

Good morning all and thank you for the invitation to address you here today.

First, I congratulate FLAC for producing this fine report which makes a strong and persuasive case for the reform of the social welfare appeals system. It is a work of great clarity and admirable in-depth analysis. I commend all of the people who were involved in putting it together, and Saoirse Brady in particular as its principal author for her painstaking endeavour and clear focus. I believe that the Chief Appeals Officer, Geraldine Gleeson, and her staff in the Appeals Office who met and corresponded with FLAC will also welcome this report.

FLAC has had a huge and ongoing influence over the last four decades on how the Department of Social Protection impacts on its clients. Some of the landmark Court judgements on Social Welfare issues are due to FLAC's work. The Cotter & McDermott case, for instance, as it is known, where FLAC represented women who had been subject to the Department's policy of sex discrimination - when this case was won, it brought about not only positive changes in the system but benefited over 69,000 women who were subsequently able to avail of their entitlements.

Complaints against the Department of Social Protection form a large part of the total number of complaints coming to my Office. The Social Welfare Appeals Office is within my jurisdiction and my staff has regular contact with that Office usually in a situation where we are attempting to clarify a decision or arranging for its review. Many of the complaints against the Department which end up resolved in favour of the complainant have reached this conclusion as a result of a review either by an Appeals Officer. Certainly, many of the issues explored in this report and the recommendations are familiar to me and will be of great interest to the caseworkers in my Office.

I am particularly concerned with some of the issues. The report highlights the fact that many people make their appeals without the benefit of seeing the Department's file on their case and without knowing the details of the evidence used by the Department in refusing their claim; this should not happen in a fair appeals process. FLAC make a number of recommendations on the appellant's access to information which warrant serious consideration. I know that some people *do* make use of the Freedom of Information Act to obtain their files, but this should not be necessary. An appellant should be given access to all of the evidence on which the decision in his case is based as a matter of course.

This is a timely report. The Social Welfare appeals system has experienced a great increase in numbers of appeals since the downturn in the economy as, indeed, has my Office. It is in times like these that the need for fair procedures is even more acute. It is in times of recession, of cutbacks in services, that we must all endeavour to hold fast to the principles which underlie our social welfare system – the principles of fairness and justice. The measures taken by Offices like mine and the Social Welfare Appeals Office to deal with the greater number of people coming to us must not sacrifice fairness in favour of number crunching. This report has much of worth to say about this.

When reading it I found myself nodding in agreement with much of its content and the thrust of its recommendations. I am picking out a few points on which to speak now but I would like to stress that these are only a few of the points on which I could have spoken and which are of particular interest to me.

You will all know that, as Ombudsman, my role is to examine complaints against public bodies. One of the issues explored in this report rang an all too familiar bell –and that is, the discovery that decision making by Deciding Officers (that is, the initial decision making before a case ever goes to appeal) is often of poor quality. When an appeal is received, the Deciding Officer is given an opportunity to review

the decision, and if warranted, to revise it. Quite a lot of decisions are reviewed at this point by the Deciding Officer – the report gives the figures – but many are not.

I too have seen cases where errors of various kinds were made at the initial decision making stage. Had the error been acknowledged and the decision rectified by the Deciding Officer on receipt of the appeal, this would have obviated the necessity of the appeal process being set in motion– and, of course- as I see the case after that event, it would have meant that the social welfare claimant did not have to go through the Ombudsman complaint process either. As the FLAC report points out, the long periods of time waiting for an appeal to take place can cause privation and distress for people who are already in difficulties. It is true that improvements in the quality of decision making at Deciding Officer level would have undoubted positive benefits not only for the Social Welfare recipient but also for the Social Welfare Appeals Office as it would reduce the pressure on the appeals system.

To turn to another point - the statistics in this report make for interesting reading. I was particularly taken with the figures for the numbers of appeals decided summarily and the numbers of successful oral hearings. The report tells us that Appeals Officers dealt with 69% of cases summarily in 2010, in comparison with

41% the previous year. In 2011 the number of cases dealt with summarily was 65% of all appeals. The move away from oral hearings to summary decisions is part of the Appeal Office's attempt to reduce waiting times – which were very long- for appeals and to reduce a considerable backlog which had amassed. I have great sympathy for the Appeals Office in facing this burden of increased work which came at a time of staff shortages. It is something my own Office has had to face up to and with which we continue to deal. I reported on my Office's reorganisation, designed to improve speed and effectiveness, in my most recent Annual Report.

While we have to deal with increased workloads with less resources we must also be careful that the quality of our work does not suffer, and in terms of appeals and complaint handling, that the principles of fairness and justice are not diminished by new administrative strategies. I was interested to note that, despite the move to summary decisions, 41% of all appeals in 2010 had successful outcomes, which seems a reasonably high figure one would think. But, even more interesting are the figures for successful outcomes where the appeal is decided by way of an oral hearing ranging from a low of 45% in 2008 to a high of 49% in 2009. So, an appellant is more likely to be successful if the case is decided by an oral hearing rather than summary decision. This is not surprising. It stands to reason that a

person given the chance to correct misunderstandings or mistakes about his case will be able to do so much more easily at an oral hearing than on paper.

The experience of my staff bears this out. Almost all of our complaints against the Department of Social Protection involve the examination of a case after a negative appeal decision has been given. A lot of the complaints are made orally on the phone or in person by callers to my Office in Dublin and our regional centres. Even when they are not, it is the norm that the caseworker speaks to the person making the complaint. And, of course, a person can usually explain his or her case so much better when speaking about it, and answering questions about it, than in a letter or email. The merits of a particular case and the evidence required to get a reversal of an Appeals Officer's decision often becomes clear to a caseworker in such a conversation. The oral hearing, which the Appeals Office arranges to be as informal as possible, allows for cross-examination and the questioning of evidence. As Mr Justice Hogan is quoted in this report as saying, "No greater truth-eliciting process has been devised" (p 37, 2nd Col)

I feel very strongly that a move away from oral hearings to summary decision making is not a move toward greater fairness in the appeal system.

I would like to finish now by saying that the work of FLAC should be given the attention that such valuable research and legal knowledge and such commitment to human rights deserves.