

flacNews

FREE LEGAL ADVICE CENTRES

40 Years of FLAC

Celebrating four decades of the Free Legal Advice Centres in Ireland

FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all. It campaigns through advocacy, strategic litigation and authoritative analysis for the eradication of social and economic exclusion.

We provide necessary legal services to the public, including an information and referral line, and we support a network of 70 free legal advice centres throughout Ireland.

The helpline, available at **1890 350 250**, is open during office hours Monday to Friday and while it does not provide legal advice, it offers basic information on the law and referrals to an appropriate service or centre. Our centres are open in the evenings and are staffed by volunteer lawyers who advise people on their legal queries. We do not offer representation.

In 2008 FLAC answered some 9500 queries on its helpline and provided non-means tested legal advice to about



7500 people at its centres, which are operated in conjunction with Citizens Information Centres. FLAC's website offers a wealth of useful information and is available at www.flac.ie

FLAC campaigns on a range of issues connected with our core areas of work: civil legal aid, social welfare law and credit & debt law. In addition we seek to advance the use of law in the public interest.

We take cases to challenge the law and so promote access to justice on behalf of marginalised or disadvantaged groups. Some cases have led to important law reform and enhanced rights for such groups.

Underpinning our campaigning and casework is a strong tradition of research and policy work. FLAC generates submissions on legal and social policy developments and proposes reforms to the law. The organisation produces substantive reports on our key areas of work as well as smaller publications designed to explain and make relevant legal issues for a wider audience.

Our newsletter, *FLAC News*, is now in its 19th year and appears quarterly. To mark the organisation's 40th anniversary, *FLAC News* will include a special insert documenting the four decades of the organisation's existence in photographs and press clippings. This will appear in each issue throughout 2009.

This first issue of 2009 covers the 1970s. We hope you will enjoy this series; we welcome any feedback.

Photo © Derek Speirs

FLAC News is available free on subscription, in print or PDF format. For this 40th anniversary year, it is being sent to all Irish legal practitioners. If you want to receive an electronic version rather than a printed one, or no longer wish to receive *FLAC News*, please e-mail us at flacmedia@flac.ie

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The views of individual contributors do not necessarily represent the views of FLAC.

Courts Service gets it wrong on jurors

The Courts Service has been sending out Jury Summonses that wrongly tell people over 70 that they are disqualified from serving on a jury.

Since 1 January this year, the upper age limit of 70 for serving on a jury has been abolished but the Courts Service is still sending out old Jury Summons forms that include the previous age limit, together with an explanatory leaflet that repeats the ban on people over 70.

Under the heading "IMPORTANT NOTICE" in bold type, the Jury Summons form asks the question: "What Age Must You Be To Serve On A Jury?" and answers: "You must be between 18 and 70 years of age. If you are over 70 years of age you are disqualified from serving on a jury..."

A page later, under the heading "QUALIFICATION FOR JURY SERVICE", the form says "You are qualified and liable for jury service if ... you are not less than 18 nor more than 70 years of age". And on Form J2, "Reply to Jury Summons", it helpfully tells the prospective juror that it is an offence under the Juries Act, 1976, punishable by a fine of €253.95, to serve on a jury knowing that s/he is disqualified.

An accompanying printed leaflet also says in bold type: "**Note: The qualification age for jury service is between 18 and 70 years of age**".

The Jury Summons and leaflet are accompanied by a photocopied sheet which says – not in bold type: "[T]here is now no upper limit to the age at which someone can serve on jury". It does not say that the information on the Jury Summons and leaflet is incorrect.

'Confusing' would be the politest way to describe the effect this must be having on people over 70 who are now legally entitled to serve on juries but are told three times on the official forms that they are still disqualified.

And just to complete this sorry mess, the Jury Summons also has a list of people ineligible to serve which, under the sub-heading "Incapable Persons", includes: "A person who because of insufficient capacity to read, deafness or other permanent infirmity is unfit to serve on a jury".

Another amendment last year removed the offensive reference to deaf persons as unfit to serve, replacing it with more sensitive language, although it still did not give them the right to sit on juries. FLAC client Joan Clarke, who has challenged the ban on deaf persons in a High Court action, is still awaiting a decision on her case. Perhaps if she succeeds, the Courts Service will produce a new form of Jury Summons which tells those aged over 70 and deaf persons that they are welcome to serve on juries.

▶▶ See also page 15 for further news.

FLAC at 40

On 25 April FLAC will celebrate its 40th anniversary in the Mansion House, where President Mary McAleese will address assembled guests. The evening aims to thank FLAC volunteers over four decades for their vital work and to acknowledge the contribution of FLAC's founders. At this event, we hope to gather some 500 guests to include current volunteers, FLAC's founders and supporters who are central to FLAC's development.

We will organise other events throughout the year providing opportunities to thank volunteers and promote FLAC's work. The current economic situation has placed increased demands on FLAC's services and campaigns. FLAC relies on the help of volunteers solicitors and barristers to operate its centres and plans to expand volunteering opportunities to meet increased demand for its services. For further information on events, contact Catherine Hickey at info@flac.ie

Comment: Over-indebtedness – much more urgent action required

According to figures released by the Financial Regulator in December 2008, almost 14,000 residential mortgages were in arrears of at least three months as of June 2008. Nine months later, with the steep rise in the rate of unemployment and evidence of small business failure across the country, unfortunately this figure is now likely to be appreciably worse.

In turn, figures issued by the Courts Service at the end of February 2009 show that the number of High Court applications to repossess properties and the number of orders granted both more than doubled in 2008 over 2007. Within 2008, the number of applications and orders rose appreciably in the final quarter, a trend that speaks for itself. The number of unemployed people in receipt of mortgage interest supplement (MIS), a payment intended to prevent the occurrence of mortgage arrears, appears to have increased though not substantially. Yet the Department of Social and Family Affairs is unable to provide a figure for the number of new applications for the payment, as it only keeps records on successful applications. Anecdotally, however, it is clear that many applicants are being refused this badly needed payment.

As economic circumstances further deteriorate and the pressure mounts on families to keep their heads above water financially, the question must be asked: what is the State doing to protect vulnerable people whilst the recapitalisation of the banks with taxpayer's money proceeds apace?

If the Regulator's recently adopted Code of Conduct on Mortgage Arrears (see *FLAC News*, October-December 2008) is anything to go by, Government has failed to understand the extent of this problem for many hard-pressed borrowers trying to protect their

home. The situation was exacerbated by the lack of any consultation with groups representing consumer interests before the code was adopted. As a result, the code that came into effect on 27 February provides even less protection than the draft version first viewed by FLAC in January.

Where the draft code would have prevented a mortgage lender from issuing a formal demand and legal proceedings against a borrower unless there were "six months cumulative arrears," the code as adopted allows a formal demand to be made if a third repayment is missed and permits legal proceedings to be brought after "six months from the time arrears first arise." There are many borrowers already well beyond this point.

Furthermore, whilst the code does apply to all lenders, including sub-prime, and does oblige lenders to explore alternative repayment measures with borrowers in arrears, its language is vague and enforcement will be subject to the Regulator's 'Administrative Sanctions' programme, a convoluted process unlikely to strike fear into a mortgage lender tempted not to comply. It is also instructive that as yet little or no information has been published on the code for the benefit of consumers and this has led to some misconceptions about its effect.

The code largely ignores the important question of how negative equity cases should be treated. For many borrowers who took out expensive 100% mortgages in recent years, who now find themselves in arrears and whose property may now be in a negative equity situation (i.e. worth substantially less than what they borrowed), this is now a very pressing question. Some may be tempted to hand back the keys and move on. However, money may still be owed to

the lender, where the house sells for less than the borrowed amount, in addition to costs and penalties. Given that properties are not selling at present, how the amount payable to the lender will be calculated is critical, but the code does not set any parameters for this.

Equally, for all the talk of reckless lending in recent months, there has been no proposal on a legislative initiative to examine and potentially reschedule grossly irresponsible housing loans. The borrower continues to endure the pain unaided. It has also recently come to our attention that in one particular area of the country, a local authority has started to issue eviction proceedings against tenants with sizeable rent arrears, a practice that would appear to serve no purpose whatsoever in the current climate and which we hope will not be replicated in other local authority areas.

Meanwhile, the Money Advice and Budgeting Service (MABS) struggles with referrals of large numbers of over-indebted people to its services. In its framework for economic renewal in December 2008, the Government committed itself to sustaining MABS funding for 2009 at €18 million. This is simply not enough. Already in 2009, MABS has seen an increase of 30% in the demand for its services and centres have begun to develop waiting lists, an unacceptable trend when often deeply distressed people have faced their financial difficulties and sought help.

Instead of piecemeal reactions by a variety of departments and agencies, FLAC believes that a joined-up approach to resolving increasing problems of over-indebtedness is needed – urgently.

Saving people is more important than saving banks.

Checklist of actions for surviving the

FLAC has compiled a list of tips for people who have lost their jobs – it is not exhaustive and should be taken as a suggestion for actions rather than the final word on what people can do.

A list of other agencies which might be of assistance is at the end.

- ❑ **Claim all your entitlements** - If you have just been made redundant, make sure that you have received all your entitlements under employment legislation. Depending on the circumstances, this could include arrears of wages, holiday and public holiday pay, pay in lieu of notice and a redundancy lump sum. If your employer has gone out of business, you may be able to claim these monies from the Social Insurance Fund under the Insolvency Payments scheme. A Citizens Information Service should be able to help you with this.
- ❑ **Sign on immediately** – You may have difficulty getting tax documentation like a P45 but you don't have to wait to sign on for Jobseeker's Benefit/ Assistance. When your claim is sorted out, you should be paid from the date of a valid claim. You may also be entitled to Supplementary Welfare Allowance from the Community Welfare Officer at your local Health Services Executive (HSE) Health Centre while you wait for your social welfare claim to be processed.
- ❑ **Claim Rent or Mortgage Interest Supplement (MIS)** – You can try to prevent your mortgage getting into arrears by claiming MIS from the Community Welfare Officer at your local HSE Health Centre. If you are in private rented accommodation, you can apply for Rent

Supplement. If you are turned down for these or any other social welfare payment, you may appeal the decision first to the HSE Appeals Office and then if unsuccessful to the Social Welfare Appeals Office. The local Citizens Information Centre/ Service should also be able to help you with this.

- ❑ Check whether you have **payment protection insurance** – Life Insurance cover is compulsory for almost all mortgages. However, you may have gone further and bought redundancy cover, not just for your mortgage but maybe also for a personal loan. If you have, now is the time to claim. If your insurer refuses your claim, you can use their complaints procedure to try to have the decision changed. If it is still refused, you can make a complaint to the Ombudsman for Financial Services about the refusal to make the payment.
- ❑ **Do up your own budget** – Add up your expenses on the one hand and your income on the other in as much detail as possible, taking everything into account, including household expenses, all loans, utility bills, motor tax, and house and car insurance. Look to see if there is anything you can cut back on to save money.
- ❑ **Contact the Money Advice and Budgeting Service (MABS)** – To assist with putting together your financial details and negotiating with your creditors, you may wish to make an appointment with a MABS money advisor locally. Bear in mind it is a service under pressure and you may have to wait for an appointment. MABS also has a **national helpline at 1890-283438**.

- ❑ **Contact your creditors** – Where you can see that your expenses exceed your income, it is a good idea for you (or MABS) to contact as early as possible those from whom you have borrowed to try to renegotiate payments.

The Code of Conduct on Mortgage Arrears obliges all mortgage lenders (including sub-prime mortgage lenders) to look at alternative ways of repayment that will assist borrowers to meet their obligations. A similar approach should be taken by other types of creditors (the people to whom you owe money) including local authorities to whom there may be arrears of rent.

- ❑ **Legal advice and representation** – One or other of your creditors may decide to take legal action against you, even though you have tried your best to pay what you can currently afford. In this situation, as well as consulting MABS, you should seek legal advice immediately.

If you are on a low income, you can apply to the state civil legal service, the Legal Aid Board, for legal advice, legal representation or both at the nearest Law Centre to you. You will have to take a financial means test to qualify for legal aid and you will have to pay a contribution for the service. You can also go to one of the legal advice centres run by FLAC to get basic legal advice.

- ❑ **Mortgage arrears** – the Code on Conduct on Mortgage Arrears obliges all mortgage lenders to wait at least six months from the time arrears begin on a mortgage before they bring any legal action against you. Bank of Ireland and AIB must

recession

wait for a year. If this rule is ignored, you should complain to the Financial Regulator – see <http://www.ifsra.ie> for more detail on the Code and how to complain.

- **(Re)training** – As well as continuing to apply for any jobs that may be out there, you might also investigate what training courses you could enrol in that might help to update your skills or provide you with new ones.

You might also wish to check out what courses in further education might be available through your local Vocational Education Committee (VEC) – see for example <http://www.cdvec.ie> if you are living in the Dublin area.

Useful web resources:

Useful information can be obtained from the following websites

State organisations:

- ▶ www.citizensinformation.ie
- ▶ www.welfare.ie
- ▶ www.hse.ie
- ▶ www.fas.ie
- ▶ www.cdvec.ie
- ▶ www.mabs.ie
- ▶ www.legalaiddboard.ie
- ▶ www.ifsra.ie
- ▶ www.financialombudsman.ie

Non-governmental organisations:

- ▶ www.flac.ie
- ▶ www.redundancy.ie
- ▶ www.mrci.ie
- ▶ www.ictu.ie
- ▶ www.inou.ie

State mortgage assistance scheme under review

Following FLAC's joint submission with Northside Community Law Centre on the Social Welfare (Miscellaneous Provisions) Bill 2008, FLAC has learned that the Department of Social and Family Affairs is currently conducting a review of the application of the scheme.

Mortgage Interest Supplement (MIS) is a payment made as part of the overall Supplementary Welfare Allowance scheme in order to help people who are finding it difficult to make their mortgage interest payments. In order to qualify for the supplement, the claimant must be in receipt of a social welfare or HSE payment. The scheme is administered by Community Welfare Officers (CWOs) of the Health Service Executive.

The scheme's main aim is to keep people in their home, which should underlie any proposed changes to the scheme. The payment is particularly relevant in the current environment of job losses. One of the main criticisms of the way the scheme is currently operated is a lack of consistency in decision-making, as each CWO has his/her own interpretation of what constitutes a "reasonable" mortgage

As reported in the last issue of *FLAC News*, the 2008 Act contains more restrictive provisions regarding the application of the scheme. However, the DSFA is currently drawing up guidelines for CWOs on the new application of the supplement. It is hoped that this will help eliminate current discrepancies between different decision-makers.

To address current problems with mortgage arrears and repossessions, relevant government departments must meet to discuss the potential housing crisis. Any such consultations should include the Health Services Executive and the Departments of Social & Family Affairs; Environment, Heritage & Local Government; Finance; Justice, Equality & Law Reform; and Enterprise, Trade and Employment. As the current wave of redundancies continues, newly unemployed people who purchased their family home at the height of the boom are now in danger of losing it since they simply cannot afford to keep up mortgage

interest payments.

It is essential that these government departments take a more creative and collaborative approach to keeping families in their homes at a time when they are now at risk of becoming homeless through no fault of their own. The State is ultimately responsible for accommodating people, whether through the provision of local authority housing or through rent supplement, so a more co-ordinated response could prove more cost-effective in the long run.

In her reply to a recent parliamentary question from Fine Gael Deputy Olwyn Enright, Minister Mary Hanafin indicated that there are over 8500 people currently in receipt of MIS. However, she also revealed that the DSFA does not keep statistics on the number of applications received for the supplement. Instead, it only records cases where the payment is granted, so there is no way of accurately knowing how many people are actually in need of this measure.

The DSFA estimates that an average 20 to 25 per cent of cases are refused but anecdotal evidence suggests that this figure could be much higher. The current budget for the supplement currently stands at €30 million for the year but the *Irish Examiner* (2 March 2009) reported the Department may face a deficit of €13 million in relation to this scheme.

The Minister also emphasised that there is an onus on financial institutions to show willingness to reschedule payments in situations where a person finds him/herself in financial difficulty. While the government has recently introduced a code of conduct for mortgage lenders, this measure is not an adequate response in dealing with the growing issue of mortgage arrears and repossessions.

FLAC hopes the government will use the review of the MIS scheme as an opportunity to collate up-to-date statistics showing the actual need for MIS while at the same time exploring other ways of helping people who are coping with this increasingly worrying situation. It is essential that people who need this supplement are helped to keep their homes.

Government fails to submit Social Rights report

The Irish government has failed to submit a report on how it protects economic and social rights to the European Committee on Social Rights which monitors how states are implementing the European Social Charter. The Committee is set up under the Strasbourg-based Council of Europe.

Under the Social Charter, the government is obliged to submit periodic reports for assessment by the Committee of Social Rights, but it failed to deliver its most recent report which was due on 31 October 2008.

The latest Report should have dealt with the articles of the Charter relating to "Employment, training and equal opportunities". These include the right to work (Article 1); the right to vocational guidance (Article 9); the right to vocational training (Article 10); the right of

persons with disabilities to independence, social integration and participation in the life of the community (Article 15); the right to engage in a gainful occupation in the territory of other States Parties (Article 18); the right of men and women to equal opportunities (Article 20); the right to protection in cases of termination of employment (Article 24); and the right of workers to the protection of claims in the event of insolvency of the employer (Article 25).

In the absence of an updated report, a somewhat annoyed Committee had to base its conclusions on the Government's performance during its previous examination of these articles in 2006 and 2007. It found that Ireland is not in conformity with parts of Articles 1, 9, 10 & 18. In relation to a number of other provisions the Committee said it would need more information in order to arrive at a conclusion.

The next Report from Ireland is due to address Articles relating to "Health, social security and social protection".

The European Social Charter is the social and economic companion to the European Convention on Human Rights. It shows little respect for the concept of a Europe based on respect for human rights if the Government ignores its responsibilities under the Charter.

But then maybe this is just consistent with its attitude to human rights monitoring bodies closer to home, like the Equality Authority and the Human Rights Commission.

Read the full text online at
http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/ConclusionsIndex_en.asp

Manager appointed for new public interest law project

Tony O'Riordan has been appointed Manager of the Public Interest Law Alliance (PILA). Welcoming his appointment, FLAC Director General Noeline Blackwell said "this exciting new project builds on the work FLAC and others have undertaken in recent years to bring together all strands of Public Interest Law in Ireland already underway and so foster a more vibrant culture and practice of working with the law to benefit marginalised and disadvantaged people."

A key objective of the Alliance is to develop a more coordinated infrastructure for Public Interest Law in Ireland. This will be done across four strands, law reform, legal education, community legal education and public interest litigation. PILA will facilitate exchange of information and will be a vehicle for idea and initiatives and will have a range of stakeholders, including lawyers, statutory bodies, law firms, law centres, NGOs, educators and other interested

parties. Individuals and organisations are invited to become members of the Alliance which is intended to be a dynamic community which will quickly become aware of the potential for common work, agendas and resources.

Tony is well placed to head up this initiative. He is a graduate of NUI Galway, Milltown Institute, University of London and University of Oxford and holds degrees in Law and Politics, Philosophy and Theology. From his student days he has been active in various areas to promote social justice. In 1994 he was appointed Co-ordinator of the WEB Project, a scheme based in Dublin 15 to divert 10 to 16 year-olds at risk of being in trouble with the law. For over ten years he has been a regular visitor to many of the country's prisons and was one of the founders of the Blanchardstown-based BOND Project in 1998.

In 1994 Tony joined the Jesuits and has lived for many years in the Jesuit



Community in Ballymun: he currently chairs the Ballymun Neighbourhood Council and is a Board Member of Ballymun Regeneration. Prior to his appointment to PILA he was Director of the Jesuit Centre for Faith and Justice where he led a number of significant contributions to policy debate in the areas of health, housing and penal reform.

New Charities Act does not recognise Human Rights

The Charities Act 2009 was signed into law on 28 February 2009 and while regulation in the area was long-anticipated and welcome, FLAC is very disappointed that the “advancement of human rights” was deliberately removed from the legislation as a recognised, valid purpose for organisations seeking charitable status.

The Charities Bill 2007 was debated before the Seanad on 26 November 2008 and Committee stage took place on 4 December 2008, during which much attention was given to the exclusion of “human rights” as a purpose beneficial to the community. A joint position paper from FLAC, Amnesty International Ireland, the Irish Council for Civil Liberties and Front Line was circulated to all Senators.

This paper subsequently had frequent mention throughout the Seanad debate. It referred to the corresponding legislation in neighbouring jurisdictions, including Northern Ireland, which all include human rights as a charitable purpose. The paper also highlighted possible issues with the exclusion from the legislation surrounding funding and the principle of equivalence contained in the Good Friday agreement.

The Law Society of Ireland also submitted a memorandum to all Senators in advance of Committee stage held on 4 December 2008, outlining concerns that existing charitable organisations advancing human rights may be vulnerable to exclusion from the register at some future point since their *raison d’être* would not be expressly included in the legislation.

Minister for State John Curran defended the omission of human rights from the legislation, stating that existing organisations with charitable status which use a human rights-based approach would not be adversely affected by the introduction of the new legislation. He justified the exclusion by stating that the legislation only sought to “maintain the status quo” in this area and such a provision for human rights was unnecessary. It later emerged during the Seanad debate that the government received advice from the Revenue Commissioners rather than the

Attorney General in determining what constituted a charitable purpose within the legislation.

A number of Senators including David Norris (Independent), Ivana Bacik (Independent), Alex White (Labour), Joe O’Toole (Ind) and Jerry Buttimer (Fine Gael) tabled amendments to the Bill calling for the inclusion of human rights as a charitable purpose. However, the amendments calling for the inclusion of human rights were ultimately defeated and the Bill passed through the Seanad without this glaring omission being rectified.

The Charities Bill then returned to the Dáil for approval before its enactment. While it was not included in the agenda, members of all opposition parties used this opportunity to raise the issue of human rights by asking Deputy Curran to explain the government’s motivation in removing this from the Bill. Deputies Jack Wall, Michael D Higgins and Joe Costello (Labour) all spoke in favour of including human rights in the current bill as did Deputy Michael Ring (Fine Gael) and Deputy Aengus O’Snoadaigh (Sinn Féin). The Minister reiterated the government’s position and insisted that the legislation would be revisited in five years time. The Bill was later approved by the Dáil.

In the absence of legal advice to the contrary, FLAC cannot understand the exclusion of the advancement of human rights from the Charities Act 2009. While the Minister has insisted that organisations carrying out human rights work are covered under other provisions of the legislation, it is not certain that they will be protected from malicious complaint or removal from the register in the future. FLAC calls on all elected representatives to monitor the situation and ensure that the inclusion of human rights in this important piece of legislation is incorporated into any future programme of government.

See the position paper at
www.flac.ie/download/pdf/2008_12_08_pos_paper_on_charities_bill_final.pdf

Expanding advice centres on immigration law

In January 2009 FLAC decided to expand its specialist immigration services. The staff of the Immigrant Council of Ireland kindly offered to train our volunteers on Saturday mornings over a three-week period. The first training took place on 21 February; it covered the basic aspects of immigration law in Ireland, providing an introduction to the subject. Two more sessions are to follow covering the more detailed aspects of immigration law and the issues surrounding its implementation on the migrant population of Ireland.

FLAC hopes to set up two further specialist immigration law centres in Dublin. These will run alongside the existing clinic in Macro Community Resource Centre on North King Street every Thursday evening from 7pm. One centre will be located on the south side and the other will operate out of Blanchardstown CIC alongside our general service there on Monday evenings. One of our immigration experts has agreed to begin the Blanchardstown service on 27 April, initially on a monthly basis.

Transgender conference

The Transgender Equality Network Ireland, Union of Students in Ireland and BeLonG To Youth Service are hosting a Transgender human rights conference and educational seminar entitled *Transforming Attitudes* on 17 & 18 April 2009 which will feature FLAC Senior Solicitor Michael Farrell and a video address by Thomas Hammarberg, the Council of Europe’s Commissioner for Human Rights. More details at <http://www.teni.ie/Conference>

FLAC: 2008 statistics show

FLAC is keenly aware of the need to understand the legal needs of its callers in order to campaign efficiently on issues important to them and to provide a basic free legal advice service to the public. Our data collection programme entered its fifth year in 2008 and the information collated from our telephone information line and network of centres has been of great assistance to FLAC's development and ongoing research.

Telephone Lines

In 2008, FLAC head office received 9244 telephone enquiries to its information service. This is up 53% from 6034 calls in 2007 and 4303 calls in 2004, showing a sharply growing need for legal information and an increasing awareness of FLAC's service.

Family law was again the largest area of enquiry, with one-in-five calls to the information line. The number of employment law queries also rose to one-in-five calls during 2008. The next largest area of enquiry was legal services, followed by consumer law. The number of debt related calls increased steadily over the year, with figures for October to December double those for January to March. During 2008 the phone lines were busiest during the period from July to September.

The number of calls made to FLAC's information and referral line has doubled since 2005. Table 1 compares the breakdown in calls between 2006 and 2008. The most noticeable increase is the rise in employment law queries, which rose from 6.7% of calls to the information line in 2006 to 20.1% in 2008, accounting for one in every five calls during 2008. Family law queries fell from one quarter of all calls in 2006 to just one fifth of all calls in 2008, showing an increase in demand for legal assistance in non-family law matters. The period from 2006 to 2008 also saw a fall in the actual number of calls relating to both housing and property issues.

Centres

By the end of 2008, 47 legal advice centres were participating in the Data Collection Programme, and 7,233 data collection forms were returned to FLAC

head office in 2008. This was a substantial increase on the 4,815 data collection forms returned in 2007. Table 2 shows the type of legal queries that callers brought to FLAC's network of centres over the period from 2004 to 2008.

The quantity of family law queries presented to legal advisors has increased over the period from 2004 to 2008, yet as a percentage of total queries, this has fallen slightly from 37% of all queries in 2005 to 31.5% of all queries in 2008.

There has also been an increase in the level of employment law queries brought to the legal advice centres. In 2008 employment law queries accounted for 14% of all legal queries, and were the second largest area of law discussed at the centres. The centres also saw an increase in the number of credit and debt related queries.

One in ten clients said that they had already engaged a solicitor in relation to their query. The majority of these queries that had already been discussed with a private solicitor were family law issues.

20% of callers to FLAC centres during 2008 were referred on to the Legal Aid Board for further advice or representation. Of these, 70% were family law issues. The next largest area referred on to the Legal Aid Board was employment law issues, which accounted for only 6% of cases referred on to the LAB.

28% of the callers to FLAC centres during 2008 were advised to consult a private solicitor, 230 of these were being referred back to their own solicitor. Of the clients referred on to a private solicitor, only 27% of these cases were family law issues. Examining the 535 clients who were referred to a private solicitor with

Table 1 Information and Referral Line 2006-2008

		2006	2007	2008
Civil Law	Family	25.1%	22.8%	20.7%
	Children's Rights	-	0.1%	0.2%
	Civil	5.3%	5.0%	4.6%
	Company	-	0.8%	0.5%
	Consumer	14.4%	5.7%	7.3%
	Debt		1.5%	1.7%
	Contract	0.8%	2.5%	1.7%
	Discrimination/Equality	-	0.2%	0.1%
	Employment	6.7%	14.1%	20.1%
	Housing	1.6%	0.9%	0.7%
	Immigration	2.0%	1.8%	1.8%
	Landlord & Tenant	2.5%	2.1%	2.5%
	Legal Aid	1.8%	4.5%	3.5%
	Legal Services	12.4%	18.1%	10.7%
	Personal Injuries	2.5%	1.3%	2.2%
	Tort		-	1.3%
	Probate	6.9%	5.4%	5.9%
	Property	6.2%	3.7%	4.4%
	Social Welfare	1.1%	0.9%	0.9%
	Solicitor/Client Issues	3.0%	4.0%	3.8%
Miscellaneous	2.7%	-	-	
Criminal Law		5.0%	4.6%	5.7%
Total legal queries		5,786	6,034	9,244

1970s: Building a movement for civil legal aid in Ireland

In April 1969, law students David Byrne, Denis McCullough, Vivian Lavan and Ian Candy began a Free Legal Advice Centre in Ozanam house in Mountjoy Square. FLAC's immediate aim was to use law students to give free legal advice to those who could not afford it. The need was so great, however, that FLAC also began providing representation and opened centres in Molesworth Street ISPCO Offices, in Ballymun and in Rialto. FLAC Cork opened its first centre in October 1969.

It was through this work that they hoped to advance their ultimate objective: to persuade the government to put in place a comprehensive plan providing civil legal aid to those in need. FLAC's work expanded rapidly. By 1972, 2437 cases had been handled. By 1974, some 8000 cases were taken by students and a panel of lawyers in eight centres.

Ultimately, FLAC's threat to withdraw these services forced the government to take action on civil legal aid. Responding to FLAC's campaign, in 1974 the government formed the Pringle Committee to address the issue of civil legal aid in Ireland. Meanwhile, FLAC achieved one of its early ambitions in 1974 by opening the first community law centre in Ireland. Coolock Community Law Centre was established to provide an accessible full-time legal service to individuals in Coolock and to promote knowledge and awareness of legal rights.

In 1977, the Pringle Committee published its report calling for the provision of state-funded legal aid centres and for individuals to be

educated about their rights, echoing FLAC's demands. However, the government remained slow to implement these recommendations.

Nine years and 22,421 cases later, FLAC continued to provide a free legal aid service as the government continued to break its promises. However, in March 1978 FLAC resolved to close its centres from April 1979 if Government were not taking adequate steps to implement the Pringle report. FLAC followed through with this threat and announced impending strike action.

In May 1979, the Government succumbed to pressure from FLAC and, having given assurances during the *Airey* case, committed itself to setting up a legal aid scheme by the end of the year. The landmark *Airey* judgment came that October: The European Court of Human Rights found that Ireland had breached the European Convention on Human Rights by failing to provide Josie Airey with legal assistance.

Following the state's commitment, FLAC voted at an EGM to stop representing clients from 30 June 1980. However the organisation pledged to establish centres providing legal advice based in community services organisations. These advice centres still operate today.

There is little doubt that the social and legal landscape have benefited immeasurably from the work of the law students who set up that first legal advice centre in Mountjoy Square in 1969.

Padraig O'Morain, *The History of the Free Legal Advice Centres 1969-2003*.

All photos © Derek Speirs except where indicated



FLAC protest to save Coolock CLC from closure, December 1979



FLAC EGM, Ormond Hotel, April 1979: Walter Walsh, Gerry Durcan, Karen Banks and Bill Shipsey



At a demo to mark the 3rd anniversary of the Pringle Report, FLAC Chair Bill Shipsey talks to Michael Keating TD



FLAC EGM, Ormond Hotel, April 1979



Protest outside Dail, March 1978



Irish Times, 12 December 1972

Photo © Eamon O'Dwyer



FLAC protest outside Dail on 1st anniversary of Pringle report, December 1978



Above right:
Evening Press, 24
April 1979



Irish Times, 27 March 1979



Right:
Irish Independent,
24 April 1979



During protest march on legal aid in Dec 1978, FLAC's Mary Griffin (centre left) and Greg O'Neill (left) talk to TDs Eileen Desmond and Jim O'Keefe



FLAC delivers a birthday cake to the Department of Justice marking the 2nd anniversary of the Pringle report, 14 Dec 1979



Mr Justice Pringle



Protestor on anniversary of Pringle Report, Dec 1978

REPUBLIC'S FIRST COMMUNITY LAW CENTRE IS OPENED AT COOLOCK

By Paul Murray, Social Services Correspondent

THE REPUBLIC'S first full-time community law centre was opened yesterday in Coolock, Dublin. It is being run by FLAC (Free Legal Advice Centres), a voluntary organisation of law students, which already has part-time offices in eight city and suburban areas.

The opening of the centre was welcomed yesterday by leading members of the community. A home help organiser said she already had clients lined up for its services, and gardai said they would put the centre's posters in the station. A community development officer and a tenants' association leader both said the centre would help fill a great need.

In its six years FLAC has dealt with over 9,000 clients in its eight part-time centres which were set up to demonstrate the need for a non-professional system of free legal aid and advice. FLAC believes that such need has been demonstrated beyond doubt.

The People's Committee is now examining how the State could provide free legal aid in the future, but many legal people say it should also be examining the provision of aid in criminal courts. Present provisions for the law have been substantially weakened by the four-month dispute between solicitors and the legal aid panel, and the Department of Justice.

Coolock Community Law Centre, which is a happy, extensive study of the barriers between legal people and the public. They came because, among other things, solicitors' offices are usually located in city centres remote from the poorer communities and working people can't get to them during office hours.

But the greatest barrier, says FLAC, is the money poor people are hesitant for both seeking

psychological reasons to approach legal people and are intimidated by the atmosphere in their offices. It is envisaged, however, that the centre, which should be a "prototype of the law centres that we (FLAC) wish to see the Government establish," will become an integral part of the Coolock community.

DIFFERENT

It is different from the other eight centres in that it will be full-time and have its own permanent offices in four rooms at the Northside Shopping Centre. It will be open from Monday to Friday, office hours, as well as on Saturday morning and Thursday nights. A solicitor and secretary will work on the full-time staff, and they will be assisted by voluntary law students, barristers and solicitors.

Barrister helping individuals, the centre will also provide a legal service for community groups, take tax cases, and conduct enquiries to make the community more aware of their legal rights and how to enforce them. Legal aid related social problems will also be researched.

The centre is financed through a Government grant of 15,000 a year and by voluntary subscriptions. It is still waiting for a telephone, but hopes that Dr. O'Riada, the Minister for Posts and Telegraphs, as a T.D. for the area, might be able to do something.



Above: Woman with child being welcomed into Coolock Community Law Centre by community solicitor Dave Ellis, Nov 1980



Left: FLAC protest to save Coolock CLC from closure, December 1979

Irish Times, 3 April 1975

Far right: Cover of FLAC's Annual Report 1978



Karen leads the attack in a legal battle

Right: Southside, 4 April 1979



FREE LEGAL AID

As you may be aware, the People's Free Legal Aid Centre has been operating in the Dublin area since 1975, during which time it has dealt with approximately 40 cases per week.

As you may also be aware, the People's Centre is a part of 11 similar centres which FLAC operates in and around Dublin City, together with one Centre such as Limerick and Galway. Some of these centres have been in operation since 1967, when FLAC was set up in Dublin with the dual aims of campaigning for a state scheme of civil legal aid and providing its own legal advice service. The Centre was financed by law students with a qualified lawyer in attendance, and consisting of a one night per week team have to date dealt with roughly 10,000 legal problems.

As stated above, since we were set up in 1967 we have, along with providing the emergency service, also campaigned for the immediate introduction of a state scheme of civil legal aid and advice which would incorporate community law centres. This campaign led to the People's Committee being set up in 1971 by the then Minister for Justice to advise on the introduction of an early date of a comprehensive scheme of legal aid and advice in civil matters and for introduction of a scheme which would be set up at a matter of urgent need the full introduction of the state scheme of legal aid. At the same time as the committee was set up the Government decided to give FLAC an annual grant from the Department of Justice funds to enable us maintain our emergency service.

The Committee (1971-1977) have said a half year after it was set up, the People's Committee reported to the present Minister for Justice Mr. Collins. The report was published in March 1978 and recommended the early introduction of a comprehensive civil legal aid and advice scheme incorporating community law centres. It also said that it was not possible to introduce the comprehensive scheme immediately as income schemes should be introduced as a matter of urgency. This income scheme would be modelled on the comprehensive scheme.

which also establish community law centres, and would at first deal with cases from the areas of consumer law, landlord and tenant law, and family law.

As far as we have been able to implement the recommendations of the People's Committee report in so far as the Government has now declared its intention to provide free legal aid available to family cases, it is, however, unclear what the scope of this report will be, and how soon we can expect its implementation.

Once the People Report was published FLAC was able to resume its campaign for legal aid, a campaign which naturally had both public and legal aid a half year while the People's Committee had disappeared. In the case of FLAC's annual general meeting in June 1978 it was resolved by the members that with cases from the areas of consumer law, landlord and tenant law, and family law.

We are actively aware of the fact that the longer we operate our emergency service the further we are from the Government taking up its responsibilities to implement the People Report. We also hope that if our withdrawal might force the Government to act.

We are actively aware of the fact that the longer we operate our emergency service the further we are from the Government taking up its responsibilities to implement the People Report. We also hope that if our withdrawal might force the Government to act.

We would urge all our readers in the People's Centre to attend the meeting where the present state of affairs regarding legal aid or other the lack of it will be discussed in detail - Yours, etc.

NIALL CORCORAN
Director Free Legal Advice Centres
111
Williamstown Road,
Flac House,
Dublin 11

FREE LEGAL ADVICE

It is the Minister for Justice is expected to announce (later 2001) of this report as being very clear that this country cannot afford a State funded civil law in all and sundry, but that many members of this organisation, which is having some measure of success in the provision of civil free legal aid.

If we are all that stand in the breach between the doing of justice and the doing of justice, then I would appeal for greater assistance from both branches of the legal profession, and from the Department of Justice if we can be of any use in this regard. It is an organisational search by the Minister, then surely he can provide us with some limited grant, or some facilities in our work, some of which we receive at the present time.

When this organisation meets in 1979 for its annual general meeting, for some central provision, for office facilities, it would make the job of organising representation for civil litigation much easier if every lawyer had a statutory obligation, from some fee and stamp duties, to arrange cases especially where it is used for such assistance. An attempt could be to follow - There is a stamp duty of 25.00 on every High Court summons issued. This is a crippling burden for a working-class wife seeking a separation by the High Court. This is not a difficult piece of legislation; a broadsheet exists in section 75 of the Irish Statutes Act, 1968. All this, and more, we ask from the Department of Justice.

From the profession we ask for continued co-operation. We have 10 solicitors on our rolls, serving five centres. Needless to say, more are welcome. As it's more solicitors, but we are getting no quite wait - Yours, etc.

BRIAN M. GALLAGHER,
Chairman,
Free Legal Advice Centres,
111 Williamstown Road,
Dublin 11.

Irish Times, 28 July 1971

Irish Times, 8 March 1979



At a news conference in 1972 calling for state funding for divorce and other law reform, L-R: David Molony (Chair), Anne Colley (Secretary), Alan Shatter (Director)

Right:
Irish Times,
26 March 1979

The confusion over civil legal aid caused by the Government's mishandling of the Airey case is analysed by DON BUCKLEY, who outlines the minimum requirements for an adequate legal aid scheme now.

Confusion at the top augurs badly for proper legal aid

IT didn't take thousands of people in a demonstration like the FATEL march to AIRNEY a few centuries from the Government's mismanagement of civil legal aid. A solitary civil lawyer, Anne Airey, was all that was needed to bring the Government before the Human Rights Court in Strasbourg.

And the misunderstanding of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid. The Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid. The Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid.

But when the Government of Ireland is faced with the prospect of a legal aid scheme which would be a step forward for the Government, it is not to be by any means confined to the Government's mismanagement of legal aid. The Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid.

Government get off the hook

IN THE AIRNEY CASE, the Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid. The Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid.



Josie Airey



FLAC picket on Department of Justice in support of Josie Airey's case, February 1979



Meliosa Dooce at picket in support of Josie Airey's case, February 1979

OUR TIMES

I broke through all the red tape, didn't I?

She is the woman who has broken through all the red tape of the legal system. She is the woman who has broken through all the red tape of the legal system.

Irish Times, 23 March 1979

NEWS FEATURE

Too little too late

The Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid. The Government's mismanagement of legal aid is not to be by any means confined to the Government's mismanagement of civil legal aid.

Irish Times, 12 December 1974



Inge Clissmann speaking at FLAC EGM, April 1979



FLAC picket address by Gerry Collins TD, Minister for Justice, at Jury's Hotel, Jan 1979



Mary Robinson speaking at FLAC protest, December 1979

sharp rise in legal need

a family law query, 191 of these were also advised to contact the Legal Aid Board, suggesting that the remaining 344 clients were referred onto a private solicitor rather than the Legal Aid Board would not satisfy the means test. The question remains as to whether these clients can afford a private solicitor.

225 clients were informed about family mediation, and 215 were sent to the district courts. Other agencies to which clients were referred in 2008 included the Small Claims Court, the Gardaí, PIAB and the District Court Office.

Trends

2008 was a busy year both on the telephone information and referral line and in the centres. Statistics for the telephone lines showed an increase of 53% in the number of calls received in 2008, and showed that the number of calls to the information line doubled over the last three years.

Two-thirds of FLAC legal advice centres contributed to the Data Collection Programme in 2008, up from just half of our centres in 2006. The number of data collections forms received in 2008

through the Data Collection Programme was also 50% higher than in 2007.

Family law continues to be the largest area of enquiry on both the phone lines and in the centres. However, family law queries fell from one-quarter of all calls in 2006 to just one-fifth of all calls in 2008. This trend is also reflected in the number of family law queries received on the telephone information and referral line, again highlighting an increase in demand for legal assistance in non-family law matters.

There were marked increases in queries related to our specialised areas of work including debt and credit as well as social welfare. From 2004 to 2008 there was a 55% increase in people attending FLAC centres with social welfare issues (29% increase from 2007 to 2008) and the number of people with debt and credit queries more than doubled in 2008 from the 2004 figure (53%). These increases may be due in part to the change in economic climate but they may also be due to FLAC's greater media profile and campaigning work, which means that other organisations working in these areas may also refer people to FLAC.

In relation to our campaign for a comprehensive civil legal aid scheme there has been an increase in property queries in FLAC centres which would suggest this is an issue which needs to be addressed by the Legal Aid Board who should reconsider their position on disqualifying people who need assistance in a dispute or right over land.

Also in queries related to immigration or refugee law, despite the drop in asylum applications and the enlargement of the EU in 2004, the figures for 2007 and 2008 were significantly higher than in the previous three years. There is a need to ensure that persons with such queries are able to access appropriate legal advice and representation through the Legal Aid Board if necessary.

The data collection programme provides valuable insights to the wider community on the gaps that remain in meeting legal need in Ireland. FLAC would like to take this opportunity to thank our dedicated and hardworking volunteers and all those who contributed to the collation of information for their commitment in helping the programme to succeed.

Table 2 Areas of law discussed at FLAC centres 2004-2008

		2004		2005		2006		2007		2008		
		Count	%	Count	%	Count	%	Count	%	Count	%	
Civil Law	Family	1249	35.3	1425	37.4	1504	33.7	1,741	32.7	2438	31.5	
	Non-Family	Employment Law	361	10.2	343	9.0	455	10.2	508	9.5	1094	14.1
		Succession/Probate	293	8.3	342	9.0	395	8.8	393	7.4	275	3.6
		Property	265	7.5	288	7.6	389	8.7	436	8.2	439	5.7
		Housing/Landlord	247	7.0	275	7.2	336	7.5	330	6.2	521	6.7
		Consumer Law	179	5.1	192	5.0	265	5.9	348	6.5	505	6.5
		Credit and Debt	123	3.5	120	3.1	135	3.0	153	2.9	259	3.4
		Neighbour Dispute	-	-	-	-	-	-	205	3.9	157	2.0
		Immigration/Refugee law	95	2.7	83	2.2	83	1.9	222	4.2	258	3.3
		Negligence/Personal Injury	-	-	-	-	102	2.3	165	3.1	413	5.3
		Wills/Power of Attorney	3	0.1	1	0.03	13	0.3	14	0.3	268	3.5
		Client-Solicitor Relations	41	1.2	49	1.3	34	0.8	20	0.4	89	1.2
		Social Welfare Law	63	1.8	58	1.5	68	1.5	99	1.9	139	1.8
		Other civil matters	420	11.9	445	11.7	444	9.9	392	7.4	446	5.8
	Total non-family	2090	59.1	2196	57.6	2719	60.8	3,285	61.7	4863	62.7	
	Criminal Law	197	5.6	190	5.0	245	5.5	297	5.6	432	5.6	
	Total legal queries	3536	100	3811	100	4468	100	5,323	100	7,733	100	

The elephant in the room: Personal

Michael Green is Visiting Research Fellow at the College of Business, Social Sciences and Law, University of Wales in Bangor. He is one of the UK's leading academics and researchers on the topic of personal over-indebtedness and régime design.

Introduction

One of the primary economic and social features of developed and, indeed, some developing economies, over the past decade has been the expansion of retail credit and the resultant growth in unpaid balances and serious personal over-indebtedness. What happens if there is a breakdown in an individual's array of credit bargains, particularly in a multi-creditor situation and what should be the philosophical and practical public policy response? This matter is now one of singular political importance, if individuals and economies are not to suffer indiscriminately. This article summarises and describes contrasting recent developments in relation to this topic in England and Wales and then in the Republic of Ireland.

England and Wales

Individual Voluntary Arrangements (IVAs) and Bankruptcy

Following the groundwork of the Cork Committee (1977-1982), the Insolvency Act 1986 materially changed the rules surrounding personal bankruptcy and the management of insolvency. It introduced for the first time the Individual Voluntary Arrangement (IVA) as an alternative to bankruptcy. This allowed debtors to pay what they could afford over a finite period with the remainder of the debt being written off, i.e. a composition of debts. Originally intended for the business debtor, such as a partner or sole trader, it has been overwhelmingly used by 'consumer debtors' since the end of the 1989-93 recession. Typically, an IVA will last some five years, has an average debt level of £60,000 and provides a net yield of 25%-30% to creditors after costs (£5,000 - £7,500). IVAs are administered by licensed insolvency practitioners and their incidence has expanded dramatically in recent years.

The advent of New Labour in 1997 brought a sea-change in political thinking and attitude. Insolvency reform became a foundation stone of economic

policy and the Insolvency Service became committed to reviewing both corporate and personal insolvency legislation. Simultaneously, it instituted a programme of research and extensive consultation. This combination led to a period of unprecedented reform which is now reaching the final stages of its implementation.

Research commissioned by the Service concluded that bankruptcy was ineffective as a means of creditor recovery with the IVA system working better. However, though well respected, the IVA had become a bloated, slow, costly and inefficient mechanism and informal debt management plans were exceeding IVAs at a rate of over ten to one. Over-indebtedness was forecast as a looming social and economic problem for the UK with an estimate of two million 'iceberg bankrupts' i.e. those who could not repay their debts without - or even with - liquidating their assets. Against conventional thought, overspending emerged as a greater cause of over-indebtedness than changes in financial circumstances.

These conclusions demanded a practical response in terms of reform running contrary to perceived wisdom. An improved regime should no longer be based on the belief that financial failure and moral failure went hand in hand and should be effective in times of economic recession. Primarily, it should move away from the dominance of a bankruptcy mechanism in favour of an updated IVA system, where costs to the State were minimised and payments to creditors were higher. Bankruptcy should be seen as a last resort and principally directed against those who can pay but will not, those who have been guilty of some offence or those for whom the medium-term economics for recovery are hopeless. In turn, the regime should shift from a judicial to an administrative basis, with conflict

resolution rather than publically funded courts at its centre.

This early template for reform has proved to be robust. IVA reform came through the Insolvency Act 2000 (enacted in 2003) which largely removed the role of the courts and speeded up the process. Subsequent informal administrative reform came via the IVA Protocol Agreement of 2008 and further changes are due in 2009. Bankruptcy reform came with the passage of the Enterprise Act 2002 (enacted in 2004) which introduced a one-year discharge period for 'no fault found' debtors and gave more protection to the family home. However, it simultaneously introduced a new punitive sanctions regime by way of Bankruptcy Restriction Orders (BROs) with a maximum disqualification of 15 years. In addition, entry into any formal mechanism will generally lead to a debtor being barred from mainstream credit for the next six years. Thus, the idea that bankruptcy is now easier in the UK is a myth.

Other proposed mechanisms are contained in the Courts, Tribunals and Enforcement Act 2007 and are likely to be enacted in 2009 or 10. These include:

- ▶ **Debt Relief Orders** – protection for debtors with few assets and insufficient income to support an IVA and who have debts of less than £15,000.
- ▶ **Enforcement Restriction Orders** – protection for persons with a temporary break in income flow and who are anticipated to resume earning within six or eight months of the Order.
- ▶ A new **Administration Order** process, i.e. one payment to be distributed pro rata to creditors where total unsecured debts are less than £15,000, this process to be administered by the courts with no judicial intervention.

Personal Insolvencies in England & Wales 1998-2008

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008*
Bankruptcies	19.6	21.6	21.5	23.5	24.2	28.0	35.9	47.3	62.6	64.5	64.1
IVAs	4.6	7.2	8.0	6.3	6.3	7.6	10.7	20.3	44.3	42.2	38.0

*Annual running rate based on 9 months to Q3: 2008

over-indebtedness and public policy

Finally, this Act has given enabling powers to the Lord Chancellor to bring informal debt management plans (DMP) within the formal regime.

The above table tracks the increase in the uptake of both bankruptcy and IVA applications from 1998 to 2008. Debtor petitions now comprise 84% of all bankruptcies with creditor petitions remaining constant each year over the entire period. One of the significant features of the sector is the presence of a well developed commercially-based provider network which generates solutions to distressed debtors in the working economy. At this point, some 30 firms deal with 90% of IVAs. The leading dozen of these firms generally follow the 'one stop shop' model and will provide a range of options in addition to IVAs or bankruptcy, including general advice, DMPs, remortgages or consolidation loans.

Increase in Unpaid Credit Balances

The increases noted in the table above, particularly in IVAs, have coincided with the expansion of retail credit lending, unpaid credit balances and an escalation in the general level of the ratio of debt to household income. In May 2001, unpaid unsecured credit balances stood at £130 billion; in December 2008 this had risen to £236 billion. Potential delinquency within this figure could be in the range of £30 - 60 billion and has been exacerbated by the effects of the economic downturn. This is a huge figure and is further evidence of the lack of control exercised by lenders over their exposures. The ratio of household debt to income has risen from 40% (1990) to 104% (2001) to 170% (2008). Underpinning this quantum shift has been a government ideology wedded to the notion of a relatively unfettered retail credit market, where consumer spending has been one of the mainstays of now illusory economic growth.

The Republic of Ireland

In relation to unpaid credit balances, the Republic has had a similar experience: The figure for personal non-housing or investment borrowing has escalated from €3.9 billion (Q2: 1999) to €8.3 billion (Q2: 2001) to €18.8 billion (Q3: 2008) including €2.9 billion of credit card balances. Recent events within the Irish economy clearly show that it is unrealistic to expect all this

debt to be repaid.

However, the position in the Republic over a very similar chronology to that of England and Wales is markedly different on the question of proposing and adopting solutions for over-indebtedness. The Bankruptcy Act 1988 provides for discharge after either a period of twelve years or a settlement of at least half the debt plus costs or otherwise by creditor and Court approval. It is therefore a little-used process. The 2007 and 2008 calendar years in total will have seen less than a dozen bankruptcies and almost all such cases have business-related circumstances. Bankruptcy in Ireland is a High Court Process, is thereby necessarily expensive and generally precludes actions for lower value debts. Hence access is artificially constrained, its scope limited and the process itself is cumbersome, slow and unsuitable for consumer debt recovery.

Further, two further issues in Ireland stand out as against the grain of current international practice. Firstly, there is no facility for attachment of earnings to help recover debts - individually or collectively. Secondly, the continuing practice of imprisonment for what is notionally described as contempt of court for debtors who do not appear at court hearings and do not meet the terms of Instalment Orders. Both are exceptionally unhelpful.

What, therefore, happens to less serious levels of consumer over-indebtedness and recovery? Outside of bankruptcy itself, there is no equivalent mechanism to the IVA system or similar repayment schemes that exist elsewhere in mainland Europe. Apart from the highly respected Money and Budgeting and Advice Service (MABS), there is little or nothing in the informal régime. Debt management companies are rare, given open access to the publicly funded and free MABS service by debtors and creditors alike.

However, MABS is now subject to increasing financial and operational stress. The autumn 2008 budget has provided that MABS is now to become part of the Citizens Information Board but its structure has not been rationalised. Anecdotally, it is apparent that the service is being

increasingly approached by over-indebted individuals who are in work, are recently unemployed or are self-employed and who may have a house or other assets. Some of these new clients are outside MABS' traditional catchment and may also be outside their skill base. A fundamental philosophical question follows as to whether or not public funds should be used to subsidise the efforts of commercial lenders to recover civil debts. Should MABS' efforts, capacity and resources be confined to helping those on low incomes; and should those who are in work and who may have an asset base in turn be assisted by commercial operators where creditors pay a reasonable price for this service?

Irrespective of any eventual improvement in lenders' assessment of borrowers' creditworthiness in Ireland, the historical errors and the subsequent delinquent debt will still have to be dealt with in terms of write offs. The scale of this delinquency problem is likely to be significant in the context of the Irish economy and will seriously impact on banks' already troubled balance sheets. There seems little in terms of outcomes for the economy in the foreseeable future to help already seriously distressed individuals/households, other than a personal windfall. The absence of formal or informal mechanisms, other than MABS, to simultaneously balance the accommodation of distressed individuals within some format of economic, social or emotional rehabilitation, while looking to maximise creditors' recoveries and minimise the costs to the State, is therefore very marked. MABS on its own is unlikely to be sufficient without major changes in skills, resources and structure.

There is as yet no accessible evidence in the public domain that would suggest that this topic is yet deemed pressing at either a political or administrative level in government in Ireland. Equally, there is little sign that boundaries in levels of acceptability of moral hazard and commercial lending behaviour within society have been examined. Experience from other countries would suggest that the time lags associated with over-indebtedness are difficult to gauge. Consequently, action is best taken sooner rather than later and its need must be openly debated.

Focus on FLAC: Peter Ward BL Chairperson of FLAC Council

Peter Ward BL joined FLAC in 1981 when still a student and has been a member ever since. It was just after the introduction of the Civil Legal Aid Scheme in 1980 and FLAC was in the process of adapting to the new environment whereby its campaign to establish a state-funded civil legal aid scheme had been successful – albeit partially.

Today Peter is Chairperson of FLAC Council. For many years Council was responsible for the day-to-day management of the service which FLAC provided. Nowadays, however, the organisation has a full-time staff. The administrative management of the organisation is in the hands of the Director General. FLAC Council has overall responsibility for the governance of the organisation and for policy formulation. This takes the concrete form of a devising a periodic strategic plan and overseeing its implementation.

Peter has been a member of FLAC for 28 years. His involvement in the organisation has changed over that time, having spent many years as a volunteer adviser both in the evening centre at Westland Row and at head office. Some of Peter's fondest memories of working in FLAC date back to the 1980s, when the head office was one small room at the top of a building in North Earl Street. As he says, "it was a tiny space but it was a hive of activity with huge demands being placed on the service at a time when unemployment was extremely high and the economy was completely stagnated – and it survived on doughnuts from the Kylemore Bakery. It was a time of great energy and fun in the organisation and lifelong friendships resulted."

A great milestone was reached for Peter when FLAC moved into its own premises in Dorset Street in Dublin's north inner city. He believes this has given the organisation a secure base and the ability to plan long-term in a way that many non-governmental organisations find difficult.



Great memories for Peter also include FLAC's successful test cases – most obviously the test cases on equality in social welfare payments and recent success in the case of Lydia Foy on the law on transgender.

In his view, "FLAC has always had a dual role. It provides a service which is badly needed to people who otherwise would not have access to legal advice from solicitors and barristers. This has always been at the core of FLAC's existence and continues to be so."

At the same time FLAC has sought to campaign for law reform in the areas of law in which it works. In the 1970s this meant that many proposals for reform of family law grew naturally out of the family law service which FLAC provided. In the last number of decades FLAC has likewise made proposals most successfully in the areas of social welfare law, employment law and the law governing the enforcement of debt., while also being at the heart of the debate on the provision of legal services.

Peter sees FLAC as networked into front-line services and organisations through-

out the country. He believes that this means the organisation can identify the most pressing legal issues facing the poorest people in society. He cites an example of this: *An End Based on Means?*, FLAC's report on debt published in 2003 which identified the need for a complete overhaul of the legal regulation of credit in this country, including the issue of reckless lending.

Peter is hugely impressed by the dynamism and idealism of law students and young lawyers, who for him represent the lifeblood of the organisation. "Combined with the continued support and involvement of the established profession, this means that FLAC will continue to thrive as the most progressive legal services organisation in the country," he says.

Most recently FLAC has led the debate on the role of Public Interest Law generally in Ireland and Peter hopes that the organisation will expand this debate in the near future: "FLAC is a vital and progressive organisation with a large pool of good will in the legal profession, committed volunteers and a highly skilled specialised full-time staff."

Inside the Centre:

The Free Legal Advice Centre @ MACRO, Nth King Street, Dublin 7



**Julie Fitzgerald,
Solicitor and FLAC
volunteer in the
Macro
Community
Resource
Centre, North
King Street,
Dublin 7:**



I've been a volunteer for three years. I learned about FLAC while studying law at UCC, being a volunteer was highly encouraged and it has been a very rewarding experience. It is a pleasure to be part of such a noble tradition.

Being a volunteer has taught me a lot about how the law and the Courts system is still a daunting prospect for many people. It has also made me aware of the invaluable work carried out by the Citizen's Advice centres around the country. More recently, it has made me aware of our growing immigrant population and the problems they face in Ireland and of the need to continue the good work in educating people about their basic rights, whether in relation to Employment matters, Family law, Landlord and Tenant relations or Consumer rights.

I would encourage all solicitors to participate in FLAC, to share their knowledge

and take pleasure in helping people learn about their legal rights in general terms and directing those people to the appropriate forum for their complaint.

**Brendan
McKeon BL;
Barrister and
FLAC volunteer
at North King St:**



I have been volunteering with FLAC for about a year now. My Master during my first year at the Bar volunteered with FLAC and she was the one who really got me interested in participating. She told me that I should apply to be a volunteer as it is a good way to help people who need legal advice but who may not be in a situation to gain that advice easily.

It provides a great opportunity to develop my knowledge of different legal issues which I may not otherwise experience during the working day. Every time I vol-

unteer at FLAC I am presented with a different issue. I think this shows how the organisation is extremely important in helping people in all types of situations. I decided to volunteer because I was lucky enough to go to college and qualify as a barrister. I felt that I should use the training that I received working with FLAC.

Over the past year volunteering with FLAC I have come in contact with people from all walks of life and all backgrounds. I feel I've learned a great deal from the varying questions I've been asked. Many of the queries relate to family law or criminal

law but some more unusual questions arise now and then. The staff of FLAC are always very well organised and have information packs ready for each consultation should volunteers need to look up any information or provide clients with brochures.

I think if any barrister or solicitor is considering volunteering with FLAC they should definitely participate. It is a fantastic organisation. I have seen over the past year how you can make a difference by volunteering.

Casework Round-up: Social Welfare Appeals

FLAC is representing a number of clients in an important review by the Chief Social Welfare Appeals Officer of the Habitual Residence Condition for qualifying for social welfare benefits. Four of the clients had won social welfare appeals against the refusal of Child Benefit but then the Department of Social and Family Affairs asked the Chief Appeals Officer to review the decisions. The clients are all in the asylum/leave to remain process and the Department is claiming that no-one who is seeking asylum or leave to remain can satisfy the Habitual Residence Condition (HRC) for welfare benefits.

These cases are about Child Benefit but the decisions in them will also affect applicants for a wide range of other non-contributory benefits which are subject to the HRC. A decision on these cases is expected shortly as it is over a year since the Department applied (in February 2008) for a review of the first of these successful appeals. The Department has refused to pay Child Benefit to any of the four applicants pending the outcome of the review.

The Habitual Residence Condition was introduced in 2004 to guard against an influx of supposed “welfare tourists” from the new EU Accession states. The influx never happened but the HRC has remained. The criteria for fulfilling the HRC were set out in the Social Welfare (Consolidation) Act, 2005, amended by the Social Welfare and Pensions Act, 2007. It is nowhere stated in either Act that people in the asylum/leave to remain process are to be excluded as a group or class.

In seeking these reviews by the Chief Appeals Officer, the Department has relied upon a decision by the Supreme Court in the case of *Goncescu & Others v. The Minister for Justice, Equality and Law Reform* [2003] IESC 49, where judgment was given on 30 July 2003. The Department argues that this case is authority for holding that persons allowed to enter the State to apply for asylum are not really “resident” here but

merely ‘present’. As a result, the Department claims, people in the asylum/leave to remain process cannot build up any entitlement to benefits, no matter how long they remain here, unless or until they are given leave to remain.

The Department now routinely relies on the *Goncescu* judgment in new social welfare appeals as well.

In response to the Department’s claim, FLAC has argued that the *Goncescu* decision was made before the introduction of the Habitual Residence Condition and in a case that did not concern social welfare issues, but instead a claimed right to establishment as self-employed persons under EU bilateral agreements with candidate member states. FLAC submitted that *Goncescu* could not just be transposed to quite different circumstances under a different statutory framework.

In addition, FLAC pointed out that the legislation governing the Habitual Residence Condition, which contains quite detailed and specific criteria for complying with the condition, had been enacted after the *Goncescu* decision and should supersede the reasoning contained in it. In particular, a supposed general prohibition on compliance with the HRC by anyone in the asylum/leave to remain process could not be taken to override specific criteria adopted subsequently in legislation and which made no reference to such a blanket ban.

As well as contesting the Department’s application for a review in the four successful appeals, FLAC itself subsequently sought a review by the Chief Appeals Officer of another four cases where an Appeals Officer had found against other FLAC clients based on *Goncescu*-type arguments. These cases included applications for Carers’ Allowance and Disability Allowance as well as Child Benefit.

It is not clear whether the Chief Appeals Officer will decide on all these cases together since they raise similar issues, or whether he will decide the earliest (February 2008) case first and then apply that reasoning to the others. These decisions will be very important in relation to determining the entitlement to social welfare benefits of people in the asylum/leave to remain process.

FLAC has also issued Judicial Review proceedings to challenge the Department’s refusal to pay Child Benefit to the woman whose appeal succeeded in February 2008. There is no provision in the legislation to put a stay on the payments of benefits pending a review by the Chief Appeals Officer. FLAC is arguing that the Department, as a party to the proceedings, should not be able to unilaterally decide to withhold payment after the duly appointed Appeals Officer, acting entirely within his/her jurisdiction, has allowed an appeal.

The Judicial Review proceedings are ongoing.

Accessibility Case against Iarnrod Eireann

Submissions closed in February after a two-day hearing in a case where FLAC represents a disabled man who had complained to the Equality Tribunal about wheelchair accommodation on inter-city trains. He also claimed that he had been victimised and harassed because of his complaints. The Equality Officer reserved her decision in what was quite a complex case which had also taken a long time to come to hearing. A decision is expected shortly.

Challenge to ban on deaf jurors

In 2008 FLAC represented Ms Joan Clarke, a deaf woman from Galway who last year challenged her exclusion from jury service on account of her deafness. Joan's case was heard in the High Court at the beginning of June 2008 and a judgment is expected soon in this case which is important for ending discrimination and exclusion of the deaf community.

During the hearing, FLAC stressed the position in the United States where deaf persons can and regularly do serve on juries. On the other hand, the State, in opposing Joan's challenge, relied on the example of the UK where deaf people are still excluded from jury service at all levels.

Or are they? We have recently heard about an interesting case in the UK where a deaf woman did serve as a juror in a Coroner's Court.

In 2005, Joanne Barber received a summons to serve on a Coroner's jury in Derbyshire. She replied saying that she was deaf and would need the service of

Sign Language interpreters. She did not expect to hear any more about it. To her surprise the Coroner's office got back to her to say that they could not book interpreters for the date in question but they arranged for her to serve on a jury on another day with the assistance of the interpreters.

Ms Barber was nervous about how she would manage at the hearing but all went well and the inquest passed off without difficulty. Afterwards, Derby Coroner Peter Ashworth commented:

I can say quite clearly that her participation did not disrupt the hearing in any way. It was clear to me that, with the help of two excellent sign language interpreters, she fully understood the issues and participated fully. After the inquest one of the jurors gratuitously commented that she had taken a very real part in the decision-making.

Deaf persons who are otherwise fit and well should always, with the help of good sign language interpreters ... feel fully qualified to serve as jurors.

Asked by *SIGNMatters*, the magazine of the British Deaf Association, how this fitted in with previous decisions barring deaf persons from juries, the British Department of Constitutional Affairs drew a not entirely convincing distinction between the role of juries at inquests and in criminal trials. They seemed to forget that juries also sit in some civil cases such as defamation actions.

Here in Ireland, there is no distinction between the eligibility requirements for juries in criminal or civil trials or inquests. Deaf persons cannot serve on any of them.

It happened in Derbyshire without the sky falling in. Isn't it time this outmoded discrimination was scrapped, the way the upper age limit for jury service was scrapped last year?

FLAC is grateful to SIGNMatters and the British Deaf Association for the information in this article.

Implementing Human Rights in a Time of Change: Facing up to Challenges under the International Covenant on Civil and Political Rights

As regular readers of FLAC News will be aware, in July 2008 Ireland was examined by the UN Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR). Having participated in the shadow reporting process of the examination, the Free Legal Advice Centres (FLAC), the Irish Council for Civil Liberties (ICCL) and the Irish Penal Reform Trust (IPRT) are organising a follow-up event.

The purpose of the conference is to raise awareness of the UN Committee's recommendations on Ireland and to open a dialogue with stakeholders on how to

implement them. Three members of the UN Human Rights Committee will address this conference, including:

- ▶▶ Judge Elisabeth Palm, Rapporteur on Ireland and former judge of the Swedish courts and former Vice-President of the European Court of Human Rights;
- ▶▶ Judge Rajsoomer Lallah, former Chief Justice of the Supreme Court in Mauritius;
- ▶▶ Professor Michael O'Flaherty, Co-Director of the Centre for Human Rights at the University of Nottingham and the Irish elected member of the UN Human Rights Committee.

Also confirmed to speak are Éamonn MacAodha, Chief Executive of the Irish Human Rights Commission; Michael Farrell, Senior Solicitor at FLAC and Dr Siobhan Mullally of UCC's Centre for Criminal Justice and Human Rights.

The conference will take place in the Radisson SAS Hotel, Golden Lane, Dublin 8 on 6 April. Anyone interested in attending should contact FLAC's Legal Research Officer Edel Quinn at (01) 8745690.

We will report on the outcomes of the conference in the next edition of *FLAC News*.

