hearing, with opening submissions, examination-in-chief, cross-examination and closing submissions. PRTB hearings are intended to be informal, i.e., do not require the parties to have legal representation. For example, the PRTB is flexible on procedural matters, to the point of admitting evidence and submissions that would not be accepted in a normal court.

Nonetheless, a party with legal representation is in a stronger position, according to Threshold's Legal Officer, Kevin Baneham. They will be more aware of the relevant legal principle involved, they will ask the right questions and say the right things and, finally, they will have obtained the best supporting evidence. But it is often only landlords who can afford legal representation. This is the imbalance that Threshold seeks to correct by representing tenants at hearings.

In order to assist Threshold advice workers in preparing for and conducting hearings, Threshold has prepared a PRTB Handbook and provides relevant legal training. Threshold workers are

available

also supported by the in-house Legal Officer. This support covers the evidence and legal issues arising in the particular case and on-going advice on general principles used by the PRTB in dispute resolution.

The Threshold advice worker then uses this information to represent tenants at hearings. They are expert in the relevant law (but not trained lawyers) and experienced at conducting hearings. They have also built up close relationships with the tenant and this trust is essential during the hearing and any negotiations.

However, in certain cases, a tenant needs to make a referral to the Circuit Court or High Court, as provided for in the Residential Tenancies Act. But since civil legal aid is unavailable in most cases involving an interest in land, tenants are often unable to make these referrals. This restricts the ability of tenants to challenge interpretations of the PRTB of the Residential Tenancies Act and general landlord/tenant law.

The development of advocacy services by Threshold and many other non-profit organisations and community groups is crucial in ensuring equality of access to courts and tribunals. However there is still a largely unmet need for representation in certain categories of cases, such as cases involving social housing. Housing cases usually involve a right or interest over land and are thus excluded from the remit of the Legal Aid Board. Low-cost representation or advocacy services are essential in these circumstances, since the outcome of cases can impact greatly on peoples lives.

More information:

<http://www.threshold.ie/>
<http://www.citizensinformation.ie/>
<http://www.prtb.ie/>
<http://www.legalaidboard.ie/>

ICCPR Shadow Report in progress

FLAC, along with the Irish Council for Civil Liberties (ICCL) and the Irish Penal Reform Trust (IPRT), has commissioned an independent researcher to conduct research on civil and political rights in Ireland. We will be producing a Shadow Report to respond to the Irish government's third report on Ireland's implementation of the International Covenant on Civil and Political Rights (ICCPR).

Under Article 40 of the Covenant, all States Parties are required to submit regular reports on how the rights provided for in the Covenant are being implemented. This international human rights treaty sets out extensive rights including the right to life; freedom from torture and the right to a fair trial.

The research involves consultation with groups such as migrants, asylum seekers, Travellers, ex-prisoners and certain family groups about their experiences of civil and political rights in Ireland. It further involves an assessment of how these rights impact the work of key stakeholders who operate in relevant areas in relation to the ICCPR, as well as criminal justice, immi-

gration and credit/debt lawyers.

Previously many of the concerns raised by non-governmental organisations (NGOs) have been reflected in the recommendations of the UN Human Rights Committee, which monitors state signatories implementation of ICCPR.

For example, the Committee's Observations/Recommendations in relation to Ireland's first and second reports show that they took on board the concerns of NGOs. With this in mind, we are holding a consultation with NGOs on completion of the draft Shadow Report in June 2007.

The Irish government has already submitted its report to the UN Human Rights Committee. When the date is set, the ICCL, FLAC and the IPRT will travel to Geneva to present the final joint Shadow Report, to lobby Committee members and to explain the civil and political rights situation in Ireland today from an independent point of view.

A leaflet describing the project is available to download from the FLAC website.

Creating a place for all

SICCDA — the South Inner City Development Association — is organising a seminar on its experience with growing sustainable communities in a changing urban environment through the development of an integrated rights-based strategy.

The event, entitled *A Home for All*, will take place in the Guinness Storehouse, Dublin 8 on 3 July from 9.30am to 3pm. Minister for the Environment John Gormley has been invited as guest and the conference will be chaired by Philip Flynn, CEO of the Digital Hub.

According to organiser Marie Bennett, the Irish urban environment has and is

experiencing rapid major social, economic and cultural changes, some positive but many negative, over the past decade. The physical, psychological and economic impact of the Celtic Tiger on family and community life both for Irish and migrant people needs to be assessed.

The event will examine at the rights and responsibilities of all concerned in tackling such negative impacts and in promoting the positives of the situation.

Contact SICCCA by telephone at 01-4536098 or by e-mail at mbennett@siccca.ie

Treoir conference highlights

A multi-disciplinary seminar entitled *The Legal and Practical Implications of the Baby Ann Case* was held on 6 June 2007 by Treoir, the national federation of services for unmarried parents and their children.

The Supreme Court provoked widespread and heated debate in November last year, when it ruled that the family who had cared for Baby Ann for almost two years after she was placed for adoption must surrender her to the appellants, her natural parents. The Court held that a child may only be adopted from the natural, marital family where there had been a serious failure of parental duty. Placing the child for adoption did not constitute such a failure. The judicial reasoning in this case, reported as *N. & anor. -v- Health Service Executive & ors.* [2006] IESC 60 reflects the vulnerable status of children in Irish law.

Proving legal perspectives at the seminar were solicitor Geoffrey Shannon, an expert in family law and children's rights, and two specialists in the field of social work, Berit Andersen and Eilish Craig.

Mr Shannon outlined the facts of the case. In 2004 a young unmarried mother had, after counselling, decided to give her baby up for adoption. (The baby was assigned the pseudonym Ann by the Courts.) She signed a Voluntary Care Agreement Admission to Care, placing Ann into the care of pre-adoptive foster parents. In the routine practice of adoptions in Ireland, there are effectively two consents required of the birth mother — the agreement to place the child for adoption, and then a final, binding consent upon the making of an Adoption Order.

The initial agreement signed by the birth mother stated that consent may be withdrawn at any time before the making of an adoption order. The form explained that where a person who has

consented to the placing of a child for adoption later refuses to give consent to the making of an adoption order, or withdraw their consent, it is open to the prospective adopters to apply to the High Court for an order under section 3 of the Adoption Act 1974. The High Court, if it is satisfied that it is in the best interests of the child so to do, may make an Order giving custody of the child to the prospective adopters.

This is what did in fact occur. In September 2005, the birth mother wrote to the Adoption Board to say that she no longer wished the adoption to proceed. In January 2006 the birth parents married. Fennelly J said in the Supreme Court judgement that [i]t seems reasonably clear that (the birth parents) were acting on legal advice to the effect that their marriage would improve their prospects of recovering the custody of Ann.

The foster parents then sought an order from the High Court that their adoption of the child, by then two years old, be allowed to proceed. This order was granted.

The natural parents appealed to the Supreme Court pursuant to article 40.4.2 of the Constitution, seeking return of their child. The appeal was allowed, premised on the constitutional position that the family unit, based on the institution of marriage, is the best place for the upbringing of a child. The court held that, under the Constitution, there are only two circumstances where the adoption in a case like this may be allowed to proceed — if there has been a failure of parental duty under Art 42 (5) of the Constitution, or if there are other compelling reasons, neither of which had been proven in the appeal.

In the original High Court case brought by Ann's foster parents, *Re GH, an Infant*, from 2005, McMenamin J said that the risk of psychological harm to the baby if she was to be taken away from her fos-

ter parents, with whom she had bonded, displaced the constitutional presumption that the best place for her to be brought up was with her natural family. The child had formed a very strong attachment to the foster parents who wished to adopt her. In the opinion of Geoffrey Shannon, the weight we attach to this factor, as a society, is important.

The judgement of Hardiman J of the Supreme Court has attracted much comment. The Constitution does not prefer parents to children, he said, it prefers parents to 3rd parties, official or private, priest or social worker, as enablers and guardians of children's rights. But the reality is not that simple. What about the position of foster parents? Also, it is misleading to suggest that parents will always act in keeping with the welfare and best interests of their children.

Mr Shannon referred to another Irish case where issues of parental care were examined, the PKU case, *North Western Health Board v HW and CW* [2001] IESC 90. In that case the Supreme Court held that the autonomy of a child's parents prevented the State from intervening to enforce a diagnostic test which the Health Board had demonstrated was strongly in the child's interests.

The parents believed that the test would cause harm to the child. It was held by the Court that no matter how unreasonable or irrational this belief, there is a Constitutional presumption that the welfare of a child is best protected by its natural parents. Finlay Geoghegan J held that this presumption can only be rebutted where the Court is satisfied that the welfare of the child can not be found within the natural family, and that the natural parents have failed and will continue to fail to provide for the educational, moral or physical well-being of the child.

There is an extremely high threshold to

need to refocus on child rights

meet before the State can intervene in a child welfare case. According to Mr Shannon, this threshold must be lowered in the interests of providing a robust, effective system of child protection. Moreover, legislation can go no further without constitutional amendment. The Guardianship of Infants Act 1964 s.3, states that in any proceedings concerning the custody, guardianship or upbringing of an infant, the welfare of the infant shall be the first and paramount consideration. Yet by the Courts reasoning in Ann's case and others, this legislation may be inconsistent with our Constitution.

Treoir has long campaigned for the specific insertion of children's rights into the Constitution and for these rights to be paramount, notwithstanding any other article in the Constitution. This would create equality between children born within and outside marriage.

The *Baby Ann* case reminds us that currently the Constitution recognises only the family based on marriage. Geoghegan J's judgement, in particular, emphasised that the fact that the applicants were married was fundamental to the case and radically changed the nature of the decision. Different standards apply to married and non-married couples.

There must be greater emphasis placed on the rights and interests of children in proceedings concerning them. There has been some attempt by the judiciary to protect the natural and imprescriptible rights of the child, (which can find support in Article 40 (iii) of the Constitution, relating to the personal rights of the citizen).

In the unusually positive example of *FN. E.B. v CO, HO and EK* [2004], a High Court family law (guardianship and custody) matter, Ms Justice Finlay Geoghegan gave strong support to the Constitutional rights of children to have their wishes considered. In this case the judge met with the two children



Photo © Treoir

Speakers at the Treoir Seminar, pictured L to R: Berit Andersen, Social Worker, PACT and Treoir Executive Member; Eilish Walsh, Chairperson of Treoir and CEO of the National Social Work Qualifications Board; Geoffrey Shannon, solicitor and family law expert; and Eilish Craig, Social Worker, HSE

involved (aged 14 and 13) in her chambers, finding that they were both of an age and maturity where it was appropriate to take their wishes into account. Their wishes formed the basis of the judgment which was then handed down. The significance of this case can not be overlooked in the context of the European Convention on Human Rights and Brussels II Convention (a)/bis which now form part of Irish law. Under the ECHR we have an obligation to protect and promote the voiceless in society.

In Ann's case, the child's rights were entirely subsumed by other Constitutional factors. There is a pressing need for Constitutional change to ensure consistency, otherwise hundreds of children who have been adopted or placed in foster care in Ireland will continue to have an uncertain legal status. In a memorable part of the Supreme Court judgment, McGuinness J said that the only voice that had not been heard in the course of the proceedings was the voice of the child:

It is perhaps striking that the one per-

son whose particular rights and interests, constitutional and otherwise, were not separately represented, whether by solicitor and counsel or through a guardian *ad litem*, was the child herself. It would be disingenuous not to admit that I am one of the quarters who have voiced criticism of the position of the child in the Constitution. I did so publicly in the report of the Kilkenny Incest Inquiry in 1993. The present case must, however, be decided under the Constitution and the law as it now stands. With reluctance and some regret, I would allow this appeal.

A copy of the judgement in *N. & anor. -v- Health Service Executive & ors.* can be found at <http://www.courts.ie/> under Judgements by Year > 2006.

FLAC seminar on *amicus curiae*

FLAC hosted a seminar on the use and potential of *amicus curiae* interventions on 30 April. *Amicus curiae* briefs are filed in court proceedings by individuals or groups who are not party to a lawsuit, but who have a strong interest or expertise in the issues in the case and are invited by the court, are permitted by law or petition the court to make an intervention in the action. The *amicus* is considered to be a "friend of the court".

Speakers for the event, introduced by FLAC's Michael Farrell, were Phil Shiner, a senior solicitor with UK-based firm Public Interest Lawyers, Karen Quinlivan, a practicing barrister in Northern Ireland who has acted in a number of interventions on behalf of the Northern Ireland Human Rights Commission, and Eilis Barry, Senior Legal Advisor with the Equality Authority, who has experience of *amicus curiae* applications in Ireland.

Phil Shiner: The Importance of Third-Party Interventions in Public Law & Human Rights Cases

Phil Shiner gave an account of his extensive experience of interventions in cases where human rights are being violated. He focused on cases that raised important constitutional law and international law dimensions. His work encroaches on unknown legal territories by challenging the current political climate.

In many cases there are no existing precedents that can be relied on, as domestic, European, and International law can be lacking. *Al Skeini* and *Gentle & Others* are two examples of Phil's case-work.

***Al Skeini*:** The *Al Skeini* case focuses on a British national, Baha Mousa, who was tortured to death while in detention in Basra, Iraq in 2003. Photographs showed that detainees there were very badly abused. In this case Phil acted to test vital points of law: Did the Human Rights Act apply extra-territorially in South East Iraq? Did the European Convention on Human Rights apply?

Before Phil Shiner's team initiated the judicial review, the authorities had closed the investigation. Only one soldier pleaded guilty to inhumane treatment. It is clear from the judgment that Mousa died from attacks by multiple soldiers who have not been charged because, as the judge put it, the ranks had closed.

(As an update, on 13 June 2007 the House of Lords ruled that the Human Rights Act applies to British soldiers who imprison detainees during military campaigns abroad. The full implications of this judgment are only emerging, but Phil has described it as a breakthrough decision.)

***Gentle & Others*:**

The families of soldiers killed in Iraq are taking this case. They contend that Article 2, the right to life, carries with it procedural obligations to have an inquiry which will answer the fundamental question of whether their loved ones died in circumstances where the military orders were illegal.

Gentle & Others is an example where intervention was actively discouraged. Phil felt that the strength of the case was that he was acting for soldiers not Iraqis. Thus there was a desire to prevent groups coming in with all sorts of different agendas, which would ultimately be unhelpful to the families case.

Essential to Phil's work is bringing together the relevant organisations to argue the intervention. For example, he is in negotiations with Greenpeace to intervene in the government's nuclear programme. He believes passionately that NGOs and other bodies have something different to bring to the argument, such as the weight of public opinion. He does not believe in intervention for the sake of it but rather that intervention should come in a small number of cases so as not to bring the technique into disrepute.

Karen Quinlivan: Third Party Interventions — the Northern Ireland Experience

Karen Quinlivan gave an overview of how *amicus curiae* interventions have developed in Northern Ireland. She concentrated on its effectiveness as a strategy and whether interventions should be oral or in writing. She outlined casework in which she has been and some milestones in the development of *amicus curiae* in Northern Ireland.

Karen rates the cases taken prior to the Human Rights Act and the European Convention as successful overall. These earlier cases were an opportunity for the Human Rights Committee (HRC) to introduce European law concepts and comparative law standards to the Courts. This heightened the awareness of judiciary and practitioners as to how international standards can be used to assist cases. Karen explained that there is now comparative openness to the concept of intervention in Northern Ireland.

The case of *Treacy & MacDonald* was taken by two successful applicants to the senior bar who were challenging the obli-



Seminar speakers L-R: Eilis Barry BL, Equality Authority; Phil Shiner, Public Interest Lawyers; Michael Farrell, FLAC; and Karen Quinlivan BL.

interventions held in Dublin



Pictured L-R: John Costello, Solicitor; Mr Justice Declan Costello, former President of the High Court & Professor Kingston of TCD Business School.



Attendees at the seminar

Photos © Derek Speirs

gation to make a declaration of loyalty to the Queen. The HRC's submissions focused exclusively on international human rights standards, while the applicants' submissions were broader ranging.

At the same time, the HRC intervened in the case of *Adams v DPP* in which a High Court judge had determined that police officers had assaulted an individual in custody. He was awarded £30,000 in damages due to injuries sustained. The DPP decided not to prosecute despite the decision that the police were liable. While the focus of the case was on the failure of the DPP to give reasons for its decision not to prosecute, the HRC focused on issues to do with Article 3 rights: the right not to be tortured and the right to a proper and effective investigation of the circumstances in which someone sustains ill treatment at the hands of the security forces.

The upshot of the inquest into the 1998 Omagh bombing was that, from September 2000 through to June 2002, the HRC could not intervene. But there is now comparative openness to the concept of intervention. This is undoubtedly bolstered by the House of Lords judgment giving sanction to the concept and by the fact that the House of Lords itself regularly welcomes intervention in important cases, especially by NGOs.

Eilis Barry: Amicus Curiae — The Experience of a Statutory Body

Eilis Barry provided a factual account of the experience of the Equality Authority in relation to *amicus curiae* interventions and gave a backdrop to the development of *amicus curiae* in Irish law. Unfortunately *amicus curiae* is not as developed here as it is in the United Kingdom, or Northern Ireland, but the comparisons between the jurisdictions could assist in furthering its use in this jurisdiction.

Eilis split the concept of *amicus curiae* into two models: the individual enforcement model and the adversarial model. The individual model draws strength from developing concepts of equality, in particular European anti-discrimination law. The individual case can have extensive legal and social effects as it tests and clarifies the content of existing laws, it raises issues publicly and prompts national debate. This in turn heightens awareness of the legislation and, hopefully, encourages compliance with it, stressing that it raises issues publicly and prompts national debate.

However, Eilis stated that whether the potential will be realised depends on a number of factors, such as the openness and willingness of the courts to allow *amicus curiae* applications, the strength of opposition by potential respondents, recognition that opposing the application will result in considerable delay to the plaintiff, and obviously the quality and effectiveness of the *amicus curiae*. Lastly,

she cited the capacity and resources available so that individual cases can be brought forward and pursued.

EU directives recognise the need for *amicus curiae* type applications. However, at present there is no system of notifying relevant NGOs or bodies like the Equality Authority about the possibility of intervention. Eilis suggested that the Equality Authority and the Labour Courts themselves could notify the relevant body. Also, there are no statutory provisions for the granting of leave to intervene as an *amicus curiae*, except in relation to the Irish Human Rights Commission and s8 of the Human Rights Act 2000.

Overall, the speakers' expertise provided an excellent insight into the concept of *amicus curiae* interventions. Feedback from attendees has been very positive, with delegates commenting that the inputs clearly demonstrated the strengths and weakness of such interventions, highlighting obstacles that can crop up for the intervener. It is hoped that this seminar will help evolve the use of public interest law in Ireland.

For more information see:
www.publicinterestlawyers.co.uk
www.equality.ie
www.nihrc.org

FLAC Volunteer training in criminal law

It may not be the ambition of every lawyer to practice criminal law, but it is an area which most people regard with curiosity if not fascination. It is also an area of practical importance to FLAC volunteers. The latest training seminar for FLAC Volunteers was devoted to this area of law and was held on 16 May in the Distillery Building, Dublin 7. The three speakers dealt with their respective topics expertly and the seminar was extremely well attended by volunteers.

Mary Rose Gearty BL gave an excellent overview of criminal law for FLAC clinics, answering many queries which had come in from volunteers in advance of the seminar. She stressed the need for a common sense approach when dealing with FLAC clients. It is often a good idea to advise the client to discuss a criminal charge with the Garda. This will rarely do harm to a client's case and if the client is calm, reasonable and apologises for the behaviour, it may lead to a minor charge being dropped, particularly if it is a first offence.

However, Mary Rose said that in general it is usually advisable for a client to get legal representation in a criminal case. Criminal Legal Aid is widely and readily available if the charges are at all serious and there is a risk of either a custodial sentence or a reasonably large fine. A person who is on a very low income, e.g. €150-€200 per week, will be very likely to get Criminal Legal Aid even for a minor offence.

In relation to bail, Mary Rose reminded volunteers that generally speaking bail is an entitlement and not a privilege. However, bail can be refused on two grounds:

- ▶▶ if it is believed that the accused will not appear in court for the trial; or
- ▶▶ if it is believed that the accused will commit a serious offence while on bail. If a person is refused bail, they may appeal to the High Court.

Alleged abuses of Garda powers may be dealt with by the new office of the

Garda Ombudsman. The best advice to a client alleging mistreatment or misconduct by the Garda is that they make a written complaint to that office and to keep a copy of the letter. Mary Rose highlighted the six-month time limit for making a complaint, although this may be extended by the Ombudsman in appropriate cases.

FLAC clients often present with queries on sentencing but given the sheer number of variables involved, it is difficult to provide specific answers. The best approach is to determine the maximum penalty for the offence charged and then explain the various mitigating or aggravating factors that may apply, such as whether they have children, act as a carer for someone, or whether they have previous convictions.

Catherine Ghent, solicitor with Dublin firm Kelleher O Doherty, spoke on children / young people and criminal law. She explained that the legislation governing this area is the Children Act 2001 with the amending Act of 2006. Catherine explained that since 16 October 2006, the age of criminal responsibility is 12 for most offences and 10 for some serious offences (e.g. sexual assault). The doctrine of *doli incapax* [literally, incapable of crime, usually referring to minimum age of criminal responsibility] no longer applies.

Catherine outlined the features of the Garda Diversion Programme (GDP) which was put on a statutory basis by the 2001 Act. A child charged with any offence must be allowed to avail of this scheme before the case is heard by the court — otherwise the case will be struck out. To participate, the child or young person must take responsibility for the offence for which they are cautioned. The parents or guardian(s) must agree to the terms of the caution and, since the 2006 Act, evidence of involvement in the GDP can now be used in court if the child is charged with a subsequent offence. More information can be obtained on the web at http://www.garda.ie/angarda/juveniles_diversion.html.

Catherine also detailed the rights of children and young people when being questioned by police. If a child (defined as age 17 and under) goes to the Garda station for questioning, they must be told of their rights. The most important of these are the right to a solicitor (which should always be requested specifically, if not provided) and the right to have an appropriate adult present during questioning. Under the 2006 Act, children may be held for questioning for up to 7 days. In general, it is best to advise that children not be pressured into answering questions; they can later give a statement to their solicitor.

The session also covered the law relating to Anti Social Behaviour Orders, or ASBOs. Children and young people aged 12-18 can be issued with a Behaviour Warning which lasts for 3 months. If the young person does not obey the warning, the next step may be a Behavioural Contract. This contract is made at a meeting between the child, the parent/guardian of the child and the Garda, and must be called by a superintendent in charge of a district. The behavioural contract lasts up to 6 months and can be renewed for another three months. If the contract is deemed to have been broken by the young person, then the Garda Superintendent may refer the child to the Garda Juvenile Diversion Programme, or apply to the Children's Court for a Behavioural Order, lasting up to two years. Behavioural Orders can be appealed within 21 days of the person receiving the order.

If the young person does not comply with the order, the penalty will be a fine of up to €800 and/or detention in a children's detention school for a maximum of 3 months, or both. These penalties can be challenged, and if a young person is in this situation he or she should be urged to obtain representation through the Criminal Legal Aid scheme.

Finally, Eoghan Cole, BL addressed the seminar in relation to a subject often encountered in FLAC clinics — Road

centres on legal practice, children, RTOs

Traffic Offences (RTOs). He explained that, generally, the best advice to a client facing an RTO is to turn up to court and if responsible, admit to the charge. Those who come to court for their scheduled hearing usually receive a lesser penalty than those who do not. The client may be able to put forward a good excuse!

In relation to penalties, usually a person will not receive a custodial sentence for RTOs, especially for first offences. However, if a person is charged under s112/113 (joy-riding), s53 (dangerous driving) or s56 (driving without insurance), a custodial sentence is possible and they should be strongly advised to engage legal representation. Eoghan also advised that if a client brings a summons for a minor offence with them to the FLAC clinic, the volunteer should check whether the summons was issued within 6 months of the offence as this is required.

If a client has been issued with a charge sheet then they are technically on bail and will need urgent legal advice. People who have been charged can sometimes misinterpret the bail bond payable as a fine and not realise they are actually on

bail. Thus if the person does not turn up in court, a bench warrant may be issued for their arrest.

Once a person has been found guilty of an RTO and a penalty imposed by the Court, they can apply to appeal the decision or have it set aside. An appeal can be made to the Circuit Court within 14 days of conviction, and this decision will be full and final. A person has 21 days from notification of a penalty to apply for the decision to be set aside. This is a simpler process — applications can be made by filling in a form at ras U Dhalaigh in the Four Courts. If the matter is successfully set aside, it is as if the conviction was never imposed and the case goes back to the District Court. The person then still has a right of appeal if convicted again.

As regards the imposition of penalty points, a fixed charge notice detailing the penalty or fine imposed must be issued in the first instance, unless the offence charged requires a mandatory court appearance. The accused person then has 28 days to pay the fine. If he/she pays, he/she is accepting the charge and allowing the points to be endorsed on his/her license record. If the fine is not paid

within 28 days, the person has a further 28 days to pay an increased fine and avoid court proceedings. If the client does not pay within this period, he/she may be summonsed and may run the risk of a higher number of penalty points and a larger fine. If the client did not receive a fixed charge notice, then this fact will usually be accepted as a full defence to the summons (according to the Road Traffic Act). Eoghan pointed out that if a person commits a number of penalty-point offences at the same time, they will receive only the number of points for the offence which carries the highest number of points (more information can be found at <http://www.penaltypoints.ie>).

Proposals for the subject of the next FLAC Volunteer training event are employment law, the Garda Ombudsman and how to advise clients facing debt enforcement procedures. Suggestions regarding topics and expert presenters are always welcome!

If you are interested in volunteering for FLAC, please contact us by phone at 01-874 5690 or by e-mail at volunteers@flac.ie

Volunteers receive *Unsung Heroes* awards



Pictured at the awards ceremony are (L-R) Caragh Cunniffe, Kevin Baneham, Lord Mayor Vincent Jackson, John Langan, FLAC legal intern Christina McGranaghan and Centres Coordinator Elizabeth Mitrow

Dublin City Council runs an annual *Unsung Heroes* award to honour volunteers nominated for their work with voluntary organisations. Selected nominees are enrolled into the *Unsung Heroes* Roll of Honour in the Mansion House on Dawson Street.

FLAC nominated several of its dedicated volunteers who were then invited to the award ceremony in the Mansion House on 5 June. These were: Aoife McCann, Aileen Fleming, Paddy Keogh, Joe Power, John Langan, Caragh Cunniffe, Kevin Duffy, Kevin Baneham, Niall Buckley, Kim Walley, Michael Deasy, Noel Doherty, John Hussey, David Kent, Kenneth O’Sullivan, Peter Murray, John O’Connell, Maurice O’Connor, Marissa O’Keefe and Marian Pyne.

Congratulations to all those involved!

Photo thanks to Elizabeth McCann

Focus on FLAC staff: Catherine O'Donovan

Catherine has been an intern with FLAC for almost a year. Interns take on various roles within the organisation, from administrative duties to assisting the full-time staff and research work. Not all interns have a legal background, for example there is also a library intern and a statistical intern. The aim of the internship programme is to allow graduates to experience work in the NGO sector; in return FLAC is provided with support and assistance.

Catherine studied law at UCD and came to FLAC shortly after graduation. Looking back, she says that she had not realised how far the study of law in college is removed from the reality of practice.

What FLAC has shown me is how to use law as a tool to achieve real benefits for people. And FLAC extends the use of this tool to those who do not usually have the means to wield it, she suggests. Because her legal work now isn't as theoretical, she thinks that FLAC has imparted to her an interest in social policy and campaigning that she had previously not explored.

At present her day is quite varied but tasks change throughout the internship. She spent a few months providing information to the public on the telephone information and referral line. Catherine says that this forced her to quickly pick up information on a broad range of legal subjects, particularly on the practical side of law. She has worked on articles for FLAC News and researched the recently published series of legal information leaflets.

She has particularly enjoyed assisting Paul Joyce in his study into the Irish debt enforcement procedure, which is to be published in the autumn. Currently she is involved in FLAC's campaign to improve the system of civil legal aid, where she gives advice to people who have trouble applying for legal aid. She has also worked on test cases



that FLAC has brought in this area.

She feels the most positive thing about her internship work has been the ability to work on her own initiative, as well as the variety of work and the unexpected legal queries FLAC encounters which are passed around the office — these create an energy-ball of knowledge and perspectives.

As she comments, one thing about the internship is that because of the small working environment you have the ability to work alongside experts and avail of guidance, yet your input is as valued as anyone's.

One of the aims of the internship is to provide opportunities for the intern to further their legal knowledge and training. To this end, FLAC encourages attendance by interns at conferences and events, such as those organised by the Law Society and the NGO community. Catherine completed a course on social welfare law and also attended various credit and debt law conferences as this is of special interest to her.

Where would Catherine like to see FLAC developing in the future? She contends that she would like to see the development of the Public Interest Law Network (PILN) and the taking of more strategic cases, not just by FLAC. Hopefully FLAC's initiatives will prove fruitful in this area.

Prior to her internship, Catherine thought that she would pursue a career as a solicitor or work in a corporate legal department. However, in part due to her experience at FLAC, she has decided to pursue the route of becoming a barrister. She is currently preparing for the King's Inns exams.

We wish her all the best with this and who knows, we hope to have Catherine volunteer for FLAC as a barrister in the future!

If you are interested in joining FLAC as an intern, please contact us by phone at 01-874 5690 or by e-mail at info@flac.ie

2006 Annual Statistical Report shows state still neglecting civil legal aid needs of population

One of the core principles of FLAC is to ensure that disadvantaged people can effectively access legal services. Thus it is essential that FLAC have an accurate picture of its service provision and of the legal need of its callers. The Data Collection Programme started in January 2004 and the information collated from FLAC's network of centres has greatly assisted FLAC in its ongoing research and campaigning efforts to improve the provision of civil legal aid in Ireland.

The main findings from the 2006 Statistical Report are summarised here. FLAC would firstly, however, like to take this opportunity to express our gratitude to the volunteer legal advisors for their assistance and commitment to the programme. The volunteers returned a total of 4,353 data collection forms to us in 2006.

The Data Collection Programme provided us with information from 30 Legal Advice Centres during 2006. In the Dublin area, participating centres included Adelaide Road, Ballyboden, Ballyfermot, Ballymun, Blanchardstown, Clondalkin, Crumlin, Dundrum, Finglas, North King Street, Prussia Street, Pearse Street, Rathmines, Tallaght, Whitehall/ Beaumont and the National Association for Deaf People (NAD).

Among the participating centres from the rest of the country were Bantry, Ballina, Castlebar, Cork City, Clonmel, Listowel, Navan, Naas, Newbridge, Sligo, Thurles, Tralee, Tullamore and Wexford.

Areas of law discussed with clients

One-third of all callers to FLAC centres during 2006 called to discuss family law matters, while the remaining almost two-thirds of callers sought legal information on non-family civil legal matters (see Fig. 1). Yet the figures from the Legal Aid Board's Annual Report for 2005 indicate that 91.25% of litigation services and 70.53% of the cases involv-

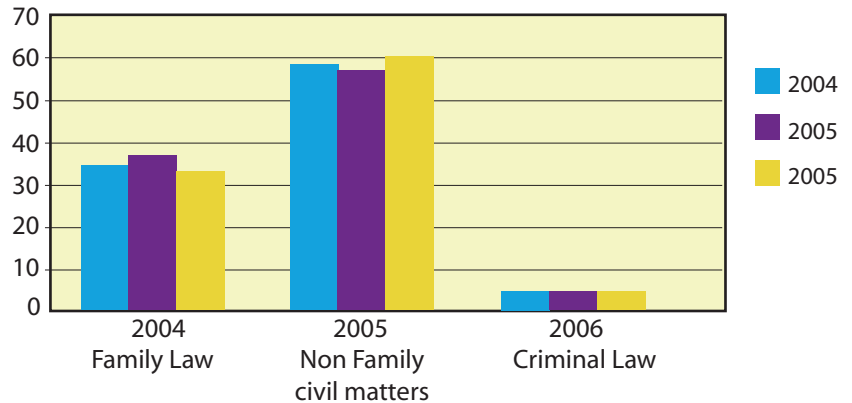


Figure 1: Areas of law discussed (N₂₀₀₄=3536; N₂₀₀₅=3811; N₂₀₀₆=4353)

ing legal advice provided by the LAB to its clients were in the area of family law.

For this reason, FLAC is concerned that there is a vast area of unmet need in the State's provision of civil legal aid in Ireland.

The most common non-family law matter was employment law, with one in ten callers to FLAC centres in 2006 seeking legal information in this area. Approximately one in every twelve callers sought legal advice on succession/probate and similar numbers sought advice on housing and property law.

Whether callers have a solicitor

More than three out of every four callers to FLAC centres in 2006 did not have a solicitor. Of the less than one-quarter of callers who had a solicitor, the majority had a private solicitor — only one-fifth of those who had a solicitor were clients of a Legal Aid Board law centre.

Finding out about FLAC

Callers found out about FLAC through a broad range of different sources. Citizens Information Centres (CICs), where FLAC centres operate on a regular basis, were the main source of

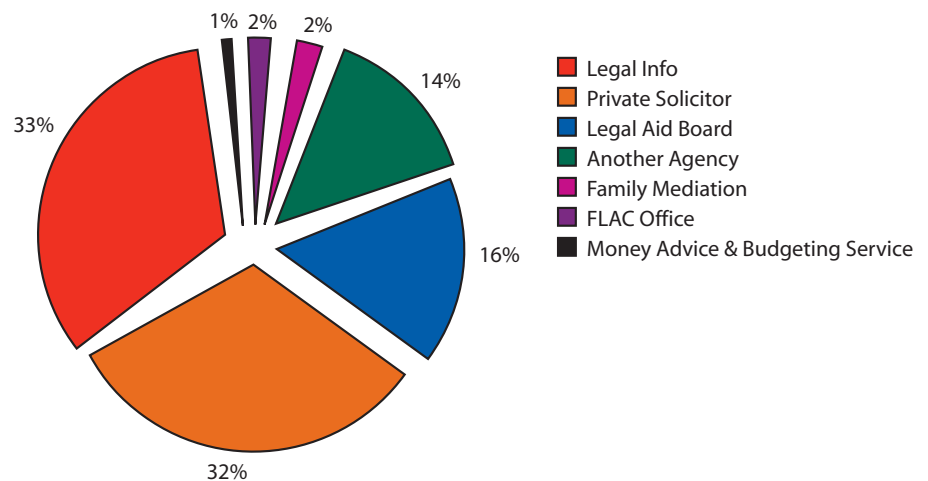


Figure 2: Legal information and referrals (N= 4353 clients)

2006 Annual Statistical Report shows state still

[continued from page 13]

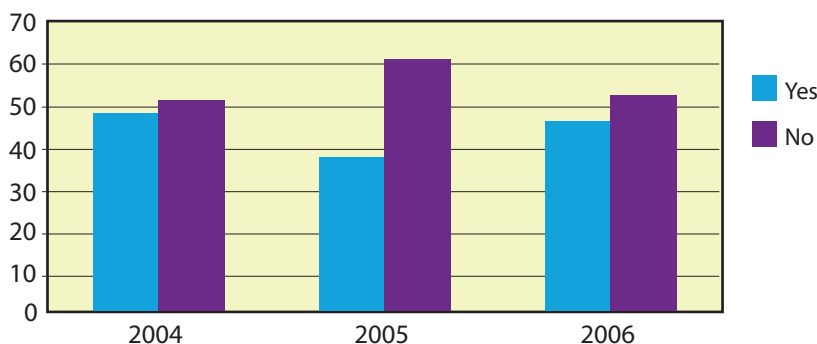


Figure 3: Had the client ever heard about the Legal Aid Board
(N₂₀₀₄= 779 respondents; N₂₀₀₅= 923 respondents;
N₂₀₀₆= 1622 respondents)

referrals for FLAC. Word of mouth (which includes clients who previously used FLAC service and referrals from friends and a family member) was the second most cited way of learning about FLAC.

How FLAC helped

Callers to FLAC's network of centres can get access to first stop legal information about general rights and entitlements (see Fig. 2). In 2006 one in three callers were provided with legal advice and information by FLAC volunteer advisors. The remaining callers, as well as being informed about their legal query, were referred on to the LAB Law Centres, other statutory and/or voluntary organisations, a private solicitor and/or FLAC Head Office.

Exploring callers experience in accessing legal aid

- ▶ One in five callers to FLAC centres in 2006 who answered this question had previously experienced difficulty in accessing legal assistance.
- ▶ Callers were asked whether they had ever heard about the Legal Aid Board (see Fig. 3), in order to assess general awareness of the LAB's existence. Of the 1,622 respondents who answered this question in 2006, just over half (53.1%) stated that they had never heard of it while 46.9% said they had. This shows that by 2006 almost one in two clients calling to FLAC centres did not know that the State provides civil legal aid in some cases.

- ▶ The 210 callers who had previously been through the legal aid system were asked how long they had had to wait before they got to see a solicitor. Figures for 2006 show that over 70% of the applicants got to see a solicitor within 4 months, this was up from just over 50% in 2004 (see Fig. 4).
- ▶ Over 80% of those who had applied for legal aid before had applied in relation to family law (see Fig. 5).
- ▶ The majority of those who applied for legal aid for family law matters were successful. The results showed that all of the applicants applying for legal aid for an immigration or refugee law matter were granted legal aid, while none of the respondents who had applied for legal aid for housing, credit, criminal or property matters were successful (see Fig. 5 for all areas).
- ▶ Of those who were refused legal aid, the main reasons given were that the client failed the means test (30%) or that their matter was not covered by the state scheme (24%). A number of callers had failed on the grounds of the merits test (14%), but most clients (32%) did not know or had not been given a reason.

Waiting times	2004 (%)	2005 (%)	2006 (%)
Within 4 months	51.5	60.3	71.7
5 to 12 months	25	21.4	10.9
Over 12 months	8.8	6	5.8
Not aware/still on list	14.7	12.3	11.6
Total	100	100	100

Figure 3: Table of comparative waiting times 2004-2006
(N₂₀₀₄= 68 respondents; N₂₀₀₅= 65 respondents;
N₂₀₀₆= 138 respondents)

- ▶ Of the callers who had heard about the LAB but had never applied to the service before, the majority claimed that there was no particular reason or that they did not deem it necessary. Only 8 clients stated that they did not apply because they thought they would not qualify, while 5 chose not to apply due to the waiting time involved.

FLAC callers demographic profile

Callers dropping in at FLAC legal advice

neglecting civil legal aid needs of population

Was legal aid granted?	Yes	No	Waiting list	No response	Total
Family law	82	30	10	13	135
Immigration/refugee law	12	-	-	-	12
Housing	-	3	1	-	4
Credit/debt law	-	2	1	-	3
Criminal law	-	2	-	-	2
Property	-	1	-	1	2
Other	2	1	-	-	3
Total	96	39	12	14	161

Figure 5: Table showing how legal aid was/was not granted including areas of law (N2004= 68 respondents; N2005= 65 respondents; N2006= 138 respondents)

centres come from a wide range of backgrounds. Over half of callers indicated that they were working either in a full or part-time job, as self-employed, or participating in a Community Employment (CE) Scheme. In relation to the callers household income, in year 2006 one in three callers said they had a gross annual household income over 20,000. One in four was a social welfare recipient and almost one in five had an income between 13,000 and 20,000 (see Fig. 6).

In 2006, 22% of FLAC callers lived in a house or apartment which they owned outright without a mortgage. Just over 26% of callers lived in a dwelling that they own with a mortgage. Just over one-quarter of the callers lived in the private rented sector, while just over 12% lived in local authority housing. Most callers (83%) to FLAC centres in 2006 were Irish nationals.

Conclusions

The data collected in 2006 showed that two-thirds of callers to FLAC centres sought legal advice on non-family law

matters. Considering that the Legal Aid Board deals mainly with family law matters, FLAC is concerned that there is a great deal of unmet legal need. The Data Collection Programme will continue to monitor this concern in 2007.

One in five callers to FLAC centres in 2006 had experienced difficulties in accessing legal aid.

Two thirds of callers to FLAC centres during 2006 had a gross annual income of less than 20,000 per year, and would face considerable affordability problems in accessing a private solicitor.

The statistics for 2006 found that just over half of callers to FLAC centres were not familiar with the LAB services. On a more positive note, we found that waiting times with the LAB dropped in 2005, and again further in 2006.

FLAC continues to promote equal access to justice for all, and to campaign for the improvement of civil legal aid in Ireland. We plan to conduct a survey later in 2007 to test caller's awareness and perceptions of civil legal aid and explore their experiences, if any, in dealing with the LAB. We look forward to discussing the findings in 2008.

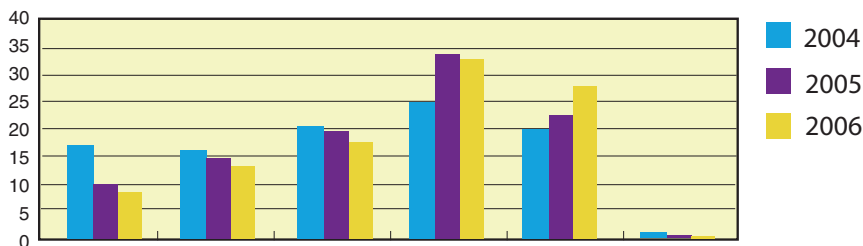


Figure 6: Gross Annual Household Income (N2004= 723; N 2005=1028; N2006= 1535)

Editorial:

Election 07 — analysis & prospects for change

In the last edition of *FLAC News*, we published a call to politicians to bring about changes which would drive forward FLAC's work. These included:

- » Recognition of the right of access to justice
- » Improvement of Civil Legal Aid
- » Reform of debt enforcement procedures
- » Restoration of Child Benefit as a universal payment.

FLAC compared and contrasted the election manifestos of the main political parties to analyse where our call for change was supported in the run-up to the election.

Concretely, as regards **access to justice**, the Green Party proposed to

- » increase funding for FLAC and existing community law centres;
- » examine the expansion of community law centres;
- » address barriers to access to the legal professions, specifically among disadvantaged, minority communities.

Only one other party mentioned access to justice specifically: Sinn Fein proposed to legally recognise the right to access justice and indeed the right to legal representation.

As regards **civil legal aid**, again the Greens were to the fore, suggesting a review of the cut-off levels currently used when means-testing free legal aid for civil cases. The Labour Party promised to review the current structure of the Legal Aid system so as to improve access to the courts, explaining that [w]e believe that wherever possible, child custody and access cases should be dealt with through mediation and that the state should develop appropriate mediation structures. Sinn Fein very notably undertook to legally recognise the right to access justice and the right to legal representation, and to expand the fund for Civil Legal Aid accordingly. They would introduce Legal Aid reforms in keeping with recommendations by FLAC to enable more people to chal-

lenge violations of their economic and social rights. Labour undertook to review the current structure of the Legal Aid system to improve access to the courts.

All parties failed to address **consumer credit** as an election issue, which is surprising given the unprecedented level of consumer debt in Irish society — this threatens to spiral into a major national crisis in the coming months unless measures are taken now to avert it. Similarly, there was no specific mention of **reform of the law on fines** in any of the parties manifestos. However, the government did introduce a fines bill this past January which went nowhere but indicates there might be a chance of legislative change in this area in the near future.

The area of **reform of debt enforcement procedures** featured Fianna Fail's sole concession to FLAC policy, with regard to the Money Advice and Budgeting Service (MABS). The party acknowledged the success of MABS and pledged to bring in legislation for a new structure with national leadership for the 21st century which maximises and recognises the current local voluntary involvement together with a strong professional role aimed at continuing to provide strong and confidential support for its clients. It also promised to give MABS a central role in increasing access to affordable credit for low income earners and social welfare customers. However, MABS has been waiting to be put on a statutory footing since its establishment 15 years ago in 1992 and such promises have been heard before. It remains to be seen whether the main government party will now live up to this undertaking.

FLAC's latest campaign is around **restoring Child Benefit as a universal payment** (see cover article for more details). This is a direct way of tackling child poverty and the organisation has had some very positive responses from individuals across the political spectrum. In the election manifestos, however, while there were some moves towards

tackling child poverty it was not always very concrete. Most promisingly, the Green Party pledged to make child benefit a universal entitlement for all, not just EU citizens and have progressive policies to tackle child poverty. Labour decried child poverty as an incalculable loss of human potential that stores up problems for which society continues to pay for decades. Sinn Fein planned to introduce a standard statewide school breakfast and lunch programme to supply nutritious food free of charge to schoolchildren — the party also has progressive policies to tackle child poverty, such as extending the new early childcare supplement to include children aged 6 to 12.

Given the final election outcome yielding a coalition government of Fianna Fail, Progressive Democrats and the Green Party, with the support of some independents, it is interesting — and hopeful — to note that one of the ruling parties was strongly behind many of our proposals in its pre-election platform. The Green Party's election manifesto covered many issues that coincided with FLAC's submissions. If access to justice and real change in the areas identified by FLAC are to become a reality, it is crucial now that the Greens push through their agenda.

While there was much to praise in the various party platforms, there were also many gaps, which is a major cause for concern. It shows that there is a lot of ground to make up before the main political parties in Ireland even take cognisance of some of the most serious issues affecting society today. Regrettably, it seems that only those issues that regularly make the media headlines attracted some parties attention. For those who are struggling to access justice or to overcome obstacles such as child poverty or consumer debt, sadly it appears this will continue for the foreseeable future.

FLAC will continue to press for reform and calls on all those who want to see real change in Irish society to get involved — check our website at www.flac.ie or call us at 01-874 5690.