



# The Courts Service Statement of Strategy 2018-2020

A submission by FLAC to the Courts Service

FLAC, October 2017

## About FLAC

FLAC (Free Legal Advice Centres) is a voluntary independent human rights organisation which exists to promote equal access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights.

We work particularly in the areas of the protection of economic, social and cultural rights. FLAC is an affiliate member of the FIDH. We identify and make policy proposals on laws that impact on marginalised and disadvantaged people, with a particular focus on social welfare law, personal debt & credit law and civil legal aid.

FLAC produces policy papers on relevant issues to ensure that Government, decision-makers and other NGOs are aware of developments that may affect the lives of people in Ireland. These developments may be legislative, Government policy-related or purely practice-oriented. FLAC may make recommendations to a variety of bodies including international human rights bodies, drawing on its legal expertise and providing a social inclusion perspective.

You can download/read FLAC's policy papers at

<https://www.flac.ie/publications/>

For *more information*, contact us at:

FLAC,

13 Lower Dorset Street, Dublin 1

01-8873600 | [info@flac.ie](mailto:info@flac.ie) | [www.flac.ie](http://www.flac.ie) | [fb.me/flacireland](https://fb.me/flacireland) | [@flacireland](https://twitter.com/flacireland)

## Summary of recommendations

1. Add “Access to Justice” as a theme to the Vision Mission and priorities contained in the previous Strategy.
2. FLAC recommends making the Public Sector Duty a core consideration in the process of developing, implementing and monitoring the Courts Services’ strategy for the next three years.
3. FLAC recommends that the Courts Service establish a widely drawn working group to examine access to justice for litigants in person.
4. Improve accessibility and content of the Courts.ie website.
  - Prepare and publish a “nutshell” guide for lay litigants.
  - Publish accessible printable guides on how to represent yourself in court.
  - Publish accessible guides on the areas of law where there are the most lay litigants, with direct links to printable and downloadable versions of the various forms as well as basic instructions on how they should be filled out.
  - Introduce a guide and code of conduct for McKenzie friends explaining the Practice Directions of the High Court and the Court of Appeal.
  - Publish guidance for court staff when dealing with lay litigants.
  - Publish clear, concise and accessible information detailing both the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme and the differences between the two.
  - Provide accessible summaries of the judgements of the Superior Courts.

5. FLAC recommends that the Court Services collect comprehensive data on the number of people who are legally aided and the number of litigants who are representing themselves.

6. Recommendations for Court Users with disabilities

- FLAC recommends that an Access Officer be available to assist people with disabilities to access the courts.
- Court documentation during proceedings should be provided in an accessible format for people with disabilities.
- Information guides and forms on the Courts Service website should be amended so that they can be accessed by people with disabilities.
- Wi-Fi should be available in all courtrooms.

7. Personal debt crisis

7.1. FLAC recommends that as a matter of urgency that the Central Bank of Ireland and the Courts Service co-ordinate the gathering of statistics on repossession activity in the courts to enable the provision of detailed information on current trends.

7.2. FLAC recommends that the State provides, at a minimum, the following information in relation to the 28,917 new repossession cases that have been brought in the past four years:

- The number of the current cases against borrowers who form part of the 32,953 accounts in arrears for over two years.
- The number of these cases concerned properties in negative equity.
- The number of defendant borrowers have not responded to the proceedings.

- The number of defendant borrowers who entered an appearance in response to the proceedings.
- The number that followed the appearance with a defence in the form of the required replying affidavit.
- The number of cases have been struck out or withdrawn and on what basis.
- The number of Possession Orders have been granted but have not yet been executed.
- The number of cases currently before Circuit Courts across the country.

7.3. FLAC recommends that a dedicated court/ tribunal which can deal with problem mortgage arrears on a case-by-case basis with a view to proposing resolutions is required as a matter of urgency, and given the complexity involved, work needs to begin on this as a priority.

## Introduction

FLAC operates a telephone legal information and referral line and runs a network of legal advice clinics where volunteer lawyers provide basic free legal advice. FLAC also provides specialist legal advice to advisers in MABS and CISs. More than 25,700 people received free legal information or advice from FLAC in 2016 from the telephone information line and the network of legal advice clinics at 67 locations around the country. It also operates PILA the Public Interest Law Alliance which operates a Pro Bono Referral Scheme for NGOs, community groups and independent law centres.

The focus on these services as a way of enabling people to assert their rights is a fundamental aspect of FLAC's work in promoting access to justice.

FLAC welcomes the commitment of the Chief Justice to accord a high priority to questions relating to practical access to justice. <sup>1</sup> . *“There is little point in having a good court system, likely to produce fair results in accordance with law, if a great many people find it difficult or even impossible to access that system for practical reasons”* .

We also welcome his comments on the great potential for exploiting I.T. in making much more effective use of court personnel and making life easier for litigants who have interaction with the courts. FLAC recognises the need for a modern fit for purpose

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<sup>1</sup>Statement for New Legal Year 2017, The Hon. Mr Justice Frank Clarke, Chief Justice of Ireland

accessible court services and is fully supportive of and eager to be involved in any endeavors to make the court services more accessible.

FLAC also endorses the comments of the Chief Justice on the need for the adoption of a practice of auditing new legislation for the resources implication on the Courts. FLAC believes that an audit of new legislation should, in addition, include an audit of the resource implications of such legislation on the Legal Aid Board.

FLAC welcomes the opportunity to provide this submission to the Courts Services, which is intended to inform discussions on the development of the Courts Services' Strategic Plan 2018-2020. FLAC is of the view that ongoing consultation with relevant stakeholders, interest groups and individuals should form a valuable element of the strategic development process both before and during implementation. In making this submission FLAC acknowledges that during the recession the Courts Service suffered a significantly larger reduction than the public service generally, or the justice sector as a whole and that the IT section of the Courts Service suffered a particularly large hit.

Our comments below address a number of issues that are relevant to the Court Services, including matters related to the public sector duty; access to justice; civil legal aid and accessibility of the courts, particularly for vulnerable court users, people with disabilities and unrepresented users/lay litigants and people in mortgage arrears.

## **Access to Justice**

Access to the courts includes understanding of the courts system and the judicial process as well as knowledge of court procedures and rules of court, all of which are aspects that contribute to true access to justice. Not all of the measures which may be needed to improve access to justice are within the control of the Courts Services. However, the functions of the Court Services which include providing information on the courts system to the public, and providing court buildings and providing facilities for users of the courts are a critical aspect of and contribute to access to justice.

**Accordingly, FLAC recommends adding another theme to the Vision Mission and priorities contained in the previous Strategy, namely “Access to Justice”.**

## **Public Sector Duty and the Courts Service**

The previous Courts Services Strategic Plan covered the period 2014-2017. Since then, the Public Sector Duty has been introduced pursuant to section 42 of the Irish Human Rights and Equality Act 2014. Section 42 requires a broad range of public and statutory bodies to have regard, in carrying out their functions, to the need to eliminate discrimination, promote equality of opportunity and treatment for staff and service users, and protect the human rights of staff and service users. Specifically, the Act requires public bodies such as the Courts Services in giving effect to this duty to:



- a. “set out in a manner that is accessible to the public in its strategic plan an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues, and
- b. Report in a manner that is accessible to the public on developments and achievements in that regard in its annual report”.

There is significant scope for human rights standards and equality of opportunity to be integrated into the work of the Courts Services because of the significant role it plays in the provision of information and support to members of the public, and providing facilities for users of the courts.

**FLAC recommends making the Public Sector Duty a core consideration in the process of developing, implementing and monitoring the Court Services’ strategy for the next three years**

FLAC has identified a number of key areas where the Courts Service can target in its Strategy Statement 2018-2020 to seek to ensure the judicial system in Ireland is accessible to everyone.

#### **Legal Aid:**

The provision of legal aid is a critical matter for access to justice. The current system of civil legal aid provided by the Legal Aid Board under the provisions of the Civil Legal Aid Act 1995 is restrictive and limited. An applicant’s disposable income must be below

€18,000 and the disposable capital threshold is €100,000. Applicants must also pay a financial contribution which in some instances may be quite significant. There are lengthy waiting times in many law centres. Core areas of law such as housing are in large part excluded from its remit.

In many cases members of the public have no option but to attempt to represent themselves or allow judgement to be entered in default of a response to a claim. In many other cases, members of the public with good claims will be left with no option but to abandon their rights and leave problems unresolved and potentially worsening, unless they are prepared to attempt to represent themselves. Navigation of the court process without representation can be difficult, complicated and emotionally draining on the person concerned. It can also add significant delay to court hearings. Litigation of this nature often arises out of family law and debt disputes involving particularly vulnerable litigants. The result is no access to justice for some and compromised access to justice for others.

FLAC's information line regularly receives calls from lay litigants who are endeavouring to represent themselves in complex court cases and who are desperately in need of assistance, advice and representation which FLAC does not have the resources to provide.

In the UK the Civil Justice Council constituted a Working Group to examine access to justice for "litigants in person". "Access to Justice for Litigants in Person (or self - represented litigants) contains useful recommendations for immediate, medium and

long-term focus. The immediate actions sought to identify practical recommendations that can be introduced without requiring additional financial resources.

**FLAC recommends that the Courts Service establish a widely drawn working group to examine access to justice for litigants in person.**

**Improve accessibility and content of the Court.ie website.**

The website needs a simpler home page, with each section (guides, news, court fees etc.) set out in a larger font, with drop-down boxes with links directing users to more specific sections of the website (e.g. Guides »» Family Law »» Access). The Guides should also be in large writing, using clear and simple language, with direct links to downloadable versions of court forms.

The website needs a user friendly format which clearly lists each court per county, or a search mechanism where a user could enter their location and find their closest Circuit / District Court Office.

Most of the forms that are easy to find on the courts website are not downloadable in a printable format. The forms are also complex and difficult for lay litigants to fill out without the aid of a legal professional.

Finding judgements can be difficult when using courts.ie as the primary database. Written judgements can often be lengthy and detailed, and while an excellent resource for members of the legal profession often prove inaccessible to members of the public.

Both the Court Service in the UK and Northern Ireland provide case summaries of judgements from their respective Superior Courts.

UK Model:

The Gov.uk website (<https://www.gov.uk/represent-yourself-in-court>) provides people with a simple and comprehensive way to access legal information and instructions on how to navigate the courts.

When you access the “represent yourself” section of the Gov.Uk website it gives a concise overview on how to represent yourself in court. It includes direct links to applying for legal aid, and to guides on how to conduct yourself before the court.

It gives advice on what a “McKenzie friend” is, and what exactly they can’t do. A direct link is again provided to a guide book on the purpose of a “McKenzie Friend”.

The home page also has an entire printable guide on how to represent yourself in court, and separate guides on family law, debt law, personal injuries, etc.

In these guides, one will find the procedures outlined in simple language with direct links to printable and downloadable versions of the various forms that need to be filed with the courts, as well as basic instructions on how they should be filled out.

This website, its simple language, and accessible user-friendly formatting are useful for assisting lay litigants become familiar with how the courts services operate.

## FLAC recommends

### Improving accessibility and content of existing website material.

- Prepare and publish a “nutshell” guide for lay litigants.
- Publish accessible printable guides on how to represent yourself in court.
- Publish accessible guides on the areas of law where there are the most lay litigants, with direct links to printable and downloadable versions of the various forms as well as basic instructions on how they should be filled out.
- Introduce a guide and code of conduct for McKenzie friends explaining the Practice Directions of the High Court and the Court of Appeal.
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- Publish clear, concise and accessible information detailing both the Civil Legal Aid Scheme and the Criminal Legal Aid Scheme and the differences between the two.
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### Efficiency and Collation of Data and Statistics.

The Programme for a Partnership Government under the heading ‘Courts and Law Reform’ contains a commitment to the commissioning of an annual study on court efficiency and sitting times, benchmarked against international standards, to provide accurate measurements for improving access to justice. Comprehensive data is

required in relation to lay litigants and persons in receipt of legal aid, in order to be able to devise accurate and effective measures for improving access to justice.

**FLAC recommends that the Court Services collect comprehensive data on the number of people who are legally aided and the number of litigants who are representing themselves.**

### **Court Users with disabilities**

Persons with disabilities continue to face barriers in their participation as equal members of society. The Courts Service has a pivotal role in ensuring measures are adopted that support a person with a disability to participate fully in the judicial process. There are a number of measures, constitutional, legislative and treaty provisions which are relevant to the access to justice of people with disabilities, including the Equal Status Acts 2000-2015 and the Convention on the Rights of Persons with Disabilities. National legislation to implement this convention will shortly be in force which will place far greater obligations on the courts service to make reasonable accommodation for people with disabilities.

Over the past three years FLAC has supported a visually impaired litigant Robbie Sinnott in his case against the Minister for the Environment, Community and Local Government. Mr.Sinnott asked the State to introduce measures which would enable him as a visually impaired person to vote in secret. While ultimately successful the

litigation process itself highlighted the barriers facing a person with a visual impairment from accessing the judicial system. Information guides and forms available on the Courts Service website are in PDF format, which is not compatible with voice-over recognition software unlike html or doc. or docx. As such, a visually impaired person cannot access relevant information in the same manner as a sighted litigant. The proceedings ran for 9 days and Mr Sinnott relied on assistance from FLAC for physical access to the courtroom. Mr Sinnott gave evidence during the trial and was cross-examined by Senior Counsel for the State who referred to written exhibits. However, this was not made available to Mr Sinnott in an accessible format and was reliant on it being read out to him without an opportunity to review the material himself and pause to reflect.

In light of the above FLAC makes the following recommendations:

- An Access Officer should be available to assist people with disabilities to access the courts.
- Court documentation during proceedings should be provided in accessible format for persons with disabilities.
- Information guides and forms on the Courts Service website should be amended so that they can be accessed by people with disabilities.
- Wi-Fi should be available in all courtrooms. This is necessary not only to access relevant court documentation in real time but also to activate navigation apps on a device to orientate (and feel more at ease) in the courtroom.

## **Personal debt crisis.**

For the past ten years FLAC has consistently campaigned for the need to resolve our personal debt crisis. FLAC recently made a submission to the Department of Justice Submission on analysing current developments in the resolution of mortgage arrears & related issues, and the review of the Personal Insolvency Act 2012 (as amended). A number of its recommendations are relevant to the Court Services.

These include:

1. FLAC recommends that as a matter of urgency that the Central Bank of Ireland and the Courts Service co-ordinate the gathering of statistics on repossession activity in the courts to enable the provision of detailed information on current trends.
  
2. FLAC recommends that the State provides at a minimum the following information in relation to the 28,917 new repossession cases have been brought in the past four years:
  - The number of the current cases against borrowers who form part of the 32,953 accounts in arrears for over two years.
    - The number of these cases concerned properties in negative equity.
    - The number of defendant borrowers have not responded to the proceedings.
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    - The number that followed the appearance with a defence in the form of the required replying affidavit.
    - The number of cases that have been struck out or withdrawn and on what basis.



- The number of Possession Orders that have been granted but have not yet been executed.
  - The number of cases currently before Circuit Courts across the country.
3. FLAC recommends that a dedicated court/ tribunal which can deal with problem mortgage arrears on a case-by-case basis with a view to proposing resolutions is required as a matter of urgency and given the complexity involved, work needs to begin on this as a priority.