

flacNews

FREE LEGAL ADVICE CENTRES

40 Years of **FLAC**

Celebrating four decades of the Free Legal Advice Centres in Ireland

Founded in 1969, FLAC is an independent human rights organisation dedicated to the realisation of equal access to justice for all.

We campaign around our core areas of work through lobbying, report-writing and advocacy work. These areas are improving and expanding the scope of the state civil legal aid system, working for fairness in access to social welfare, seeking reform of the legal and policy regime in debt enforcement and management, and promoting the use of the law in the public interest for socially progressive ends.

We offer basic legal information and advice to the public through a network of legal advice centres all over Ireland and a telephone information and referral line. FLAC produces information leaflets and guides on a range of legal issues which provide an introduction to your rights and how to access law on the area.

For the past year, to mark the organisation's 40th anniversary,



Photo by Fennell Photography

FLAC Senior Policy Researcher Paul Joyce addressing the recent Law Reform Conference on Personal Debt and Debt Management. See page 6 for details.

sary, **FLAC** has been issuing its newsletter to all legal practitioners.

This was by way of a thank-you for all the support offered by lawyers in both professions throughout the four decades of **FLAC**'s existence. It was also to give lawyers a flavour of what **FLAC** is doing and what ways they can get involved in our work.

From the next issue (due end of March 2010) we will be issu-

ing **FLAC News** to subscribers only.

Thus if you wish to keep receiving the newsletter after January 2010, please contact us by e-mail at flacmedia@flac.ie or by phone at 01-874 5690 to indicate whether you wish to receive **FLAC News** by post or electronically in PDF format.

A donation of €20 towards production costs for subscription would be most welcome.

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Ireland before the UN Human Rights Committee: One Year On

Regular readers of *FLAC News* will be aware that last year the UN Human Rights Committee reviewed the compliance of Ireland with its obligations under the UN International Covenant on Civil and Political Rights.

FLAC, together with the Irish Council for Civil Liberties and the Irish Penal Reform Trust, were involved in shadow reporting of the State's periodic report to the Committee and in lobbying the Committee at the review. A successful follow-up conference was also hosted by the three organisations in April of this year at which members of the Committee spoke.

At the end of July last year, the Committee adopted its Concluding Observations on Ireland and invoked its power under its rules of procedure to require Ireland to respond within one year on priority areas of concern. These areas of concern are prison conditions, extraordinary rendition and religion in education.

In August of this year, FLAC, ICCL and IPRT made a submission highlighting its concerns in these areas as well as a number of other issues which have arisen in the past year such as the attacks on the human rights and equality infrastructures of the state by the cuts to the budgets of certain bodies.

The Committee considered the reports last week and found the State's report to be incomplete specifically in relation to paragraph 11 of the Concluding Observations relating to extraordinary rendition and anti-terrorism measures. Next steps involve the Committee contacting the State for further information and a possible meeting until their concerns are addressed.

Ireland's third periodic report under the UN International Covenant on Economic, Social and Cultural Rights was due to be submitted by 30 June 2007. The State has not yet finalised its report and intends to hold consultations with interested parties in January 2010.



Photo by Derek Speirs

Receiving her certificate for the Thomas Addis Emmet Fellowship 2009 is Helen Nolan, a student of law at Trinity College Dublin. Presenting the award is Peter Ward SC, FLAC Chairperson. The ceremony took place as part of the Dave Ellis Memorial Lecture on 1 December (see page ??).

Right to legal aid now extends to counsel in the District Court for serious offences

The recent *Carmody* judgment expands the constitutional right to legal aid for persons facing trial in the District Court for serious offences.

The five-judge Supreme Court upheld claims by Edward Carmody, a Co Kerry farmer charged with 42 offences related to alleged wrongful movement of cattle, that he had a constitutional right prior to trial to apply for legal aid to include representation by a barrister in addition to a solicitor. The court held that in order to vindicate the constitutional right of an indigent defendant in the District Court to a fair trial, he or she must be entitled to legal aid with representation by counsel as well as solicitor where it is established that because of the particular gravity and complexity of the case or other exceptional circumstances such representation is essential in the interests of justice.

The Supreme Court, however, turned again to the question of publicly-funded legal representation in this judgment. The examination in *Carmody* related to the extent of legal aid in criminal law proceedings and to that end, did not at all help answer the vexing question of what is needed to give a person the court representation they require to vindicate their rights in matters other than criminal law – the Chief Justice stated that the State was not required to provide an “optimum form of representation” sought by a defendant, only that essential to the interests of justice. Nonetheless, it did turn a spotlight on certain elements of a fair hearing which are helpful in guiding those charged before our courts on the right to representation and public funding in modern day cases.

The question of the complexity of the case was central to the application by Mr. Carmody’s solicitor, Mr Mannix, to

ask for representation by solicitor and barrister and was an important element in the judgment. In ruling in his favour, the Supreme Court had to take account of the fact that the legal environment has changed substantially since the 1962 Act was enacted, he said. Maximum consecutive jail terms for District Court offences had, for example, doubled to two years and a wide range of potentially complex new offences had been introduced in areas such as consumer and environmental law.

In addition, the nature and volume of crime has changed dramatically over the decades. For example dealing in and supplying illicit drugs was virtually unknown in the 1960s. Successive statutes, apart from amending legislation governing long-standing criminal offences, have created new ones. As a result of all these developments the District Court’s criminal jurisdiction has grown enormously.

The case reminds us of the serious consequences for people who have to appear in the District Court. Because of the numbers of people who go through that court, that lowest level of the court system every year (550,694 cases disposed of in 2008), we can forget that the consequences for people can be very serious indeed. People can be jailed for an offence, or even for not paying a debt. People can lose their means of livelihood if it depends on a court licence. The District Court can assist in ending discrimination against a person. A person’s reputation can (as the court noted) be gravely damaged. The penalties can be severe – 11,747 people sentenced to imprisonment – but the charges can also be serious and complex.

The *Carmody* case also looked briefly at the question of “equality of arms”. In this case, the State had a barrister and solicitor. That is often the case.

However, it should not be construed that if the prosecution had two lawyers, the defendant will always be entitled to two as well. The Chief Justice stated that equality of arms was only one aspect of the right of a defendant to a fair and just hearing and warned that:

(I)t might also be noted that that Court has not found that simple parity of representation is required by the principle of “equality of arms”. In general terms, the principle or notion of equality of arms means that neither party in criminal trials should be procedurally disadvantaged as compared to the other party.

If equal representation is not to be an overarching deciding factor, then the *Carmody* judgment may result in little practical change in the District Courts. As all the lawyers in the case – whether judging or representing the parties – agreed, solicitors will for the most part be perfectly comfortable in providing full representation. They will have the capacity even in complex cases to do so.

Thus it was the size as well as the complexity of the case against Carmody and the need for background research and preparation that alerted his solicitor to the need to engage counsel. He considered this case to raise points which were unusual and exceptional in comparison to the generality of prosecutions in the District Court.

If this case is to be guidance for the judiciary, then it seems that solicitors will have to establish the exceptional nature of the cases in order to convince the court to certify for counsel.

The case reference is *Carmody v Minister for Justice, Equality & Law Reform & Ors 2009* [IESC 71].

Asylum seekers barred from welfare benefits

Minister loses appeals and moves goalposts

Within days of a group of social welfare appeal decisions that said some asylum seekers could qualify for state benefits, the Government moved to change the law and exclude all asylum seekers as a class from getting benefits, regardless of their individual circumstances.

At the beginning of December 2009, the Chief Social Welfare appeals Officer allowed appeals in five cases taken by FLAC, where the Department of Social and Family Affairs had held that the applicants could not satisfy the Habitual Residence Condition for welfare benefits simply because they were in the asylum process.

The Chief Appeals Officer rejected arguments that asylum seekers should be excluded from benefits based on a Supreme Court judgment that pre-dated the introduction of the Habitual Residence Condition in 2004, and that did not deal with social welfare issues. He said that it was not relevant to the cases in question. He said there could be no blanket exclusion of asylum seekers as a group and that each case should be dealt with on its own merits.

The Chief Appeals Officer is the head of the statutory appeals body set up to determine social welfare disputes.

The cases in question in this group of appeals dealt with Child Benefit, Disability Allowance, Carer's Allowance and State Pension. The Chief Appeals Officer held that where people in the asylum process had been in this country for some time, had established connections with Ireland, e.g. through learning English, doing training courses, having other family members living here, having children at school etc, and where they clearly intended to stay here if allowed to do so, then, on a case by case basis, they might be held to satisfy the Habitual Residence Condition.

He strongly criticised what in one case he called "the extraordinary length of

time it has taken to process the Appellant's application", which left applicants in a sort of limbo for years on end.

Within a week of the Chief Appeals Officer's decisions and without any publicity, the Minister for Social and Family Affairs slipped an amendment into an emergency Social Welfare Bill that was going through the Dail after the budget. Ironically, it was on International Human Rights Day (10th December). The amendment specifically stated that persons who had applied for asylum or protection in Ireland could not be regarded as habitually resident for social welfare purposes while they were awaiting decisions on their cases.

There was no time limit on how long they might have to wait before they could become habitually resident.

The Social Welfare Bill was guillotined through the Dail and this amendment was voted through without even being discussed. It is now law and effectively creates a second class of residents in the State. Children of one class are entitled to Child Benefit. Older people are entitled to a pension and other persons to other benefits. Children, older people and others of the lesser class are not so entitled. They are limited to direct provision accommodation and board and their €19.10 or €9.60 per week spending money.

This is a deeply divisive move. Children need nappies, toys, new runners and schoolbags and money for school trips whether they are Irish citizens or not. Depriving one group of such things will set them apart the way workhouse children or children from orphanages used to be set apart in the past. It will certainly do nothing for integration and social harmony in the future.

This hasty and ill-thought-out measure may hit other groups as well. Migrant workers who become undocumented and spouses of migrant workers who are deserted or who have to flee the family home because

of domestic violence may be deprived of benefits as well, because the Act now says that a person "who does not have a right to reside in the State" should not be regarded as habitually resident.

This mean-minded amendment treats the Social Welfare Appeals Office with very little respect. It undermines the independence of the Appeals Office. Social welfare claimants are unlikely to have much confidence in the appeals system if they get the impression that any time an Appeals Officer makes a decision that the Government does not like, the Government will simply change the law.

And all this is to save quite a small amount of money at the expense of creating social division and disharmony and a good deal of hardship for people whose lives are difficult enough already.

Briefing note on immigrants' rights to social welfare

FLAC has collaborated with Crosscare, Migrants' Rights Centre Ireland and the Vincentian Refugee Centre to produce a briefing note on immigrants' rights to social welfare in Ireland.

The document is intended to be a useful factual resource for people considering the issue of non-Irish nationals and access to social welfare. It was published on 9 December 2009 and has been circulated to TDs, senators and media. However it will now need to be updated in view of the recent development (see left).

You can download the briefing from the FLAC website at:

<http://www.flac.ie/campaigns/current/campaign-for-fairness-in-social-welfare-decisions-on-hrc>

There you will find another briefing on the Habitual Residence Condition which has been updated recently.

Victims of success? How the social welfare appeals were won

As reported on page 4, at the beginning of December 2009 the Chief Social Welfare Appeals Officer held in five cases taken by FLAC that the applicants in those cases, who had all been in the asylum process, satisfied the Habitual Residence Condition for receiving social welfare benefits while they were still in that process.

All the applicants had been in Ireland for more than 4.5 years at the time of the Chief Appeals Officer's decision and one had been here for over six years. All but one had been recognised as refugees or given leave to remain by the time the final decision was made and had begun to receive benefits.

The applicants included a blind man who had fled his home country with his son, on whom he is totally dependent, and his son; a woman who has a son who is profoundly deaf and has a disabling condition; a woman of pension age who has been here for more than six years; and a woman with a child who has a medical condition that cannot be treated in her home country. She had completed training as a nursing assistant and has been joined by her husband who has become involved in local youth activities.

The benefits they had applied for included Child Benefit, Disability Allowance, Carer's Allowance and State (Old Age) Pension.

A clear pattern emerged from these decisions. The Chief Appeals Officer took the view that there could be no blanket exclusion of asylum seekers from social welfare benefits and that it was possible for asylum seekers to satisfy the Habitual Residence Condition before they were given leave to remain. The key factors he relied on were: whether they had been here for a significant period of time; had they done training courses or tried to involve themselves with the local community or integrate themselves into Irish society; did they have problems or special needs that required or warranted additional benefits that would be paid to Irish citizens with similar problems?

The Chief Appeals Officer also repeatedly criticised the long delays in reaching decisions on asylum applications and said asylum seekers should not be disadvantaged or refused benefits for long periods of time because of this.

The Chief Appeals Officer's decisions outlined a reasonable and humane interpretation of the Habitual Residence Condition. It will be very unfortunate if the amendment to the Social Welfare Bill means that this reasonable approach is abandoned in favour of treating asylum seekers as second class inhabitants of the State, to be given just enough to survive in the hope that hardship will make them go away.

EU national wins social welfare appeal over habitual residence

FLAC recently successfully represented an EU national separated from her Irish partner in a social welfare appeal.

The case concerned claims for Supplementary Welfare Allowance and One-Parent Family Payment. The original decision-makers had rejected both claims on the basis that the claimant had not been continuously resident in the State for 2 years.

As FLAC has previously noted, Irish legislation and EU law requires decision-makers applying the Habitual Residence Condition to weigh up the five *Swaddling* factors, namely: length of residence; length and purpose of absence; employment pattern; centre of interests and future intentions as it appears from the circumstances.

The claimant's two children are also settled in the State – one sees her father regularly and the other is in secondary education. In that context the Appeals Officer found that the claimant had established her centre of interest in Ireland at a date prior to 2 years' residence in the State.

This case demonstrates the importance of assessing claims under the HRC by weighing up all five factors.

Law Reform Commission conference

The Law Reform Commission published its *Consultation Paper on Personal Debt and Debt Management* in September 2009. It is an impressive and detailed piece of work, examining the deficiencies in the Irish legal system in the area of debt enforcement. Recent international developments in credit and debt law and Irish research, including FLAC's two major reports, *An End based on Means?* (2003) and *To No One's Credit* (2009), are comprehensively reviewed. The Commission provides a wide range of provisional recommendations for reform, focusing particularly on our outdated debt enforcement procedures. Submissions from interested parties (including members of the public) can be made until mid-January 2010.

As over-indebtedness begins to affect more and more people in Irish society, the Commission attached great urgency to the issue by holding its Annual Conference 2009 on this subject. The event was chaired by Commission President Mrs Justice Catherine McGuinness and opened by the Minister for Justice, Equality and Law Reform, Dermot Ahern TD, who acknowledged that many individuals and families are now affected by the serious economic downturn.

The Minister accepted that the debt enforcement system needs to become more humane, efficient and effective. He stressed that urgent reform required a 'whole-of-Government' approach and a Cabinet Committee of Ministers to drive policy. He shared the Commission's view that litigation should be a last resort. However, in relation to the Commission's proposal to establish a Debt Enforcement Office to oversee enforcement and debt settlement applications, he suggested that the concept of such an office is attractive but would have to be cost effective. The State should not be regarded as a collection agency for all personal debts. He indicated that the final recommendations of the Commission would strongly guide the Government. Implementing new



Photos by Fennell Photography

L-R: Minister Dermot Ahern, Hon. Mrs Justice Catherine McGuinness and Patricia Rickard Clarke

legislation in a short time would be a challenge but the momentum for change had started and would be maintained by the Government.

FLAC's Senior Policy Researcher and author of its two reports on debt, Paul Joyce, traced the development of FLAC'S policy work and research, culminating in proposals for law reform. He reminded the audience of some of the proposals FLAC had made in 2003 in relation to debt enforcement and bankruptcy but regretted the failure of the State to initiate reforms in better times. He criticised the reckless approach to the provision of credit and weak financial regulation evident in recent years.

Paul praised the Commission's work and expressed FLAC's appreciation that many of its recommendations for change had been approved in the text. Key guiding principles underpin its recommendations including the need to reconcile the interests and rights of not only creditors and debtors but also the public interest. A debt enforcement system must therefore be balanced, proportionate, achieve legitimate goals and be designed with a cred-

it society in mind.

Expressing hope that reform in debt enforcement and bankruptcy was imminent, Paul suggested that a co-ordinated National Strategy to manage the consumer debt crisis was now required given the growing mortgage arrears problem. The 'Renewed Programme for Government' had suggested exploring ways to protect those in mortgage arrears, but no firm proposals had yet resulted. He concluded that recommendations in the paper should be implemented at the earliest opportunity and that complementary measures be put in place to protect indebted people who are victims of events outside their control.

Mary O'Dea, acting Chief Executive and Consumer Director of the Financial Regulator's Office, outlined the Regulator's Consumer Protection and Mortgage Arrears Codes designed to supervise the activities of lenders. She accepted that its approach to financial regulation was framed in a more benign environment and, with the benefit of hindsight, things might have been done differently and stronger action taken to dampen

calls for major changes in debt laws

credit growth. She expressed amazement at claims by the Irish Banking Federation (IBF) that supervision of the banks had been weakened by the setting up of the Regulator, because it had focused excessively on consumer information rather than monitoring banks health. She suggested that both regulators and banks worldwide needed to work hard to regain consumers trust. Mary concluded that the Financial Regulator would welcome and fully support a policy initiative that will work for people who are genuinely trying to address their debt problems.

Michael Culloty, Social Policy and Communications officer with the Money Advice and Budgeting Service (MABS), outlined the process of money advice, from the assessment of the client's financial liability and maximisation of his or her income through to the determining of priority debts and the drawing up of a repayment plan and monitoring of that plan. He explained that money management was an important part of MABS programmes and community education projects nationally. He referred to submissions made on law reform issues by MABS and initiatives taken with the credit industry, such as the MABS/IBF Protocol on debt management. The detrimental effects of over-indebtedness on health and well being were documented. MABS view is that the legal process was inappropriate and out-of-date. Debt issues should be dealt with outside of courts as much as possible, while the legal process should support, strengthen and facilitate

voluntary negotiated settlements and should move away from an individual creditor approach to a collective approach.

Patricia Rickard Clarke of the LRC summarised the wide array of proposals for reform. She stressed that the paper had considered all aspects of the European Commission's six 'building blocks' to manage the problem of over-indebtedness but that the principal recommendations focused on personal insolvency law and debt enforcement procedures. The Commission concluded that the Bankruptcy Act 1988 is outdated, ineffective and wholly inappropriate for the realities of consumer debt. Voluntary settlements are taking place but they need a legislative basis to provide legal certainty.

The Commission proposes a comprehensive reform of the current Act and the introduction of legislation to put in place a non-judicial debt settlement option. The key features of such an option would include a right of 'earned discharge', i.e. the write-off of residual unsecured debt at the end of a repayment plan that might typically be of three to five years. Access to such an option would be dependent upon a test of insolvency and good faith.

Patricia suggested that current debt enforcement mechanisms pre-dated the deregulation of credit and revealed an antiquated view of debt default. Amongst many detailed recommendations here

were the establishment of a Central Debt Enforcement Office that would oversee updated enforcement mechanisms and ensure that they are appropriately used. All applications to enforce would be on a single application form and the Enforcement Office would decide, on the basis of full information on the debtor's income and assets, what form of enforcement (if any) would proceed. It would also consider whether non-judicial debt settlement might be more suitable on a case-by-case basis.

Papers were delivered in the afternoon session on 'Credit, Debt and Consumer Solvency Regulation: Fundamental Issues' by Professor Ian Ramsey of the University of Kent; 'Credit Reporting: The Future' by Marc Rothmond of the European Credit Research Institute and 'A Debt Enforcement Office?' by Dr David Capper of Queen's University Belfast. These papers demonstrated just how far Ireland has to travel to modernise the credit and debt regulatory infrastructure.

The recession has catapulted increasing numbers of people into a debt crisis of unmanageable proportions. The sooner genuine debt settlement and appropriate enforcement is available, the better. Half measures will not suffice. FLAC will be keeping a watching brief on developments and make its own final submission on the paper in addition to the research reports and submissions already published and available on FLAC's website.



Speakers and researchers from the Commission conference



L-R: Michael Culloty (MABS), Patricia Rickard Clarke (LRC) and Paul Joyce (FLAC)

Dave Ellis Memorial Lecture:

The 3rd Annual Dave Ellis Memorial Lecture was given by Dr Maurice Hayes at the Law Society of Ireland on Tuesday 1 December. Dr Hayes spoke on the theme of "Access to Justice" to a large gathering of FLAC supporters and family and friends of the late Dave Ellis, a community activist who dedicated his career to working with community groups in areas including welfare rights, legal aid, legal education and legal entitlements generally. Below is an excerpt from Dr Hayes' speech:

If I must preach, I take my text from Sir James Matthews, an Irish judge in the late Victorian period, who declared: "In England justice is open to all, like the Ritz Hotel."

Even in the days when we were young and innocent about these things, you did not have to be a genius to detect the logical fallacy, the contradiction in terms, the oxymoron, if you want to go up-market.

In the first place the Ritz was open only to those who had money – and not always then. For those not properly dressed, or with the right accent, or not knowing how much to tip the maitre d' on the way in or the concierge on the way out, there was still no ready entrée, no particular pleasure when there and a rather poor prospect of a return visit.

Legal aid has gone some way towards opening access to the courts, legal representation and advice has made things somewhat more comfortable, more comprehensible, but there is still a long way to go. The majesty of the law, so reassuring to those steeped in it, can be oppressive to those who meet it only periodically. For most people the experience

of going to court is ordeal enough, not to mind the adversarial culture in which challenge is merciless and the prize goes to those who can shout the loudest or muster the bigger guns.

In civil cases, where the right to free legal aid is even more curtailed, the playing field has not been sufficiently levelled, there is no equality of arms, especially between the citizen and the agencies of the state, and the work of FLAC becomes more necessary than ever.

This being an eponymous lecture it is appropriate to pay tribute to the work of Dave Ellis and to celebrate not only his energy and his legal expertise, but a life devoted to the service of the poor, the disadvantaged, the marginalised and the casualties of society. He recognised that empowerment involved not only advocacy but information and education, and mobilising communities in political action to assert their legal rights and entitlements.

He was one of the first to see the challenge of urbanisation which Ireland is even yet coming to terms with, the demographic changes, the emergence of

a new sub-culture especially during the period of rapid if not always well-directed economic growth which not only failed to float all ships but widened the social and economic distance between the haves and the have-nots, an Ireland challenged to cope with the pressures of immigration, of a new ethnic mix and fundamental changes in social and cultural values as old landmarks disappear, old certainties dissolve. In all of this he was one of those who worked tirelessly under the radar, binding up the wounds of society, sustaining the weak whom other agencies fail and preventing society from falling apart at the seams.

We are also celebrating the 40th anniversary of FLAC, and there is much to celebrate – first just being there, like the Abbé Sieyès in the French Revolution, *J'ai survi*. But there is more than that. To have maintained energy and hope, to continue to attract generations of young volunteers while retaining the support and enthusiasm of their predecessors, and to have preserved the integrity and moral purpose of the organisation, its commitment to the core values of the foundation and the support and credibility among the com-

Photos by Derek Speiris



Dr Maurice Hayes (centre) delivered the Dave Ellis Annual Memorial Lecture for 2009. Also pictured are Peter Ward SC, Chairperson, and Noeline Blackwell, Director General of FLAC



Eilis Barry BL and Paul Joyce, FLAC Senior Policy Researcher, at the Dave Ellis Memorial Lecture

FLAC at work: What we are doing today

FLAC currently campaigns around four broad areas of work: Civil Legal Aid, Credit & Debt Law Reform, Social Welfare Law and Public Interest Law. We also engage in providing information and advice on the law to the public through our long-standing information services - a telephone information & referral line plus a network of legal advice centres. Here we present an overview of that work.

Access to justice: Promoting Civil Legal Aid

FLAC has worked to establish a legitimate system of civil legal aid since its founding in 1969. Early examples of this work are the establishment of the Coolock Community Law Centre (now Northside CLC) in 1975 and FLAC's involvement on the Pringle Committee in 1974. More recently, FLAC has continued to campaign for a more comprehensive legal aid system.

In 2005, FLAC did an in-depth analysis of the civil legal aid scheme, entitled *Access to Justice: A Right or a Privilege?* That report identified that, after 25 years of state legal aid, the scheme had failed to achieve its stated goal: "to make the necessary legal services available to every deserving person in the country". It noted that the system – though mandated to provide representation in a wide variety of legal areas – regularly focused primarily on family law with over 90% of cases each year falling within this heading. It also highlighted that the Civil Legal Aid Act 1995 officially

excludes many areas of law from the scheme. This gives rise to hardship and unfairness, such as when people are denied representation at Employment Appeal Tribunal hearings or are threatened with eviction.

Another FLAC report issued in 2009 entitled *Civil Legal Aid in Ireland: Forty Years on*. It noted a number of improvements in the civil legal aid scheme. These included an increased emphasis by the Legal Aid Board on Alternative Dispute Resolution in family law matters, an updated website, a reduced means test threshold to qualify for legal aid and a wider range of information. The problems highlighted in 2005 remained, however. The 2009 report called on the State to prioritise the needs of those who need aid and assistance to access legal services and the courts. It went on to note that even a fully functioning and well resourced legal aid system would not provide universal access to justice. Access to justice requires a commu-

nity-orientated approach, encompassing the needs of marginalised groups often left without a platform for their needs.

FLAC continues to monitor the delivery of the civil legal aid service. The increasing length of waiting lists in 2009, with applicants in nine of the Board's Law Centres now having to wait for 5 or 6 months or more to see a solicitor, has been and continues to be a concern. People who have a legal problem will rarely improve their position if they have to wait for 6 months to get a first consultation with a solicitor. The lengthening waiting lists is a problem of reduced financial and staff resources in the Legal Aid Board. However the recession cannot be used as a reason to deny access to legal services and representation to those who need it most. Equal access to justice is a fundamental human right for all. A right to legal aid exists to implement that fundamental human right. FLAC will continue to work to advance this right in the years to come.

Opening law to all: How FLAC provides legal information and advice

FLAC's campaign to promote greater access to justice includes improving the quantity and quality of legal information available to the public. To this end, FLAC offers legal assistance in the form of our telephone information and referral line and our network of legal advice centres.

Telephone information & referral line: This offers first-stop legal information to the public. While legal advice is not given over the phone, callers can receive basic legal information. If a caller requires advice, he/she will be referred either to one of FLAC's legal advice centres, or to another organisation/agency which may be able to help him/her further.

In 2008 FLAC had 9,244 calls to its information line, with 2009 showing similar numbers despite much lengthier and

more complex queries. Family law remains the largest area, but in the past year there has been a major rise in debt queries.

Legal advice centres: FLAC operates a network of Legal Advice Centres throughout Ireland in conjunction with the Citizens Information Board. These advice centres are open in the evening and the service is provided by volunteers who are all fully qualified solicitors and barristers. They are located all over the country, usually on the premises of the local Citizens Information Centre. At these centres, people can receive legal advice on their issue in confidence. FLAC also operates specialist advice centres in Immigration, Family and Employment law. Our centres receive over 10,000 visitors each year.

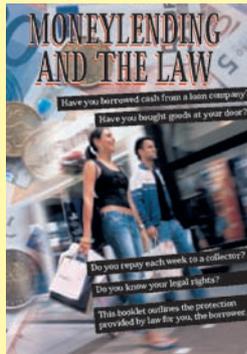


Getting legal advice at a FLAC centre

Legal information publications: FLAC publishes a series of leaflets and guides explaining such issues as: separation, maintenance, wills, probate, enduring power of attorney and maternity leave. These provide people with basic information on their rights and how to access the law. These publications are distributed to Citizens information Centres in hardcopy and are also available online.

Standing up for Consumer Rights: Reforming Credit & Debt Law

Many of Ireland's laws in the area of debt enforcement and management date from the 19th and early 20th century. While society has changed utterly since the days of the debtor's prison graphically highlighted by Charles Dickens in novels such as *Little Dorrit*, the state in Ireland has singularly failed to reform the laws governing the area of consumer debt to reflect the fact that we now live in a credit dominated society. Even the Bankruptcy Act, although it was passed into law in 1988 after a lengthy review period, is more reminiscent of a Victorian era in terms of its punitive approach. As a result, for those individuals who were encouraged by government and credit institutions alike to indulge in the credit boom of recent times and now find their financial situation is unmanageable, there is cold comfort in the legal system.



Since taking up a focus on campaigning for reform of laws around debt enforcement in the late 1990s, FLAC has been a consistent advocate and independent voice making proposals for legislative and policy change on the issue of consumer debt, to protect vulnerable people who do not enjoy the benefit of a high-powered, high-level lobby group. The organisation's briefing notes and submissions to politicians on proposed legislation have led in some instances to amendments in final drafts. Our detailed research reports have made a large number of constructive recommendations for change and offer wide potential for legal and policy reform. FLAC's information and advice services have provided members of the public with options, limited as they may be under the current legal framework, for dealing with debt problems. FLAC also acts as a trainer and legal support to the state's Money Advice and Budgeting Service (MABS) on consumer credit and debt law and other legal issues.

An area of considerable concern as 2009 ends is the question of how to tackle mortgage arrears. During the boom years, with rocketing property prices, many people were granted mortgage loans which under closer scrutiny appear to have been

beyond their financial capacity to maintain, even without adverse events like job loss or reduced income. The government's sole response to date to the inevitable swelling tide of arrears has been a code of conduct for mortgage lenders that imposes a temporary hold of six months (12 in the case of the recapitalised banks) on banks from initiating repossession proceedings against borrowers in arrears. At the time of writing, a further extension of this moratorium for a further six months is said to be under review.

When the draft code became available in early 2009, FLAC prepared a detailed submission evaluating its weaknesses and called for far stronger measures to be introduced when the final version turned out to be even weaker than the draft. Having now monitored the issue throughout the year and seen a large increase in enquiries around arrears to FLAC from struggling borrowers, in October 2009 we published an open letter to legislators calling for wider and more focused debate around dealing with a potential arrears avalanche. It is now clear that a moratorium on legal proceedings, no matter how lengthy, will not solve every case and setting up a rescue fund must be prioritised.

Another issue of huge concern has been that of imprisonment related to debt, addressed the United Nations' Human Rights Committee on no less than three separate occasions. In Ireland a creditor may still apply to imprison of a debtor who has failed to pay court-ordered instalments on a debt. FLAC has been campaigning for change in this law at many levels for many years, most recently with a joint Shadow Report to the UN

Committee. In June 2009 the ruling in the *McCann* case, taken by a MABS client with representation from Northside Community Law Centre, led to amending legislation whereby the onus is now clearly on a creditor to show beyond a reasonable doubt that the debtor's failure to pay instalments was due to his/her 'wilful refusal' or 'culpable neglect'. The debtor must be present in court and is entitled to legal aid to defend his/her position.

This case shows the value of strategic litigation in achieving reform. In tandem with such casework, briefing papers and reports are also highly effective. Incorporating a study of debtors who had personally been through the debt enforcement system, FLAC issued a report in July 2009, *To No One's Credit*, which makes a raft of law and policy reform proposals. This followed on its 2003 report that examined the deficiencies in debt enforcement generally, *An End based on Means?* These reports featured prominently in the Law Reform Commission's (LRC) detailed consultation paper on Personal Debt

Management and Debt Enforcement, and a number of the provisional recommendations made in the Paper expressly approve FLAC's recommendations. The Commission's final report will follow in early



Launching FLAC's report *To No One's Credit* in July 2009
(L-R): Mary Coughlan, Noeline Blackwell & Paul Joyce

2010. At the LRC's annual conference in November 2009, at which FLAC renewed its call for a co-ordinated national strategy to deal with the consumer debt crisis, the Minister for Justice, Equality and Law Reform said that he will take swift action based on the final proposals put forward by the Commission. We are therefore now very hopeful that our work on reforming the law in this area will bear some fruit.

In any event, FLAC will continue to campaign for humane laws and effective policy in the areas of debt and credit, to protect and enhance consumer rights and interests.

Making the system fairer for everyone: Challenging Social Welfare law

FLAC has worked on informing people about their social welfare rights and helping them to achieve those rights since it was first established. Social welfare payments account for 34% of current Government spending and so the social welfare system affects a very substantial section of the population, inevitably including the poorest and most vulnerable. There are very many different social welfare benefits and the decisions about who qualifies for what are vitally important to the people who depend on these payments. Given that the right to Social Welfare has been established in law (by the European Court of Human Rights in the case of *Stec & Others v. the United Kingdom*) there has to be a way of vindicating that right legally when things go wrong and bad decisions are made. In Ireland, that route is through the Social Welfare Appeals system, a quasi-judicial



In 2006 FLAC launched a campaign to restore Child Benefit to all children in Ireland

mechanism for reviewing decisions on entitlement to benefits. Thus FLAC has concentrated its work in the area of social welfare on the appeals system in recent times.

Dozens of decisions are taken every day about people's entitlements, which often literally determine what is put on the table for families in the evening or what goes into the children's lunch boxes in the morning. Some decisions will be influenced by cultural misunderstandings, stereotyping and unintentional prejudice; underlying everything, there may still be a lingering attitude that social welfare is a form of charity for which the poor should be duly grateful, rather than

something which is a basic right in a modern democratic society. Even if we did establish a better social welfare system, decisions about eligibility for and amounts of benefits would still have to be made and there would still have to be a mechanism to correct the the mistakes that inevitably occur, and to clarify the law so that it can be applied fairly to all.

Despite hearings being quite informal, the appeals process is still quite intimidating for most applicants and there is a real need for advocacy services that can accompany inexperienced and vulnerable applicants to these hearings. Overall, 48% of all appeals in 2008 resulted in some advantage to the applicants; that percentage has been fairly constant for the last five years or more. This does not reflect very well on the standard of initial decisions. It also raises a

question about how many people were too frightened or too uninformed about the system to lodge an appeal when their application was refused.

Another barrier to vindication of welfare rights for some particularly marginalised groups is the Habitual Residence Condition (HRC). The HRC, which applicants for social welfare benefits are required to satisfy, was introduced in May 2004, ostensibly to prevent a feared influx of "welfare tourists" from the East European EU Accession states. The influx did not happen but one of the effects of the introduction of the HRC was to stop asylum-seekers and people seeking humanitarian leave to remain

from getting Child Benefit, which had hitherto been a universal benefit paid to all families without distinction.

In 2005, FLAC launched a campaign to restore Child Benefit to all children - regrettably it was not successful. In connection with the campaign, we took on a number of cases for people in the asylum/leave to remain process who had been refused Child Benefit on the basis that they did not fulfil the HRC. In some cases, we found that well-prepared renewed applications or appeals led to revised decisions fairly swiftly and the benefit was granted.

Controversially, in February 2008, the Department of Social and Family Affairs, relying on an interpretation of a Supreme Court judgment (*Goncescu & Others v. Minister for Justice, Equality and Law Reform* [2003] IESC), claimed that no-one in the asylum or leave to remain process could be regarded as "resident" in the State for the purposes of the HRC. FLAC represented four applicants in connection with the Department's review application, ultimately obtaining a decision that *Goncescu* "...did not have a social welfare relevance". All four applicants were awarded Child Benefit, with substantial arrears in some cases. In the meantime, FLAC had also asked the Chief Appeals Officer to revise four decisions by an Appeals Officer who had relied on this argument to reject appeals from a group of applicants who were in the asylum process. All of these have been successful.

To date, our use of the Social Welfare Appeals mechanism has been reasonably successful in vindicating the rights of one particular group of social welfare. Along the way, our focus has broadened out from just Child Benefit applicants to the wider Habitual Residence Condition and we have represented people seeking a variety of different benefits affected by that condition. Despite FLAC's generally positive experience in the appeals process, we believe it could be improved by greater independence from the department, publication of its decisions, and less delays in processing appeals. (See page 4 for recent developments in this area.)

Public Interest Law Alliance: Law for communities and communities for law

For many years FLAC has led a number of initiatives to raise awareness about the ways that law can be used to benefit people who are marginalised and disadvantaged. Working with a range of other organisations, FLAC has sought to expand the role of law in tackling social issues.

In order to consolidate and further this work, the **Public Interest Law Alliance (PILA)** opened its doors as a project of FLAC in June 2009. PILA was officially launched at the celebration of the fortieth anniversary of the founding of FLAC in April and it is hoped that PILA will become a focal point for developing public interest law in Ireland.

What do we mean by public interest law? There is no fixed definition of public interest law and it does not fall neatly within a substantive category of law. For FLAC, public interest law is a way of working with the law. For example, litigating an issue that might arise in the area of housing with ramifications for the wider community might be considered a use of the law in the public interest. The aim of this project is to facilitate and promote the use of the law in the public interest for the advancement and protection of human rights for the benefit of the marginalised and disadvantaged.

PILA, the Alliance: PILA seeks to involve a community of individuals and organisations committed to using the law in various ways in the public interest which involves NGOs, Community Law Centres, law firms, sole practitioners, international public interest law organisations, legal academics, law students and the community.

How does PILA carry out its work? While litigation is mentioned in the example above, this is only one means of using the law in the public interest and often is a means of last resort. PILA's other areas of work include law reform, legal education and awareness-raising among lawyers and in the community. Much of this work will be carried out by strengthening the legal capacity of existing NGOs and grassroots organisations.



Attendees at a PILA seminar on Legal Education in October 2009

Over the past six months, PILA has been working to develop its areas of work. Research is ongoing into barriers to public interest litigation such as the threat of an adverse costs order, standing, mootness and class actions.

The project has hosted its first of a series of seminars. The topic was the experiences of the use of the European Convention on Human Rights in the UK and Ireland. At the seminar, PILA announced the development of an informal lawyers' register. One of PILA's objectives is to develop *pro bono* initiatives to match legal expertise with legal needs of the NGOs with which PILA will be working. By means of the register PILA intends to involve practitioners in public interest law e.g. community legal education, legal research, law reform submissions, casework. If you are interested in the opportunity to apply your legal skills in a new context, please contact PILA's Legal Officer at jo.kenny@flac.ie.

Lawyers from 12 organisations (NGOs and community law centres) attended a meeting for lawyers working in the sector and were introduced to solicitors from two new law centres: the ITM Law Centre and the Mercy Legal Resource Centre. Through the network PILA hopes to identify training needs for public interest law seminars as well as opportunities for organisations to co-ordinate on issues of common concern. Outreach to NGOs and organisations, both nationally and internationally has been a core part of the initial work of the project.

PILA welcomed academics and representatives of the legal professional bodies involved and interested in clinical legal education to a roundtable on the issue in October. A project objective is to examine the scope to support the development of public interest law in clinical legal education programmes at third level institutions across the island of Ireland.

A range of projects and initiatives under the four strands of PILA's work are ongoing and we look forward to reporting their progress in FLAC News in due course.

PILA Bulletin: The Public Interest Law Network Bulletin, which FLAC has circulated since 2006, has recently been relaunched as the PILA Bulletin. A core group of 500 legal practitioners, legal and non-legal NGOs, academics and other interested parties continue to receive the bulletin with numbers continuing to grow. The bi-monthly electronic bulletin provides updates on the most current developments in the area of public interest law and litigation, such as legislative changes, jurisprudence and on-going campaigns both nationally and internationally as well as filling you in on conferences and events. To receive the bulletin, simply drop an e-mail to the Bulletin team at bulletin@pila.ie.

For further information on the work of PILA, please visit the temporary website at www.pila.ie. A new and comprehensive site will be launched in the coming months.

Access to Justice

munity it serves is a major accomplishment by any standards.

There is too the list of achievements – the setting up of the Pringle Commission and the Legal Aid Act, the support given to people in the courts and the tribunals, the advice services, the education programmes, the setting up of community law centres, valuable research papers, tireless contribution to the debate on law reform, the tireless fundraising and the readiness to meet new and emerging needs. Born in a period of recession, it now faces another.

I suppose the optimistic impulse at the start was to fill the breach until the state responded to campaigning and established a properly staffed and funded system for delivering legal aid and advice for those who could not otherwise afford it, and which would meet all their needs.

The trouble with tackling social need is that once a problem is solved, there is often another more basic need behind it. Need is infinite while resources both of money and people are necessarily limited. It was the same with the setting up of the British National Health Service, one of the great artefacts of modern social policy anywhere in the world. It was founded on the assumption that there was a fixed quantum of disease, a legacy of past poverty and occupational diseases, and when that had been dealt with, costs actually decline. The truth, of course, was the opposite, as uncovered needs increased exponentially, as have the costs, as demands outstrip supply and few had given thought to mental health problems or psychosomatic disease, the diseases of ageing or a more affluent lifestyle and the yet to emerge scourges of AIDS, and now, shortly obesity.

It is a warning to all who begin to tackle deprivation or need in any of the social services – that need is endless, that expectations rise continually in line with improving standards in the wider community, that the concept of relative deprivation present an ever moving target, that new needs emerge, and new methods and new technologies make possible the treatment or amelioration of conditions which were regarded as inevitable or intractable in the past.

So the pioneers of FLAC, like the Argonauts, having put their hands to the oars and headed out into uncharted seas to a visionary landfall, find themselves lashed to the oars of a trireme battling towards a utopian destination which, by definition, can never be reached. Although the performance has been impressive, much remains to be done, and there are painful gaps in the social fabric as surveys and successive annual reports show only too clearly.



Attendees at the lecture in the President's Hall of the Law Society. Pictured in the first row are members of Dave Ellis' family.



Journalist and broadcaster Colin Murphy who launched FLAC's online archive on the night of the lecture.



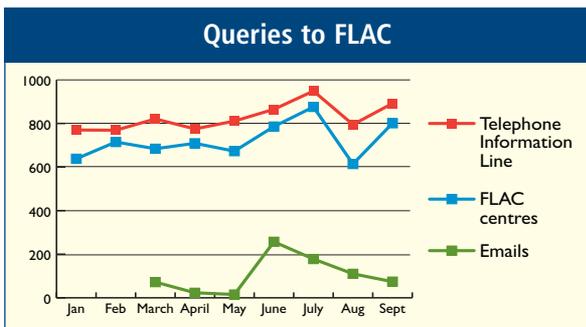
Dr Maurice Hayes with Sarah Flynn (R), wife of Dave Ellis, and Statia Crickley, campaigner and friend to Dave Ellis.

Debt-related queries to FLAC rising in third quarter

2009 was another busy year in the FLAC centres and on our telephone information line. The number of calls received by FLAC's telephone information line increased again in the third quarter of 2009 to 2,636 calls, which was more than in the same quarter of 2008. July was the busiest month of the year so far both on the phone lines and in the centres. Despite slowing down in August the number of calls increased again in September.

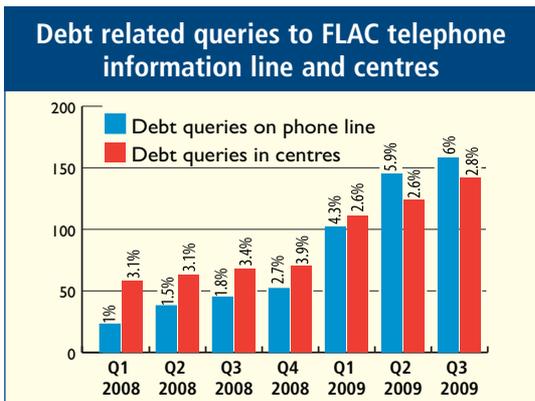
of 2008, accounting for 1.8 percent of calls. There were three and a half times more debt related calls in the same quarter of 2009, accounting for 6 percent of all calls to the phone-line during that quarter. It is also worth noting that length of debt related calls would also have increased with the severity of the problems in this area.

There has been a similar pattern in the centres, the number of debt related queries in the third quarter of 2009 was double that in the third quarter of 2008. However, while the number of queries doubled, as a percentage debt related queries accounted for only 2.8 percent of all queries brought to the centres in Q3 2009, compared to 3.1 percent in Q3 2008.



Family law remains the most frequent area of enquiry both on the telephone information line and in the centres, followed by legal services, civil matters and employment law. So far 2009 has seen a rise in debt related queries, criminal law queries, wills, and queries regarding legal aid and legal services. Calls relating to consumer law and solicitor client issues have fallen over the last nine months.

Of the 405 debt related calls to FLAC's telephone information line so far this year, 96 callers have been referred on to MABS for further advice and assistance. 161 of these callers were advised to attend a FLAC centre, which may highlight a future need for a specialist credit and debt legal advice service.



The number of debt-related queries on the phone line rose from 102 in the first quarter of 2009 to 158 in the third quarter. The increase is striking when compared with last year's figures. There were 45 debt related calls in the third quarter

However, 93 callers to a FLAC centre during this period were referred to a private solicitor, even though they had approached the centre with a credit and debt related query.

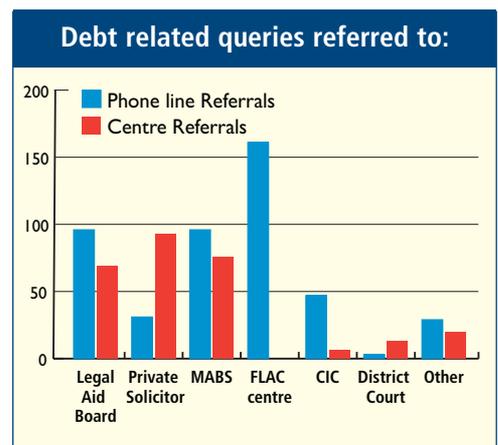
UK Manifesto for Justice

Eight organisations in the UK (AdviceUK, General Council of the Bar, ILEX, JUSTICE, Law Centres Federation, Legal Action Group, Legal Aid Practitioners Group, Liberty) have collaborated to launch a new Manifesto for Justice on 7 December 2009.

The manifesto sets out three principles of justice: good governance and the rule of law; respect for human rights and civil liberties; and access to justice. It describes an accessible justice system as the "hallmark of a free, just and democratic society".

Among its recommendations are: co-ordinated and properly funded legal education; adequately funded civil legal advice; and co-ordination on the provision of advice and representation on social welfare law. It urges that funding be made available for communities without advice agencies or solicitors to prevent such areas remaining "advice deserts".

The manifesto concludes by emphasising the importance of diversity in the legal profession. It states that the judiciary ought to be "representative of the public and the communities they serve" by ensuring that it is open to competent persons from all parts of the legal profession.



PILA runs seminar on human rights law

PILA held its first seminar entitled, *Using human rights law for clients: comparing the British and Irish experiences* on 16 October 2009. The seminar was very well attended, attracting around 70 people from the Bar, private practice and the voluntary sector.

The speaker was Kevin Kerrigan, Associate Dean of the School of Law at the University of Northumbria in Newcastle, practising solicitor and co-author of *Advocacy and Human Rights: Using the Convention in Courts and Tribunals*.

Kevin discussed the structure of the Human Rights Act 1998 (HRA) and the impact which it has had to date. He talked through a series of recent HRA decisions and led an interesting discussion as to whether similar issues arose in Irish law.

A summary of the discussion will be available on PILA's website at



Pictured above (L-R) are PILA Legal Officer Jo Kenny, Kevin Kerrigan of the University of Northumbria and Tony O'Riordan, PILA Manager.

<http://www.pila.ie/>

Earlier that day, Mr Kerrigan also addressed attendees at a roundtable on Clinical Legal Education, hosted by PILA,

which included representatives from third level institutions nationally and the legal professional bodies.

New family law centre to open in One Family

One Family, the national organisation which supports one-parent families, operates an information service called Askonefamily*. This includes a helpline that regularly receives calls from people with Family Law queries. These can cover areas such as access, guardianship and maintenance.

In fact, legal queries form one of the largest categories of enquiries from their helpline callers, second only to social welfare questions.

Previously, One Family have helped these people with legal queries indirectly by referring them to appropriate specialist services such as FLAC. However, this service has now expanded with the announcement that One Family will be hosting a specialist FLAC family law centre.

Starting on 12 January 2010, One Family will host a FLAC centre in Cherish House in Dublin 2. The centre will run once a month in the evenings from 5.30 to 7.30pm and it will operate on an appointment-only basis. A legally trained and experienced FLAC volunteer will be available to give legal advice on family law matters.

These FLAC volunteer lawyers can help establish whether or not there is a legal solution to the caller's issue, explain what options are open to him or her and refer to other services to obtain further assistance where appropriate.

- » Appointments at these free evenings are available by calling One Family on 01 662 9212.
- » Check the website at www.one-family.ie
- » The helpline is at 1890 66 22 12.



Photo by One Family

Focus on FLAC: Noeline Blackwell Solicitor & FLAC Director General

Noeline Blackwell began her legal career as a law student volunteering in FLAC's advice centres. Now, with an extensive and varied background in human rights and legal practice, she has come full-circle, returning to FLAC as Director General in 2005. She is responsible for overseeing FLAC's operations and driving forward FLAC's agenda.

Starting out as an apprentice in a country practice in County Tipperary, Noeline was determined to set off for Dublin as soon as she qualified. She recalls "My boss said 'wait to go until I actually knew something'". A compromise was reached that she would stay for one year, which ended up being eight or nine years. She found the great variety of work kept her interested and particularly enjoyed the sense of collegiality and working in the community.

After working briefly as a taxation lawyer in Kildare, Noeline finally made the move to Dublin and set up her own practice in Drumcondra. Involvement with Amnesty International (Irish Section) led her to further roles in Human Rights organisations including Immigrant Council of Ireland and Frontline. Her firm worked extensively with refugees and she was also on the Law Society's Family Law & Civil Legal Aid Committee and its European Convention of Human Rights Task Force.

Noeline had first encountered FLAC as a law student in the 70s. At the time, FLAC's advice centres were staffed by students and she had been based in the Finglas centre. Noeline is delighted to be working with FLAC again, this time as Director General. "Honest to goodness, it is the best job in the country" says Noeline. "Every day is a highlight."

As Director General, Noeline is responsible for implementing the plan of action set by the board every five years. In this way, she is charged with taking forward FLAC's ambitions and achieving FLAC's core mission of improving Access to Justice. She admits, "It has the advantage of a wide and varied job description". On a day-to-day basis, she coordinates and oversees all aspects of FLAC's work, mak-



Photo by Derek Speirs

ing sure projects are driven forward. She is also the public face of FLAC, promoting the organisation's message: "Some days I could be talking to politicians, people in the media, colleagues in the legal profession, preparing something for our volunteers..."

For Noeline, the continuing highlights of her work are the people she gets to meet, not just in the office, but also colleagues in the law centres and other NGOs. Noeline recalls having the opportunity of getting to know the late Dave Ellis: "You didn't have to explain Public Interest Law to someone if you said 'Dave Ellis is a Public Interest Lawyer', because they would know exactly what you were talking about. Dave understood that law was part of society and the importance of working with the law to accomplish social change."

Noeline hopes that Dave Ellis would be pleased with the establishment of PILA and the opportunities it represents for greater cooperation among civil society groups and the promotion of public interest law.

Other highlights for her include Michael Farrell's success in the Foy case, achieving the first ever declaration of incompatibili-

ty with the ECHR in the Irish courts. "After all the years Lydia Foy put in, it is great to see her rights vindicated in the end."

Also, despite the misery and hardship of the recession, Noeline takes satisfaction in seeing Paul Joyce's decade of work hitting the right spot and his analysis and solutions setting the agenda on personal debt.

Major events aside, Noeline finds the little things can be the best part of FLAC's work. "The leaflet we issue that no one else has, the phone call that no one else is there to answer... these are all mini-victories that give me huge satisfaction."

Into the future, Noeline hopes FLAC can develop a better understanding among lobbyists and decision makers that law is an integral part of how our society operates and that a space for law in the public interest should be respected. For her, FLAC's work is about "making it easier for people who currently can't make their case because of blocks in the system or because they don't know how to deal with power and authority." Most of all, Noeline hopes that FLAC continues "to do what we have been doing, even better."

Legal aid for students! FLAC centres at universities in Ireland

There are currently three student FLAC societies: UCC FLAC, Trinity FLAC and the recently established NUIG FLAC.

UCC FLAC: UCC FLAC has been in existence for a number of years. Its main purpose is to operate advice clinics where students can receive once-off legal advice from qualified practitioners. The main areas of law for students attending the clinics in UCC are around tenants' legal rights & responsibilities, public order issues, consumer information and employment law. These legal advice clinics take place every Wednesday and there are three volunteer legal practitioners involved. As well as the advice centres, UCC FLAC is involved in organising and arranging information and training seminars on various legal topics. The main aim here is to provide students with practical legal information. In addition, UCC FLAC runs an annual essay competition for law students on a specific legal topic. It also engages with campaigns run by FLAC head office. (See below for more information on UCC FLAC.)

Trinity FLAC: As with UCC FLAC, the main objective of the FLAC society in

Trinity College Dublin is to operate legal advice clinics, where legal practitioners pass on advice and information to students. The students involved with the society in Trinity are responsible for scheduling the volunteer practitioners to attend at these clinics. The clinics take place on a Tuesday evening every 2 to 3 weeks in the Atrium in Trinity. The most prevalent areas of law on which TCD students seek advice are employment law and landlord & tenancy law. The society is also involved in organising legal information seminars and in FLAC's general campaigns.

NUIG FLAC: This year saw the birth of a new FLAC society in NUI Galway. At present this society is still in its formative stages and hopes to start operating advice



Photo by Derek Speirs

Members of NUIG and Trinity FLAC societies attending the recent Dave Ellis Memorial Lecture. Kathrina Bray, FLAC Legal Intern is on the far left.

clinics in the New Year. Despite this, the society and committee involved have been very industrious, having to date encouraged over thirty students to get involved with FLAC and also having located volunteer practitioners to attend at the advice clinics. In addition the committee have co-ordinated with the Law Society in NUI Galway in organising and running debates and information seminars. The student committee envisages the official launch of FLAC NUIG for 18 January 2010 and the opening of the advice clinics that week.

Inside the Centre:

The Free Legal Advice Centre @ University College Cork

The FLAC centre in University College Cork runs clinics every Wednesday in the student centre on the third floor. These clinics are staffed by students and practicing solicitors and barristers on a rotational basis. Over the last three years, UCC FLAC has seen demand for its services triple and is a very useful help to the students of the university.

The main issues dealt with are landlord and tenant law, minor public order offences and employment law. The work done by UCC FLAC was recognised last year by the Societies Guild with a nomination for best Charitable Society. UCC FLAC works closely with the Students Union and the Accommodations office to

ensure that students' legal rights are upheld on campus.

The centre also provides training seminars for law students interested in giving advice. Training seminars have included landlord and tenant law and also public order offences looking at, in particular the Intoxicating Liquor Act 2008, knowledge of which comes in useful after "Rag Week".

Last year, the centre held a very interesting seminar series on such topics as 'Civil Legal Aid and Public Interest Law', 'What Rights Should Children Have? Constitutional Amendment on Children's Rights', 'The Shadow Report on Ireland's Human Rights Record' and the proposed

Civil Partnership Bill. All of these seminars were huge successes, resulting in lively discussion on campus.

UCC FLAC ran many other activities last year including campaigning on campus for the reinstatement of universal child benefit (ended by the government in 2004 by the introduction of the Habitual Residence Condition). The society also held a campaign showing our support for the Equality & Rights Alliance, attended by Labour TD Kathleen Lynch. In 2009, UCC FLAC held a seminar on *The Future of Child Protection in Ireland in the Light of the Ryan Report* with Nora Gibbons (Director of Advocacy at Bernardos), Maria Corbett (Policy Director for the Children's Rights Alliance) and Kieran Walsh BL.

Translating legal needs into Legal Aid:

Kristine Duncan was the recipient of the 2008 William Sampson Fellowship, jointly organised by FLAC and the University of Washington, Seattle. She spent her time with FLAC as a legal intern researching Irish debt laws and working on a joint community law centres Social Welfare Casebase. Below she compares the effectiveness and provision of civil legal aid systems in Washington State, USA and Ireland.

Ireland and Washington, aside from sharing an unfortunate propensity for rain, also have similar per capita incomes, unemployment numbers, and estimated homelessness rates. There is an amplified need for civil legal aid in both places due to the large quantity of people living around and under the poverty levels, and based on a needs study conducted in Washington in 2003, over 76% of these low income households had experienced at least one legal problem during the previous year.

Consider one such household: Jessica is a victim of domestic violence who just recently decided to divorce her husband and is now facing two very significant legal problems. First, her husband has hired a lawyer to fight for custody of their two young children. Second, as a result of her husband coming to her apartment and causing disturbances, her neighbors complained and her landlord brought proceedings to evict her and her children. Jessica has a tremendous amount at risk, her children and her home, but no income aside from Government benefits and therefore no

means to hire a lawyer. She is just like the thousands of people in Ireland and Washington State who need help accessing largely inaccessible court systems to protect their rights. If Jessica were to try and get legal aid in both Washington and Ireland, she would find fairly different structures and standards for administering legal aid. However, she would also find that in both places her chance of getting the help she needs depends entirely on factors out of her control.

Ireland has attempted to address the problems of people like Jessica by establishing the Legal Aid Board, a statutory body responsible for the provision of legal aid and advice on civil law matters to persons unable to fund such services from their own resources. Its general service operates through 89 solicitors working at 29 full-time and 12 part-time law centres around the country.

In addition to the Legal Aid Board, a variety of independent law centres have emerged to help low income and disenfranchised individuals in Irish society

who have problems that the Legal Aid Board cannot or will not help them with.

The vast majority of the work funded by the Board is in the area of family law, and many people are therefore

left without representation for their problems related to housing, benefits, immigration, and associated issues. Instead of establishing one statutory body like the Legal Aid Board to provide civil legal services, the Washington Supreme Court created the Access to Justice Board, which is charged with the planning and oversight of a network of statewide, integrated civil legal services providers. This network consists of two wide-ranging service providers, Northwest Justice Project (NJP) and Columbia Legal Services. Some examples of boutique programs are "Teamchild," which represents youth who are involved in the criminal justice system in civil matters, and "Solid Ground," which deals primarily with cases involving public benefits.

In addition to having different basic structures, civil legal aid programs in Ireland and Washington also have dissimilar standards and procedures for taking on cases. In examining whether or not to take cases like Jessica's, the Legal Aid Board would use a means test and a merits test to evaluate her eligibility for aid. The means test requires the individual seeking aid to have a disposable income of less than €18,000 per year before their claim will be considered. It allows for certain deductions for income tax, PRSI, dependents, rent/mortgage repayments, and childcare expenses. The merits test has two parts; the Board must find as a matter of law that a reasonably prudent person would be likely to pursue the claim at their own expense if possible, and that a reasonable solicitor or barrister would be likely to advise the client to obtain legal services at his or her own expense. The test is very subjective and the department has never issued examples of a case refused on the merits, therefore it is difficult for



Comparing legal aid in Seattle...

Civil Legal Aid in Ireland & Washington

someone like Jessica to know if their claim was wrongly rejected under the merits test.

A person who has been turned down may appeal internally to the Appeals committee, but the Legal Aid Board is not susceptible to scrutiny by the Office of the Ombudsman. The scope of the work done by the Board is extremely narrow, with over 90% of the court representation being for family law cases, so Jessica is much more likely to get assistance with her custody matter than the eviction if she is in Ireland. In fact, help with housing issues falls into one of the categories of legal issues the Board is prohibited from working on (disputes concerning rights and interests in or over land) and she would therefore have to look to one of the independent law centres for help with the eviction claim.

The tests that organizations in Washington use to determine whether or not someone is eligible for services are less stringent. Northwest Justice Project (NJP) has the strictest test because it receives federal funding from the Legal Services Commission (LSC) and must conform to their requirements. Its means test requires the applicant to be below the government cut off of 200% of the Federal poverty level, which is \$21,660 for a single person this year. This includes any assets except for the home that the person lives in. Like the Legal Aid board, NJP is prohibited from taking cases that fall in to a number of categories, such as class actions, cases involving non-citizens (unless they are victims of domestic violence) and any fee-generating cases.

If, however, the applicant has two private attorneys who testify that they turned the case down first, they may litigate a fee-generating case. This is one key difference between the Legal Aid Board and NJP, where NJP is actually forbidden from accepting payment or getting attorney's fees for their work, the Board requires the client to pay for

court costs much of the time, and require income contributions anywhere from €35 to €2,210.

NJP has different practice groups for different areas of law, such as family law, housing, public benefits, consumer, education, and some immigration.

If Jessica qualifies financially and the case does not involve a prohibited area of law, the intake attorney will look to see if the case is a priority area for their practice group. They do not apply any sort of merits test, but each practice group has cases that they will consider priorities, for instance domestic violence cases will be given priority in the family law group. There is not a strict order in which cases will be taken, however, and even priority cases may be denied if all of the attorneys have full caseloads.

Certain practice groups have longer wait lines than others, for instance family law has a notoriously long waiting list, but the housing group hardly ever does. Even though her case is a priority area for the family law group, she will still be subject to the wait time and would be likely to get help with the eviction from NJP long before the custody matter. If she was turned away from Northwest Justice Project because of the restrictions put on the LSC funding, for instance if she was a non-U.S. citizen or if she was trying to bring a class action suit, it would be possible for her to secure legal services from the other big civil legal aid provider in Washington, Columbia Legal Services (CLS). CLS does not receive



...and Dublin

any money from LSC, so they

can take cases that NJP cannot, however their focus is strategic litigation, so they would also be more likely to take the housing case (for the impact on future proceedings involving domestic violence victims) than the custody case.

The civil legal aid programs in Ireland and Washington differ structurally and procedurally, yet Jessica would have much more trouble getting representation for one claim over than the other regardless of where she was; in Ireland it would be housing, in Washington it would be the custody battle. Both involve vitally important rights, and neither is fully protected in either State. In the end, whether or not Jessica would be able to defend her fundamental rights would depend on circumstances completely out of her control, such as wait times, what a given solicitor felt about her case merits, or where her legal issue fell on the priority list. Neither system entirely protects the rights of its low-income and disenfranchised individuals by ensuring that those individuals are not denied the opportunity to present their cases effectively before the court, even though such effective representation is, as the European Court of Human Rights recognized in *Airey v. Ireland*, central to the concept of a fair trial.

