



**FLAC Submission to the
Department of Housing, Local
Government and Heritage &
the National Homeless Action
Committee on the
development of a
Youth Homelessness Strategy**

March 2022

About FLAC

FLAC (Free Legal Advice Centres) exists to promote equal access to justice.

As an independent human rights and equality organisation, FLAC makes policy recommendations to a variety of bodies, including international human rights bodies.

FLAC, as an Independent Law Centre, takes on a number of cases in the public interest each year, mainly in the areas of homelessness, housing, equality and social welfare. As well as being important for the individual client, these cases are taken with the aim of benefiting a wider community. The FLAC legal team also runs a Roma Legal Clinic and provides a Traveller Legal Service.

FLAC operates a telephone information and referral line where approximately 12,000 people per annum receive basic legal information and runs a nationwide network of legal advice clinics.

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Introduction & Preliminary Recommendations

FLAC welcomes the opportunity to make a submission to inform the development of a Youth Homelessness Strategy by the National Homeless Action Committee (hereafter referred to as “the Committee”). FLAC also welcomes the establishment of a cross-governmental and inter-agency oversight group.

FLAC is happy to engage further with the Department of Housing, Local Government and Heritage (hereafter referred to as the “Department of Housing”) and the Committee, and to discuss any of the matters raised in this submission.

FLAC’s submission is informed by its case work, which, in recent years, has been dominated by issues concerning housing and homelessness. The majority of those cases arise from FLAC’s Traveller Legal Service and Roma Legal Clinic.¹

FLAC’s submission takes an equality, human rights, and access to justice-centred approach.

The *Housing for All* plan aspires to eradicate homelessness (including by preventing and addressing youth homelessness) and to resolve the housing crisis. However, this potential can only be realised if the delivery of the plan is grounded on the principles of human rights (including the constitutional right to privacy and the protection of the family) and equality (in light of the disproportionate impact of the housing crisis on those from disadvantaged and marginalised communities). Such an approach is required by international human rights law and by section 42 of the Irish Human Rights and Equality Commission Act 2014 (which imposes an obligation on all public bodies performing their function to promote equality, prevent discrimination and

¹ Case files on housing and homelessness issues constituted one-third of new case files opened by FLAC in 2021. Housing case files also constituted one of the largest categories of total case files dealt with in 2021 (36.4%).

Housing files constituted the largest category of total case files dealt with by the Traveller Legal Service in 2021 (62.2%) and the largest number of new files opened by that service in 2021 (53.3%).

Within the Roma Clinic, 19.4% of the total open files related to housing, and 22.2% of new case files opened by that service related to housing and homelessness.

These trends are consistent with recent years.

See: FLAC (2021), *Remote Justice: FLAC Annual Report 2020*. Available at: <https://www.flac.ie/publications/flac-annual-report-2020/>

protect human rights – “the Public Sector Equality and Human Rights Duty”).² The obligations created by the duty apply to departmental policies, such as Ministerial circulars, and the formulation and implementation of strategies and plans such as *Housing for All* and the forthcoming Youth Homelessness Strategy.

Access to justice includes access to legal advice and representation, access to dedicated legal services and knowledge of legal rights, entitlements and services. The vindication of the right of access to justice is not only important in addressing homelessness, but also in preventing it. Groups and individuals who experience disadvantage and discrimination are disproportionately represented in the homeless population, and are also more likely to suffer justiciable problems (meaning problems for which there is a potential legal remedy within a civil and/or criminal justice framework) which render them more vulnerable to homelessness.³ Homelessness is often a by-product of so-called “clustered injustice” – the cumulative and related problems (including legal problems) which arise from poverty or social exclusion.⁴ The promotion of the right of access to justice means that such problems can be prevented or resolved – and the risk of further problems (or “knock on effects”) emerging, including homelessness, is reduced.

² Article 11.1 of the International Covenant on Economic, Social and Cultural Rights provides: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

Article 2.2 of the International Covenant on Economic, Social and Cultural Rights states that: “The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

³ A Buck, NJ Balmer and P Pleasence, ‘Social Exclusion and Civil Law: Experience of Civil Justice problems among Vulnerable Groups’ (2005) 39 *Journal of Social Policy and Administration*, 302- 320.

Canadian Forum on Civil Justice (2016), *Everyday Legal Problems and the Cost of Justice in Canada*. Available at: <https://www.cfcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>

⁴ Luke Clements, *Clustered Injustice and the Level Green*, Legal Action Group (2020).

RECOMMENDATIONS

FLAC recommends that:

- The Public Sector Equality and Human Rights duty should be a core consideration in the process of developing and implementing the Youth Homelessness strategy. This involves ensuring that the development and implementation of the strategy considers the circumstances of all disadvantaged and marginalised groups (some of which are addressed in further detail in the sections below).
- Access to Justice should be a core consideration in the process of developing and implementing the Youth Homelessness strategy. Access to Justice should form a key theme or pillar of the Youth Homelessness Strategy.

1. A Rights-Based Approach to Housing and the Eradication of Homelessness

FLAC believes that the absence of a clearly articulated right to housing in the Constitution contributed to the emergence of the housing crisis, and that any solution to the crisis must be founded in the principle of housing as a human right. The *Housing For All* plan's commitment to advance proposals on a referendum on housing is therefore to be welcomed.

However, in addition to a potential constitutional amendment concerning housing, legislation is required to ensure that the housing rights of all individuals and groups are comprehensive, clear and enforceable. A rights-based housing system must include legally enforceable minimum standards. While *Housing For All* commits to "examine the potential for independent regulation of the social housing sector", it does not contain any commitments in relation to the introduction of minimum legislative standards for emergency accommodation, Traveller accommodation and the system replacing Direct Provision.

Criteria for access to social housing supports must be clear and applied in a consistent manner in accordance with the law. FLAC has encountered instances of access to social housing supports, including emergency accommodation, being refused on the basis of dubious, non-legislative criteria applied by local authorities. FLAC has acted for several Roma families who were excluded from accessing social housing supports on the basis of a Department of Housing Circular which purported to provide guidance to local authorities in "considering whether to accept an application for social housing support from a non-Irish national".⁵ The status of Housing Circular 41/2012 is currently unclear.

⁵ Housing Circular 41/2012 was introduced in December 2012. Paragraphs 5 and 6 of the Circular state that local authorities should only assess housing applications from non-Irish EU/EEA nationals where: they are in employment in the State; they are unable to work due to accident or injury, or; they are a jobseeker with a record of 52 weeks employment in the State. There is no clear legal basis for the Circular in Irish law, and it is contrary to EU law, however it has been rigidly applied by local authorities as if legally bound to apply to its provisions.

A feature of FLAC's experience of casework involving the Circular is the fact that, while local authorities rigidly apply the Circular at first instance, they do not appear to be prepared to defend decisions made pursuant to the Circular when faced with the fact or threat of legal proceedings. In several cases, FLAC has joined the Minister for Housing to proceedings relating to the Circular, or put him on notice of potential proceedings relating to the Circular. In each instance, those proceedings have settled in favour of FLAC's clients before

FLAC has also expressed its concern at the ongoing application of non-statutory “local connection tests” by local authorities in refusing to assess people as homeless.⁶

Separately, FLAC has acted on behalf of a number of Roma and Traveller families who were refused access to emergency accommodation on the basis that they did not satisfy the definition of “homeless persons” set out in section 2 of the Housing Act 1988.⁷ Section 2 of the 1988 Act has been criticised on the basis that it “only recognises the most stark form of homelessness... [and] fails to address other forms of homelessness and hidden homelessness”.⁸

RECOMMENDATIONS

FLAC recommends that:

- Regulations should be introduced pursuant to section 10 of the Housing Act 1988 which create minimum standards for emergency accommodation and statutory standards should also be introduced in respect of the system replacing Direct Provision.
- The Minister for Housing, Heritage and Local Government (hereafter referred as the “Minister for Housing”) should issue guidance to local authorities on the

being determined by the High Court. It appears to FLAC that local authorities and the Minister for Housing are now well aware of the issues with the Circular and its legal infirmity.

See further: FLAC (2021), *A Barrier to EU Nationals accessing Social Housing Supports: The Impact of Housing Circular 41/2012 on Roma families in Ireland*. Available at: <https://www.flac.ie/blog/a-barrier-to-eu-nationals-accessing-social-housing-supports/>

⁶ Regulation 5 of the Housing Assessment Regulation 2011 provides that a household applying for social housing support shall either apply to the authority for the functional area in which the household normally resides, the authority in which the household has a local connection, or an authority that agrees at its discretion to assess the household’s application. The legislation relating to emergency accommodation has no comparable statutory local connection or residency requirements or test.

See further: FLAC (2021), *Continued use of “local connection” tests a concern for FLAC*. Available: <https://www.flac.ie/blog/continued-use-of-local-connection-tests-a-concern-for-flac/>

⁷ For example, in 2018, FLAC initiated judicial review proceedings on behalf of a young Traveller family with two children who were living in a small unserviced caravan. The judicial review of the local authority’s failure to assess them as homeless settled on the basis of the local authority agreeing to carry out a further assessment of their situation.

See: FLAC (2019), *FLAC Annual Report 2018*. Available at: https://www.flac.ie/assets/files/pdf/flac_annual_report_2018_final.pdf?issuusl=ignore

⁸ Dr Samantha Morgan Williams (2022), *Why new legal definitions for homelessness are needed*. Available at: <https://www.rte.ie/brainstorm/2022/0207/1278337-ireland-homelessness-definition-legislation/>

proper exercise of discretion in applying Regulation 5 of the Housing Assessment Regulations 2011 and clarifying that the regulation does not apply in the context of the provision of emergency accommodation.

- The Minister for Housing should confirm the withdrawal of Housing Circular 41/2012 or, at the very least, amend it to ensure its compliance with EU law and to eliminate its discriminatory impact on groups such as Roma.
- Section 2 of the Housing Act 1988 should be amended to ensure that it reflects all forms of homelessness, including those living in inadequate accommodation.

2. Promoting Equality & Combatting Discrimination in Housing

Young people from marginalised and disadvantaged groups (including minority ethnic and migrant communities, people with disabilities and members of the LGBTQI community) are disproportionately affected by the housing and homelessness crisis.⁹ Measures aimed at resolving the crisis must promote equality and combat discrimination in access to housing.

In this regard, the recent publication of the *National Housing Strategy for Disabled People 2022-2027* is welcome. People with disabilities are overrepresented in the homeless population and the Youth Homelessness Strategy must also consider the rights of people with disabilities. Further, in light of the potential risks and harm of institutionalisation, there is a particular imperative to ensuring that housing outcomes are improved for young people with disabilities by creating early pathways to independent living in the community.

The Youth Homelessness Strategy, and its implementation, must be subject to equality-proofing and monitoring.¹⁰ To ensure those processes can take place, the collection of meaningful equality data is essential.¹¹ In this regard, the recent addition

⁹ IHREC & ESRI (2021), *Monitoring Adequate Housing in Ireland*. Available at: <https://www.ihrec.ie/app/uploads/2021/09/Monitoring-Adequate-Housing-In-Ireland-Sept-2021.pdf>

¹⁰ Again, such an approach is required by section 42 of the Irish Human Rights and Equality Commission Act.

¹¹ There is a wealth of research available which highlights the persistence and impact of discrimination and inequality on groups within Irish society. However, there is a dearth of statistical data which specifically relates to protected groups and inequality. State bodies are not mandated to collect disaggregated equality data in performing their functions, despite a clear imperative to do so arising from European Union equality policy.

of a Traveller community “ethnic identifier” to the application form for social housing supports is a welcome development.¹² However, research published by the Irish Human Rights and Equality Commission (IHREC) and the Economic and Social Research Institute (ESRI) in 2021 identified “a number of data gaps that are important to address in order to accurately measure access to adequate housing in Ireland overall, and for protected or vulnerable groups...”.¹³

The Equal Status Acts 2000-2018 prohibit discrimination in the provision of accommodation on nine grounds.¹⁴ In addition, since 2016, the Acts prohibit discrimination in the provision of accommodation against people who are in receipt of rent supplement, housing assistance, or social welfare payments (the Housing Assistance or “HAP” ground).

Despite these express provisions, a combination of the interpretation of the definition of “services” and the interpretation given to a number of exemptions under the Acts removes large amounts of State activity, including in the area of housing, from coming within the scope of the prohibition of discrimination. As a result, the extent to which the prohibition of discrimination applies to the general functions of local authorities, the Department of Housing and An Garda Síochána (who have a statutory role in the housing allocation process¹⁵) is unclear. Similarly, the exemption at section 14(1)(a) of the Acts excludes from challenge “the taking of any action that is required by or under—(i) any enactment”.¹⁶ These matters raise significant concerns around the Acts compliance with EU law, as well as with the extent to which discrimination and

The benefits of equality data are twofold. Such data assists not only in the enforcement of equality law but also in the formulation of policy (including housing policy) and in measuring its effectiveness.

See Further: FLAC (2021), *Submission to the Consultation on the Review of the Equality Acts*, Section 8: Equality Data.

¹² S.I. No. 73/2022, *Social Housing Assessment (Amendment) Regulations 2022*. Available at: <https://www.irishstatutebook.ie/eli/2022/si/73/made/en/print>

¹³ IHREC & ESRI (2021), *Monitoring Adequate Housing in Ireland*. Available at: <https://www.ihrec.ie/app/uploads/2021/09/Monitoring-Adequate-Housing-In-Ireland-Sept-2021.pdf>

¹⁴ The nine grounds are gender, marital status, family status, age, disability, sexual orientation, race, religion, and membership of the Traveller community

¹⁵ See further: FLAC (2021), *Submission to the Independent Anti-Racism Committee*, Section 7: Racial Profiling. Available at: https://www.flac.ie/assets/files/pdf/flac_submission_to_the_independent_anti-racism_committees_public_consultation.pdf?issuysl=ignore

¹⁶ FLAC (2021), *Submission to the Consultation on the Review of the Equality Acts*, Section 3.3: The Scope of the Equal Status Acts concerning State Activity.

inequality in access to social housing may be challenged under national anti-discrimination law.¹⁷

Finally, there are significant procedural barriers to pursuing discrimination complaints on the HAP ground.¹⁸ These matters must be addressed in the context of the current Review of the Equality Acts.

RECOMMENDATIONS

FLAC recommends that:

- The National Youth Homelessness Strategy and its implementation must be subject to equality-proofing and monitoring.
- The National Youth Homelessness Strategy must consider the rights of people with disabilities and should be implemented in tandem with the *National Housing Strategy for Disabled People 2022-2027*. The *National Housing Strategy for Disabled People 2022-2027* must be adequately resourced and implemented in full.
- The Department of Housing and local authorities must be mandated to collect comprehensive equality data.
- The Review of the Equality Acts must ensure that the functions of public bodies (including local authorities, the Department of Housing and An Garda Síochána) are brought within the scope of the Equal Status Acts, and the Acts must be amended to provide a remedy for discriminatory legislation and its effects which applies across all grounds. The Review must also ensure that the procedural barriers to pursuing complaints on the HAP ground are removed.

¹⁷ For example, Directive 2000/43 (the Race Directive) implements the principle of equal treatment between persons irrespective of racial or ethnic origin. The Race Directive prohibits discrimination on the grounds of racial or ethnic origin in employment as well as in relation to social protection, including social security and healthcare, social advantages, education and access to and supply of goods and services which are available to the public, including housing. The Directive applies to “the public and private sectors, including public bodies”.

¹⁸ FLAC (2021), *Submission to the Consultation on the Review of the Equality Acts*, Section 5.5: Complaints on the HAP Ground.

3. Traveller Accommodation

In 2019, an independent review group established by the Government published the *Traveller Accommodation Expert Review*.¹⁹ That report called for an “overhaul” of the legislation in relation to the provision of Traveller accommodation.²⁰ The failures of the Housing (Traveller Accommodation) Act 1998, they reported, are evidenced by failures to meet the scale of accommodation needed by Travellers, an “extremely high rate of Traveller homelessness”, and an increase in those living in “overcrowded conditions”.²¹

In 2021, FLAC made a detailed submission to the Joint Oireachtas Committee on Key Issues Affecting the Traveller Community on the subject of access to housing and accommodation, including Traveller-specific accommodation.²² That submission highlighted the need for legislative reforms in relation to the provision of Traveller accommodation and the standards which apply to Traveller accommodation.

That submission also highlighted the need for urgent reform to the several pieces of legislation which can be used to evict Travellers living on the roadside. FLAC highlighted that the majority of legislative mechanisms used to evict Travellers allow for summary evictions without judicial oversight. The need for these laws to be reviewed has been made all the more urgent in light of the recent landmark judgment of the Supreme Court in *Clare County Council v McDonagh* [2022] IESC 2.²³

¹⁹Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*. Available at: <https://rebuildingireland.ie/news/minister-english-publishes-the-report-of-the-expert-review-group-on-traveller-accommodation/>

²⁰ Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*, at page i.

²¹ Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*, at page i.

²² FLAC (2021), *FLAC Submission to the Joint Committee on Key Issues affecting the Traveller Community: Access to Housing and Accommodation, Including Traveller-Specific Accommodation*. Available at: <https://www.flac.ie/publications/flac-submission-to-the-joint-committee-on-key-issu/>

²³ See Further: FLAC (2022), *FLAC welcomes landmark Supreme Court decision concerning the summary eviction of Travellers and seeks urgent legislative reform*. Available at: <https://www.flac.ie/news/2022/01/31/flac-welcomes-landmark-supreme-court-decision-conc/>

RECOMMENDATIONS

FLAC recommends that:

- The Department of Housing should implement the recommendations set out in the Expert Review Group on Traveller Accommodation's report without delay, within a specified timeframe, through legislation and any other measures necessary.
- The Department of Housing and the Department of Justice should review the legislation allowing for summary evictions without judicial oversight. The Government should bring forward reforming legislation in relation to evictions that ensures that, other than in the most exceptional of circumstances, a family home can never be interfered with in the absence of a merits based determination involving a proportionality assessment by a Court accompanied with a requirement to offer alternative appropriate accommodation to homeless families.
- Section 19C of the Criminal Justice (Public Order) Act 1994 (the so-called "criminal trespass" legislation) must be repealed.
- The Minister for Housing should immediately review the Guidelines published in 1998 in relation to Traveller Accommodation; to update guidance in relation to the design and delivery of Traveller Accommodation standards and to amend the Housing (Standards for Rented Houses) Regulations 2019 to include halting sites and temporary dwellings (including transient, temporary and permanent halting sites).

4. Social Welfare

Barriers to accessing social welfare payments (or sufficient rates of payment) increase vulnerability to homelessness, particularly for those who may already belong to groups who suffer from disadvantage, discrimination or social exclusion.

People under the age of 25 years who are eligible for certain social welfare payments currently receive a lesser amount than those aged 25 and over. Eligible individuals aged 25 and over receive a basic weekly payment of €208, while claimants aged between 18 and 24 years with no dependent children (subject to limited exceptions) receive €117.70.²⁴ These lower payments fall below the basic minimum income standard set by the Government.²⁵

There appears to be an assumption by the State that adults below the age of 25 are able to live with parents or family members. This is not always the case and the policy has a disproportionate impact on young people who belong to marginalised or disadvantaged groups.²⁶ Since this policy's introduction, concerns have been raised that it increases the vulnerability of young people to homelessness, particularly those who are already disadvantaged or without family supports.²⁷

The Habitual Residence Condition (HRC) is a qualifying condition for all means-tested social welfare payments, including Child Benefit, under which an applicant has to show a connection to the State.²⁸ Those who are not entitled to another social welfare payment (or whose applications are subject to an ongoing review or appeal) may

²⁴ See for example the rates of payment for Jobseeker's Allowance: <https://www.gov.ie/en/service/1306dc-jobseekers-allowance/>

²⁵ See Rates of Payment for Supplementary Welfare Allowance ("a weekly allowance paid to people who do not have enough income to meet their needs and those of their families"): <https://www.gov.ie/en/service/36e514-supplementary-welfare-allowance/>

²⁶ The policy has a legislative basis and would therefore seem to be immune from challenge under national anti-discrimination law (pursuant to section 14(1)(a) of the Equal Status Acts – as discussed in Section 3 of this submission). However, there are doubts as to whether the legislative basis of the policy is compatible with the Constitution.

²⁷ For example, Saint Vincent de Paul noted that: "There is a significant gap between what is required for a minimum essential standard of living and the support provided by Jobseekers Allowance/Supplementary Welfare Allowance or the Back to Education Allowance rates for young people".

See: Saint Vincent de Paul (2013), *Analysis of Budget 2014*, p.4. Available at: <https://www.svp.ie/getattachment/4debe378-39b0-4fe2-bbd0-cb0e44d71529/SVP-Analysis-of-Budget-2014.aspx>

²⁸ See section 246, Social Welfare (Consolidated) Act 2005.

generally apply for Supplementary Welfare Allowance (SWA). However, SWA is also subject to the HRC. This means that those whose applications for social welfare are refused on the basis of a failure to satisfy the HRC have no access to SWA (a basic income support intended to act as a social safety net) even in circumstances where they have access to no other form of income.

A UN Independent Expert on Extreme Poverty²⁹ and the United Nations Committee on Economic, Social and Cultural Rights (UNCESCR) have both expressed concerns about the discriminatory impact of the HRC on vulnerable and marginalised groups.³⁰

The recent *Roma in Ireland: National Needs Assessment* report set out the difficulties faced by the Roma community in accessing public services. This assessment established that 14% of Roma adults in Ireland reported having no income.³¹ The report identified the impact of the HRC as a key factor in many Roma not being entitled to employment and training supports and social protection (including Child Benefit). Roma face significant difficulties satisfying the HRC due to lack of documentation, proof of address and language and literacy skills. FLAC is concerned that the application of the HRC by the Department of Social Protection is having a disproportionate negative impact on Roma, which is not necessarily dictated by EU law.

²⁹ Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, pp.11-12.

³⁰In 2015, the United Nations Committee on Economic, Social and Cultural Rights specifically recommended that Ireland should “review the habitual residence condition so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalized individuals and groups, and ensure the consistent application of the criteria by providing clear guidelines and training to the relevant officials”.

UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR, para.21.

³¹ Pavee Point Traveller and Roma Centre & Department of Justice and Equality (2018), *Roma in Ireland: A National Needs Assessment*. Available at: <https://www.paveepoint.ie/wp-content/uploads/2015/04/RNA-PDF.pdf>

RECOMMENDATIONS

FLAC recommends that:

- The Department of Social Protection should implement UNCESR's recommendation to review the habitual residence condition "so as to eliminate its discriminatory impact on access to social security benefits, particularly among disadvantaged and marginalized individuals and groups". This should include a review of the inclusion of the HRC as a criterion for receipt of Supplementary Welfare Allowance.
- The Minister for Social Protection should restore the full basic rate for all social welfare payments to those aged under 25.

5. Legal Aid

Ireland's State-funded civil aid scheme is administered by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995. Its stated purpose under this legislation is "to make provision for the grant by the State of legal aid and advice to persons of insufficient means in civil cases".³² While its statutory remit is fairly broad, the vast majority of advice and representation provided relates to family law.³³

Civil legal aid is not available for "disputes concerning rights and interests over land".³⁴ The Legal Aid Board takes the general view that eviction proceedings are subject to this exception and are excluded from the remit of the civil legal aid scheme. These factors, combined with the strict application of the means test and a "merits test" mean that legal aid is often not available in cases related to housing (including family home repossession) and debt.

FLAC has also raised concerns around the lack of awareness of the Civil Legal Aid scheme, and legal rights and entitlements more generally (including in relation to areas

³² Civil Legal Aid Act, 1995.

³³ In 2019, 74% of cases handled by the Legal Aid Board related to family law, 14% to International Protection, 4% to childcare and only 8% to "other civil matters".

See: Legal Aid Board (2019), *Annual Report 2019*. Available at: <https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/legal-aid-board-annual-report-2019-pdf-version.pdf>

³⁴ Section 28(9)(iii), Civil Legal Aid Act, 1995.

such as housing, social welfare, debt and discrimination). In addition to the need for bodies such as the Legal Aid Board and Citizens Information Board to engage in targeted information and outreach campaigns, FLAC has also highlighted the value of dedicated legal services (such as FLAC's Traveller Legal Service) in addressing issues around knowledge and awareness of rights, and in vindicating the right of access to justice more generally.³⁵

A similar matter of concern is the perception that civil legal aid is not available in cases concerning housing and homelessness against the State and local authorities. The difficulty created by the lack of legal aid in "disputes concerning rights and interests in or over land" does not arise in this context, nor does any other statutory barrier to the availability of legal aid. However, this is not reflected in the practice of the Legal Aid Board.

Furthermore, the Legal Aid Board is precluded by law from providing representation before many quasi-judicial tribunals. This includes the Residential Tenancies Board (RTB), the Social Welfare Appeals Office and the Workplace Relations Commission (which deals with employment and equality cases, including cases concerning discrimination in access to accommodation).

Concerns around the absence of legal aid before tribunals such as the RTB are all the more pressing in light of the recent decision of the Supreme Court in *Zalewski v Adjudication Officer & Ors* [2021] IESC 24.³⁶

In 2019, the UN Committee on the Elimination of Racial Discrimination expressed its "concern about the lack of legal aid provided for appeals concerning social welfare, housing and eviction, which has a significant adverse impact on Travellers and other ethnic minority groups to claim their rights".³⁷ A UN Special Rapporteur on Extreme

³⁵ FLAC (2021), *Submission to the Consultation on the Review of the Equality Acts*, Section 7.

FLAC (2021), *Submission to the Independent Anti-Racism Committee's Public Consultation: Towards a National Action Plan against Racism in Ireland*, Section 1. Available at: <https://www.flac.ie/publications/flac-submission-to-the-independent-antiracism-comm/>

³⁶ In that landmark decision, the Court held that the exercise of powers by Workplace Relations Commission Adjudication Officers, while permissible under Article 37 of the Constitution, also constitutes the administration of justice under Article 34. Notably, at paragraph 138 of his judgment, Mr Justice O'Donnell held that: "The standard of justice administered under Article 37 cannot be lower or less demanding than the justice administered in courts under Article 34".

³⁷ UN Committee on the Elimination of Racial Discrimination (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 43.

Poverty and Human Rights and UNCESCR have previously expressed similar concerns.³⁸

An “Action Plan” published by the Department of Justice in February 2021 commits the Department to a review of the civil legal aid scheme.³⁹ In July 2021, over 40 NGOs joined FLAC in calling for that review to be independent, comprehensive, inclusive and based on human rights and equality standards. Details on the nature, scope and timing of the Review (which was due to begin in 2020) have yet to be published.

RECOMMENDATIONS

FLAC recommends that:

- The review of the Civil Legal Aid scheme must be conducted with a view to ensuring that Ireland complies with its obligations under regional and international human rights instruments. FLAC believes that this can only be achieved through a comprehensive, independent review of the civil legal aid system which examines the functions of the Legal Aid Board, its resources, the criteria for legal aid (including the means test, and financial contributions), the areas of law covered, and the methods of service delivery.
- The scope of the Civil Legal Aid Scheme should be expanded to include provision of legal aid where legal advice and representation is required in quasi-judicial tribunals and other areas currently not covered by the Civil Legal Aid

³⁸ In 2011, the former UN Special Rapporteur on Extreme Poverty and Human Rights noted her concern that “several areas of law that are particularly relevant for people living in poverty” are excluded from the scope of the Legal Aid Board.

See: Office of the High Commissioner for Human Rights (2011) *Report of the UN Independent Expert on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona to the Human Rights Council*, Geneva: OHCHR, p.4.

In 2015, UNCESCR expressed concern regarding the exclusion of certain areas of law from the civil legal aid scheme “which prevents especially disadvantaged and marginalised individuals and groups from claiming their rights and obtaining appropriate remedies, particularly in the areas of employment, housing and forced evictions, and social welfare benefits”. Thereafter, UNCESCR recommended that the remit of the Legal Aid Board be expanded and that civil legal aid services be made available in a wider range of areas.

UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland*, Geneva: OHCHR.

³⁹ Department of Justice (2021), *Justice Plan 2021*. Available at: http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf

Act 1995. This includes cases heard by the Workplace Relations Commission, the Residential Tenancies Board and the Social Welfare Appeals Office.

- The Civil Legal Aid Act 1995 should be amended to ensure that legal aid is available in eviction cases.
- Bodies such as IHREC, the Citizens Information Board, the Legal Aid Board, and relevant NGOs should be resourced and enabled (and, where relevant, mandated) to provide information and to conduct targeted education and outreach campaigns concerning legal rights, entitlements and services.
- The Youth Homelessness Strategy should support the provision of dedicated legal services for marginalised groups, including young people experiencing and at risk of homelessness.