

flacNews

FREE LEGAL ADVICE CENTRES

A new legal dawn for insolvent debtors, but more support needed

It would be fair to describe 2012 as a momentous year for campaigners seeking reform of Ireland's extremely outdated debt laws. Despite delays and notwithstanding the gaps still remaining in the law – and that it is still largely not enacted as of the end of March 2013 – the fact that we now have a working legal structure to help those who are insolvent work through their debt situation is a massive step forward. While it is worth reflecting on how we got here, we will also consider how to move on from a point where too many people have been waiting too long for a suite of solutions that, unfortunately, do not join together in the way that people need.

A crisis with deep roots

FLAC has been working on this issue for more than ten years. A landmark report *An End based on Means*, penned by Senior Policy Analyst Paul Joyce in 2003, clearly identified deficits in consumer protections. In particular, it underlined the need to update Ireland's literally Dickensian debt laws given a burgeoning and largely unregulated credit market. Sadly, various governments did not agree with any need for legal reform. As time went by, FLAC's contacts with people in our network of advice centres, on our telephone information line and through our legal support to the Money Advice and Budgeting Service confirmed that the lack of regulatory and legal protections was hurting consumers, and that people lacked access to legal supports in an adversarial, court-based system for dealing with debt where the ordinary debtor is very much at a disadvantage.



Paul Joyce, Senior Policy Researcher, speaks at FLAC's Personal Insolvency conference in April 2012

Unfortunately, these core problems have remained stubbornly in place. By 2009, the Central Bank had begun publishing figures on mortgage arrears on people's private homes that showed the personal debt problem was spiralling out of control, quarter on quarter, with no legal way of helping people to manage their situation once they had got into serious arrears. While the rate has slowed, most recent figures show that about 12 percent of all mortgage-holders are in difficulty. An inexplicably and worryingly slow state response has only recently culminated in a newly-minted insolvency law, but several concerns remain.

From our work on the ground and with MABS and other partners, FLAC had a clear vision of what was needed in a state

response to the spiralling debt crisis. Together with other legal rights groups, campaigning organisations and individuals, we launched 'Nine principles to overcome the personal debt and mortgage arrears crisis' in October 2011. This laid a foundation of basic issues on which to build a policy and legal response to the debt crisis. They centred around the State taking a holistic approach that would encompass all of a person's debt, ensuring independence in decisions on debt cases, and aiming to keep people in their homes where appropriate with access to social housing where needed.

A law at last

FLAC put forward these principles in our policy submissions on the draft scheme of

Continued on page 8

in this edition...

A new legal dawn for insolvent debtors, but more support needed 1 & 8

ECRI calls for publication of decisions on Habitual Residence Condition 2

Social welfare appeals continue to rise in 2012 3

Central Bank announces arrears targets 4

Steep rise in housing-related queries to FLAC 5

UN Report on human rights defenders in Ireland 6-7

Woman who fled abusive relationship gets Child Benefit arrears 7

UN issues new Principles & Guidelines on Access to Legal Aid 9

Lydia Foy: My Story 10

Lydia Foy goes back to court 10

Focus on FLAC:
Maeve Regan, PILA Legal Officer 11
On meeting Lydia Foy 11

PILA update:
Focus on PILA Register lawyers: Michael Kinsley BL 12

Charter of Fundamental Rights seminar 12

Legal education for NGOs through PILA 13

TENI book launch 14

Austerity on trial in the UK: Is there a case for economic cuts? 15

Tri-City Project conference on EU migrants' experiences of accessing social welfare 16

Government recognises foreign Trans persons, but no Irish need apply 16

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ECRI calls for publication of decisions on Habitual Residence Condition

In February 2013, FLAC welcomed a report by the European Commission against Racism and Intolerance (ECRI), a human rights body of the Council of Europe which monitors issues related to racism, discrimination and xenophobia in each of the 47 member states.

Representatives of ECRI conducted a joint visit to Ireland in 2012 with members of the Advisory Committee of the Framework Convention on National Minorities (FCNM), another international human rights body. While ECRI's report was issued in February 2013, the FCNM report is not due out until April and is likely to deal with issues affecting Travellers and Roma people living in Ireland.

In its report, ECRI highlighted a number of concerns shared by FLAC, including the merger of the Irish Human Rights Commission and the Equality Authority which it hopes will meet international standards on independence. ECRI also called on the government to ensure that the new body is adequately funded and suggested that it take up the mantle of the National Consultative Committee on Racism and Interculturalism (NCCRI) which was abolished in December 2008 and has not been replaced.

ECRI also called on the Irish Government to enact the Immigration, Residence and Protection Bill, which has been in preparation for the past six years or more. This will finally introduce a single procedure for protection claimants. Direct Provision for asylum seekers was another focus of the report with ECRI calling for a review of the system, as it fell short of international human rights standards.

FLAC and other NGOs had raised concerns around the Habitual Residence Condition on social welfare payments with the representatives of ECRI. As a result, it recommended that clear rules be published for the application of the Condition as well as calling for the publication of Social Welfare Appeals Officer's decisions in cases involving the HRC, highlighting the importance of access to this type of information.

Michael Farrell, the Irish expert for ECRI, convened a meeting of NGOs following the publication of the report. It is important to note that the national expert does not participate in the official state visit. At the meeting, organisations discussed the usefulness of the recommendations and how best to use them in their lobbying work to progress the recommendations.

For more information on the ECRI report, see <http://bit.ly/YKkHMm>

Best foot forward for Access to Justice!

On Monday 3 June, over 40,000 women will take to the streets of Dublin for the 2013 Flora Women's Mini-Marathon, the biggest all-women's event of its kind in the world. This year we hope to bring together a team of FLAC runners (and joggers and walkers!) to take part in what is always a great day out, rain or shine, and to raise some funds for FLAC to widen access to justice in Ireland.

We invite all our female supporters to join us at this annual event:

- ✓ the first step is to sign up online through www.florawomensminimarathon.ie
- ✓ then get in touch with FLAC to let us know!

We will provide a FLAC t-shirt and materials to help you fundraise.

Just 25 participants raising €200 each would raise €5,000 – hugely valuable at a time where funding is more and more difficult to find.

And for all the guys: While this event is female-only, we invite our male supporters to encourage the women in their lives to take part and, of course, to sponsor them!

For more information, contact Emer Butler in FLAC:
fundraising@flac.ie or (01) 887 3600.

Social welfare appeals continue to rise in 2012

On 20 February 2013 the Chief Appeals Officer, Geraldine Gleeson, was invited to make a presentation to the Joint Oireachtas Committee on Social Protection on social welfare appeals, in particular around processing times and delays. FLAC sent briefing documents to the Committee members in advance of the discussion to highlight some of the issues arising in FLAC's report, *Not Fair Enough*, which called for reform of the appeals system.

At the meeting, the Chief Appeals Officer provided the 2012 statistics for the Appeals Office which indicated a rise both in the number of appeals lodged, as well as in the number of overall live appeals when these were added to the backlog from the previous year. In 2012, the Appeals Office recorded a new high of 35,484 appeals received, resulting in a workload of almost 53,000 live appeals.

Ms Gleeson also addressed the issue of delay. She outlined the work her office had done to reduce processing times for oral hearings from an average of 52.5 weeks in 2011 to 39.5 weeks in 2012, although the length of time needed to process summary decisions had increased from 25.1 weeks in 2011 to 27.8 weeks in 2012. On the whole this was a reduction of 10.2 weeks in processing times. She acknowledged that the delays were "significant and unacceptable" and called on the rest of the Department of Social Protection to "improve processing times for the portion of the appeals process for which it is responsible". Ms Gleeson drew attention to the fact that the biggest delays were experienced by those applying for medically based schemes. This, she explained, was because there were backlogs which the Department was actively trying to clear and new Medical Assessors had been appointed to this end with more expected in the near future.

However, despite the fact that the number of Appeals Officers increased in 2012 to 41, the number of finalised appeals actually fell. The Chief Appeals Officer attributed this to the rise in Supplementary Welfare Allowance appeals now made directly to the Appeals Office cutting out a first stage HSE appeal, as well as the high number of new Appeals

2012 statistics at a glance

- ▼ Number of overall live appeals rose to 52,972 in 2012 from 51,515 in 2011 marking a new record high.
- ▼ The number of appeals received rose by more than 4000 than the number received in 2011 but the Appeals Office finalised almost 1500 fewer appeals in 2012.
- ▼ There was an increase in the number of oral hearings from 8821 in 2011 to 9267 in 2012 marking an increase of 5 per cent. In turn the success rate at oral hearing rose from 48 per cent to 53 per cent of all oral hearings resulting in a positive decision.
- ▼ Despite the increase in oral hearings, the majority of appeals in 2012 were still decided summarily; almost 60 per cent, or 13,730 appeals, were decided on the written evidence only. These resulted in a lower success rate of 31 per cent.
- ▼ In 2012, 7303 decisions were revised by the original decision-maker compared to 6035 in 2011 which represented a 5 per cent increase. In total 22 per cent of finalised decisions were revised by a Deciding Officer in favour of the appellant.
- ▼ The longest processing times in January 2013 were in relation to appeals for Carer's Allowance (46 weeks), Invalidity Pension (40 weeks), Illness Benefit (40 weeks) and Disability Allowance (38 weeks).

Officers who had less than 18 months experience by the end of last year. She noted that there had been a significant rise in the number of finalised appeals in the second half of 2012 as Appeals Officers became more familiar with the process and she expected that on this basis more appeals would be concluded in 2013.

Members of the Joint Oireachtas Subcommittee on Social Protection were all familiar with social welfare appeals from their constituency work and raised issues around processing times, independence of the office and inequality between the parties, as well as the lack of civil legal aid for appeals.

FLAC welcomes the rise in the number of oral hearings, as they offer the appellant an opportunity to meet with an Appeals Officer and present reasons why a payment should be granted; as borne out by the statistics, they once again proved to be more successful for the appellant. However, the majority of appeals were still dealt with summarily. While the Chief

Appeals Officer is considering FLAC's recommendation to include an 'express route' to request an oral hearing, we argue that the higher success rate clearly demonstrates the benefit of holding a hearing where the appellant gets the chance to put forward his or her side of the case in person.

While we recognise the huge amount of work carried out by the Appeals Office, the 2012 figures only serve to emphasise that more needs to be done. It must ensure that people are informed of the right to an oral hearing, as time and time again the statistics evidence a better outcome for the appellant. Processing times have improved because of better working models and the office must look at other ways to improve efficiency and ensure that fair procedures are followed. It is clear from these figures that the Department must improve decision-making at first instance to cut needless appeals as well as reducing the delays caused within the various payment sections.

Central Bank announces arrears targets

Meaningful action or just good intentions?

In March 2013 we saw the announcement of targets to be imposed upon Irish banks in the latest attempt to tackle the country's long running mortgage arrears crisis. At a joint press conference, Minister for Finance Michael Noonan and Financial Regulator Matthew Elderfield unveiled the Government's updated strategy and acknowledged the distress that these arrears are causing to many Irish families.

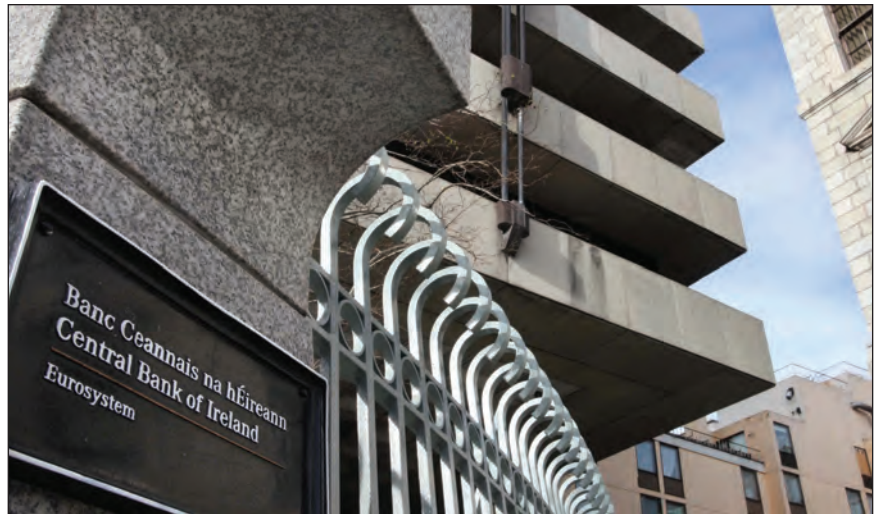
Under the Mortgage Arrears Resolution Targets (MART) published by the Central Bank, six Irish lending institutions will now have performance targets set in terms of offering sustainable arrangements with borrowers in mortgage arrears. These targets will be monitored by the Central Bank and failure to engage with borrowers in arrears and meet the targets may result in additional capital requirements being imposed on the banks by the Central Bank.

The new targets specify that sustainable mortgage solutions must have been proposed by the banks to:

- ▼ 20% of those homeowners in arrears of 90 days or more by the end of June 2013
- ▼ 30% of homeowners in arrears of 90 days or more by the end of September 2013
- ▼ 50% of homeowners in arrears of 90 days or more by the end of December 2013

These thresholds apply to mortgages on principal dwelling houses (that is, homes where the mortgage-holder is resident) and buy-to-let mortgages from six main banks: ACC, AIB, Bank of Ireland, KBC, Permanent TSB and Ulster Bank. However, sub-prime lenders and local authorities are not involved in the new target arrangements.

The Central Bank has said that it also intends to publish targets for the conclusion of these so-called sustain-



able solutions proposed by the lenders to borrowers. In addition to these public targets, each of the banks mentioned will be subjected to internal targets set out by the Central Bank on an individual basis.

It is clear that mortgage arrears constitute a worsening problem that requires a robust and durable solution. Over 94,000 (or 11.9%) of homes were in arrears of over 90 days as of December 2012. The buy-to-let arrears figures were even worse, with over 28,000 (18.9%) behind on payments for three months or more. However, while FLAC agrees with the Government's assertion that the mortgage and personal debt crisis is one of the most serious social and economic issues facing the country, we do not share their optimism that the setting of these targets alone will resolve the problem.

As ever, the devil is in the detail of the Central Bank's plans. The definition of what makes a 'sustainable solution', the fact that it will be for the banks themselves to determine the sustainable solution offered to the borrower, and questions around the enforceability of the targets are of particular concern. It is also our view that all debts – not just mortgage debt – must be considered in any resolution process.

Equally, debtors must be guaranteed a reasonable income standard while paying down debt.

Finally, it is worth noting that at the press conference, Minister Noonan stressed that people in talks with their banks need support and advice 'to even up the exchange'. He also referenced a new scheme offering free consultations with accountants to people in arrears, to be paid for by banks. However, what was not made clear is that a person will only be able to seek a one-off consultation on the deal offered by the bank after it is made, not during the negotiations. Moreover, the accountant will only explain the terms of the deal on offer, not advise or give an opinion on whether it is a good or a bad deal, and will not re-negotiate with the bank where necessary – except where the person separately pays him or her to do so.

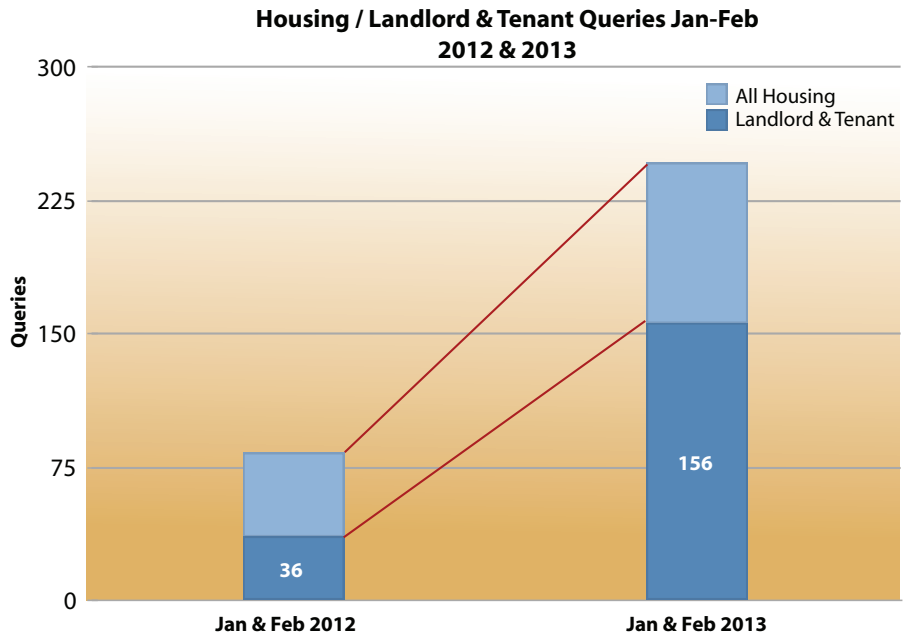
The bottom line is that the current infrastructure for supporting people in debt is entirely inadequate. More than ever, it is crucial that people in debt are provided with the full range of money advice, financial and legal supports from the outset to 'even up the exchange' and help them navigate through these processes to a real, practical and sustainable solution, not one that merely serves the interests of financial institutions and the financial system.

Steep rise in housing-related queries to FLAC

Towards the end of 2012 and in early 2013, FLAC has witnessed a 200% increase in the number of housing/landlord and tenant queries to our telephone information and referral line. Housing-related queries now account for 9% of all calls to FLAC's information line. Housing questions make up 6% of all queries in FLAC legal advice centres.

Housing queries to FLAC cover a broad range of related topics, including landlord and tenant issues, problems with management companies, rent issues, local authority housing problems and commercial housing queries.

Within this 'housing' heading, landlord and tenant queries to FLAC's telephone information line in early 2013 have risen by 333% compared with the first two months of 2012. They have remained at roughly 60% of all housing-related queries in the legal advice centres.



Volunteer lawyers needed for advice centres!

FLAC is seeking solicitors and barristers who are qualified to practice in Ireland to volunteer as advisors in our legal advice centres.

Volunteer advisors are asked to commit to dedicating two hours of their time per month providing legal information and advice to members of the public otherwise unable to access such help. The centres are chiefly open in the evenings. FLAC provides information resources and other supports to our volunteers.

Centres needing new volunteers at the moment include: Listowel, Killarney & Tralee in County Kerry; Arklow, Wicklow & Blessington in County Wicklow; Dundalk in County Louth; and Letterkenny in County Donegal. We are also recruiting in the Dublin area for our centres in Clondalkin, Lucan & Tallaght.

If you are interested in using your skills and time to become a FLAC volunteer or if you have any questions about volunteering with FLAC, please get in touch with Zs  Varga, Volunteer & Centres Manager, by e-mail at volunteers@flac.ie or by phone at 01-887 3600.



L-R: Michaela Benassi, Development Manager, Blanchardstown, Dublin 15 CIC, Zs  Varga, FLAC Volunteer & Centres Manager, and Anne McCloskey, Development Manager, Dublin 12 & 6W CIS at the opening of Tallaght Citizens Information Centre on 22 March.

UN Special Rapporteur on human

UN Special Rapporteur on Human Rights Defenders Margaret Sekaggya visited Ireland in November 2012. It was the first visit by this UN expert mandate to an EU country. She reported on the results of her trip to the UN's Human Rights Council on 4 March 2013.

Ms Sekaggya's report is an overview of how Ireland is performing in its protection of human rights defenders at home. Ireland has assumed a leading role in initiatives promoting human rights defenders internationally for many years, a point emphasised by Ms Sekaggya. This review was an opportunity to examine the government's protection of human rights defenders at home. The timing was significant too, coming during Ireland's presidency of the European Union but also during the first regular meeting of the Human Rights Council since Ireland was elected to a 3-year membership of the body in November 2012.

Overall, Ms Sekaggya found that "[t]he environment in which defenders operate in Ireland generally facilitates the defence and promotion of human rights and fundamental freedoms." Balanced against that, her scrutiny found some significant gaps in protection in Ireland's laws and structures and also in the situation of certain specific groups of defenders.

In the course of her report, she noted that the term 'human rights defender' was not well understood or promoted here, even by public officials. Human rights law and in particular, the UN's Declaration on Human Rights Defenders adopted in 1998, recognises the right of everyone, individually or in association with others, to promote and strive for the protection and realisation of human rights. Those who do such work are known as human rights defenders.

Front Line Defenders, the Irish-based international foundation which works for the protection of human rights defenders, speaks of "people who,



FLAC interns and staff with UN Special Rapporteur Margaret Sekaggya and her assistant Dolores Infante Canibano on her country visit to Ireland in November 2012

individually or collectively, work peacefully on behalf of others to promote and defend internationally recognised human rights. They are defined by their actions rather than by their profession, job title or organization."

Herself a Ugandan lawyer and magistrate and a former chairperson of the national human rights commission, Ms Sekaggya examined Ireland's legal and structural framework and also the special challenges facing some groups of defenders.

Looking at Ireland's legal framework, she echoed concerns of other international observers that international human rights treaties are not directly applied in domestic law and that there is a lack of any other accountability mechanism. This, she believes, may hinder Ireland's obligations under international human rights law. Nonetheless, she urged Ireland – particularly in light of its Human Rights Council membership - to sign and ratify outstanding treaties to protect the rights of children, persons with disabilities and migrants, among others.

She also looked at national laws protecting the fundamental rights of freedom of opinion and expression and freedom of assembly. As the current offence of 'blasphemy' may lead to self-

censorship amongst defenders, she was pleased that the Constitutional Convention was examining whether this offence should be removed from the constitution, which would then hopefully facilitate its removal from the Defamation Act 2009.

In addition, by refusing to recognise the promotion of human rights as a charitable purpose, the Charities Act 2009 excludes human rights defenders from the protections of charitable status – a matter of concern for the Special Rapporteur.

At Executive level, Ms Sekaggya praised an initiative of the Department of Foreign Affairs & Trade where regular meetings take place with an NGO standing committee. This provides a formal framework for exchange of views between the Executive and NGOs, including human rights defenders. By contrast, she is disappointed that the framework for the proposed Human Rights and Equality Commission contains no similar provision, given the importance of interaction between the Commission and civil society actors, including defenders.

Some institutions which are specifically designed to protect human rights came under scrutiny in relation to their independence and accountability. The report raises concerns about provisions

rights defenders reports on Ireland

which require approval from the Department of Justice and Equality before the Garda Síochána Ombudsman Commission can open investigations into police policies and procedures. Similarly, she questions the ‘strong links’ proposed for the Human Rights and Equality Commission with the Department of Justice and Equality. She underlined the importance of an autonomous and independent Commission for the protection of human rights in the State.

The Rapporteur notes with approval the recent establishment of the Interim Judicial Council – seen as a preliminary step to the creation of a statutory mechanism which would permit filing of complaints against judges. There is a need for effective complaints mechanisms particularly to ensure that human rights defenders can go about their work safely. On this principle, the absence of an effective complaints mechanism for those in detention was a concern.

She singled out certain groups of defenders facing particular challenges, in

areas such as environmental rights, sexual and reproductive rights, Travellers rights, asylum seeker and refugee rights, as well as whistle-blowers. Her recommendations here include engaging with and acknowledging the work of defenders; implementing legislation relating to legal abortion and for the protection of whistle-blowers; and investigating and protecting defenders from intimidation and harassment where they occur, so that they can claim the rights of their communities unhindered.

She also pointed to other challenges, including the ‘chill factor’ caused by the prohibitive costs of litigation. Here the report recommends that the Legal Services Bill 2011 include provision for protective costs orders in public interest cases.

As Ms Sekaggya says in her conclusions, the report’s findings and recommendations are made “in a spirit of constructive dialogue with the authorities and the other stakeholders involved”, as part of the review and

maintenance of international human rights standards. The work of human rights defenders is important for everyone in society and it is in our own interest as well as theirs that they and their work be well protected. This report offers expert and thoughtful recommendations as to how that can be done.

Notes:

The report acknowledges the support of Front Line Defenders and FLAC to the Special Rapporteur during her visit.

You can learn more about Front Line Defenders at www.frontlinedefenders.org

FLAC is a member of the Department of Foreign Affairs and Trade NGO standing Committee.

Report of the Special Rapporteur on the situation of human rights defenders: http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-47-Add-3_en.pdf

Woman who fled abusive relationship gets Child Benefit arrears

A woman who had to flee an abusive relationship with her husband has been paid a substantial sum in arrears of Child Benefit following a review requested by FLAC. Sarah (*not her real name*) is a non-EU citizen who was married to an EU national who had come here as an EU worker. She joined him here after some time.

The relationship was abusive and Sarah had to leave her husband not long after she arrived. She had one daughter already and was pregnant when she left. Her son was born some months later.

Sarah’s right to reside in Ireland was derived from her husband’s status and the Irish Naturalisation and Immigration Service (INIS) refused to renew her residence card and the Department of Social and Family Affairs then refused to pay her Child Benefit.

The Immigrant Council of Ireland represented Sarah in connection with her residency status and eventually INIS accepted that she was entitled to remain in the State despite being separated from her husband.

FLAC was dealing with her social welfare situation and appealed the refusal of Child Benefit but the appeal was rejected because of the INIS refusal to renew her residency.

When INIS changed its position some months ago, FLAC sought a review of the Appeals Officer’s decision by a Deciding Officer because of the change in circumstances. The Deciding Officer accepted that the residency decision should be backdated to when Sarah first arrived in the State at the end of 2007. She also noted that Child Benefit is a ‘Family Benefit’ under EU Regulations and such benefits are exempted from

the Habitual Residence Condition where the claimant is an EU worker or the spouse of an EU worker.

The Deciding Officer stated that:

As Mr [...] was an EU migrant worker in December 2007 and Ms [Sarah’s] status as his spouse has now been recognised, the provisions of EU law override national legislation and the Habitual Residence Condition does not apply to this claim”.

The Deciding Officer noted that this was the position when Sarah had first applied for Child Benefit and so she had been entitled to receive it. In addition there were no provisions to review her status because she was no longer co-habiting with her EU national husband, so she should have been in receipt of Child Benefit all along and was now entitled to payment of the full amount.

[continued from front page]

A new legal dawn for insolvent debtors, but more support needed

a Personal Insolvency Bill when it was published in January 2012. This sketch of the future Bill was very detailed. It revealed a debt settlement approach based on four categories, from smaller unsecured debts to full bankruptcy. The first three stages would require a new Insolvency Service under court supervision as well as an overhaul of existing bankruptcy law.

Giving it a cautious welcome, FLAC highlighted some serious lacunae in the proposal. These included the lack of information around the appointment of intermediaries who will make debt settlement proposals on behalf of debtors. We also raised the Bill's failure to provide independent oversight on debt settlements, leaving banks with an effective veto. FLAC highlighted the need for clear guidelines around minimum income for people making debt deals. Our submission and presentation to the Joint Oireachtas Committee on Justice in February was included in its report on the draft scheme.

After much delay, the actual Bill emerged in June and was given a little debate before the summer recess in mid-July 2012. In September, FLAC appeared before the Joint Oireachtas Committee on Justice, Equality and Defence to voice renewed concerns around the outstanding issues in the Bill. Some remained from our earlier submission. However we highlighted the Bill's inadequate provision for independent money and legal advice and supports for insolvent debtors as well as the lack of clarity around the appointment of insolvency practitioners in the scheme. FLAC feared that if the Bill was not amended, it would produce a bank-led and bank-oriented system that retained major gaps and pitfalls with only a promise of review if things don't run smoothly.

FLAC made a follow-up presentation to Dáil and Seanad representatives and their assistants at Leinster House in November outlining these concerns.

The new law is widely acknowledged by legislators as one of the most important in our history. FLAC was thus dismayed at the lack of space for debate given to it in the Oireachtas. Despite reservations voiced by FLAC and others, the Bill was

rushed through both Houses. It was signed into law by President Higgins at the end of December 2012.

While a few provisions have been enacted in the intervening period, as of the time of writing (March 2013) the Personal Insolvency Act 2012 remains as yet largely on the shelf.

FLAC was glad to have contributed to the thinking around the draft legislation – in particular, with a conference in April 2012 where people skilled in economics, law, comparative insolvency legislation and consumer supports in various jurisdictions were able to present and debate ideas and systems. We hope that this had a formative influence on what is a relatively innovative piece of law, at least in the context of English-speaking countries.

While in FLAC's view the new law could have been stronger in terms of protections for insolvent debtors, on a positive note, it was very heartening to see that it includes minimum income guidelines, as we had recommended throughout our campaign. These should ensure that people doing deals with their creditors are left with enough to live in dignity, and are based on the groundbreaking work of the Vincentian Partnership (see www.misc.ie for more).

A wider debt strategy?

It is worth mentioning that the personal insolvency law is one part of an overall government strategy on debt. This Government Action Plan on Debt was unveiled in June 2012, complete with its own cabinet sub-committee. The other planks of this programme are the Mortgage Arrears Information & Advice Service, a mortgage-to-rent scheme, and a Mortgage Arrears Resolution Strategy to ensure banks make more efforts to deal with a debtor's arrears before resorting to the Insolvency legislation (see page 4 for an update on this issue).

On the information and support front, Minister Joan Burton has promoted a new advice scheme involving some 2000 accountants. Here people can have a consultation worth up to €250, paid for by the lender, on the long-term mortgage restructuring deal their bank is proposing

to them. However, FLAC believes this scheme will not meet the needs of people for support and information throughout the entire process of dealing with their debt. It comes only after the bank's offer has been finalised and made, not before or during negotiations. This is particularly the case where people have multiple debts. All of a person's debts have to be taken into account if he or she is to reach a truly sustainable solution. Consistent supports may also reduce the stress and anxiety that is causing major health problems for over-indebted people, and which is likely to have a long-lasting and toxic legacy for the population.

Many thanks are due to the Money Advice and Budgeting Service, which has been a life-saver for many thousands of people over its more than 20 years of operation. Other organisations and individuals too numerous to mention have worked hard to highlight the issues around over-indebtedness in general and mortgage arrears in particular, and they are also deserving of much gratitude.

In the absence of an operational insolvency system and for those who are not in an insolvency position, the Central Bank's Code of Conduct on Mortgage Arrears is a crucial document. While it is currently under review, it governs how banks must deal with customers in arrears on their family homes. FLAC will be making recommendations to strengthen the hand of borrowers in this key mechanism, including that it be made legally binding.

Over-indebted people undeniably now have a legislative framework on which to start building a new future and possibly find a way out of their debt. But while the new law is a considerable step forward, it is not the end of the story. FLAC will continue to monitor developments and to campaign for a fair, independent and sustainable debt resolution process for all people in Ireland.

FLAC has published a number of legal information leaflets, including a guide to the Code of Conduct on Mortgage Arrears. These are available to download from www.flac.ie



UN issues new Principles & Guidelines on Access to Legal Aid

Every so often, the debate about access to free or subsidised legal aid emerges in political debate. Often, the starting point is a question as to why someone on a criminal charge should get state funding for the defence of proceedings. While the debate will generally also recognise the crucial role that legal representation plays in ensuring that a person has a fair trial, there is not always a discussion of the principles underlying the provision of legal advice and assistance. Although there is clear law on the right to criminal legal aid in Ireland, the standards could not previously be tied to wider international standards on this topic.

However, that has now changed. Since the UN's General Assembly adopted them on 20 December 2012, there is now an internationally accepted set of principles accepted by the nations of the world on the right to legal aid in the criminal justice system. The document adopted on that day, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, is the world's first instrument exclusively dedicated to access to legal aid. It roots itself in the Universal Declaration of Human Rights, which "enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an

independent and impartial tribunal..." and then goes on to outline a set of key principles, together with guidelines for their implementation.

Bearing in mind that the document has to serve widely divergent legal systems, the guidelines give ample room for varied implementation, but the underlying principles should be ones on which all those engaged in developing debate or policy on legal aid may agree.

In its preamble and in its first principle, the UN-approved document recognises that legal aid is an essential element of a fair, humane and functioning criminal justice system based on the rule of law. Legal aid is also seen by the international community as a foundation for the enjoyment of other rights, including the right to a fair trial. Access to legal aid is a precondition to exercising other rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

The declaration points to the need for a comprehensive legal aid system that is accessible and effective and that is equally available to all without discrimination. It sets out special safeguards that states need to consider to protect the rights of people in detention, children and women. It reminds states of the need to ensure legal

aid for victims and for witnesses where appropriate. It also stresses the need for high quality representation and advice and sanctions against those who fail to meet those standards.

The UN Principles and Guidelines also recognise the principle of the right of a person to be informed of his or her right to legal aid and other procedural safeguards. This right exists prior to any questioning and at the time of deprivation of liberty. This right to information in criminal proceedings has also been raised within the European Union, with a directive published in April 2012. The EU is currently discussing a further directive on the general right to legal aid with a draft promised in late 2013.

Being a pragmatic document debated by the governments of the world, there is a specific guideline on funding which recognises that the benefits of legal aid include cost savings throughout the criminal justice system. Elsewhere, this instrument notes the public and societal benefit in ensuring fundamental fairness and public trust in the criminal justice system.

You can download the principles document at <http://bit.ly/YHAAAdi>

Making our voice count with human rights pop-up site

To mark Human Rights Week in December 2012, FLAC created a pop-up website dedicated to gathering and publicising details of the various human rights events taking place around the country in a dedicated space.

UN Human Rights Day takes place every year on 10 December – the date on which the Universal Declaration of Human Rights was adopted. Apart from this important anniversary, it also offers activists around the world a chance to celebrate their human rights work. So Human Rights Day has inspired an unofficial 'Human Rights Week' and FLAC felt a comprehensive list of all the week's events would be a useful resource.

With the cooperation of several Irish NGOs and voluntary groups, FLAC compiled a calendar of ongoing campaigns, one-off events, seminars and other human rights-oriented activities available at www.humanrightsworld.com and with daily updates under the Twitter hashtag #hrweek2012.

Despite the short time scale, the website proved very popular, which only serves to highlight how vibrant the Irish human rights community is. The United Nations theme for Human Rights Day 2012 was 'My Voice Counts' and it drew attention to the millions of people all over the world whose voices are seldom heard within the political process. In a year of widespread



unrest and popular uprisings, the theme was particularly apt.

Some of the week's highlights included Front Line's 'Voices From the Front Line' concert at Vicar Street; President Michael D. Higgins speech at the IHRC human rights lecture; a blog carnival hosted by the *Human Rights in Ireland* blog site and FLAC's own Dave Ellis annual lecture, delivered by long-standing human rights activist, Thomas Hammarberg. Many thanks to all who took part! Hope to see even more actions in December 2013.

Lydia Foy: My Story

The following text is an extract from the Transgender Equality Network's latest publication, 'Equality & Identity', launched in March - see www.teni.ie and our report on page 14. We are grateful to Lydia and to TENI for permission to reproduce it here.

It's been a long road. When this started – decades ago, now – I was completely alone. People didn't want to know. They didn't want to consider that this – people like me – happened in Ireland. I encountered little understanding and no tolerance. I had one door after another closed in my face. Even those who sympathised with my case felt they could do nothing to help – they certainly couldn't support me in public.

I was seen as a threat to society, told that I was going to turn Ireland into a lunatic asylum. And I was alone: I hadn't the price of a stamped addressed envelope and I was expected to take on the Attorney General and the Irish State – take on the whole lot myself.

I was fair game. My home and car were vandalised. The media were nasty, writing about my case in the language of 'castrated males' and 'sexual deviancy'. I felt treated like a dog in court. I wanted what any citizen should be entitled to: the right to reply; the right to be heard; a birth certificate that shows my true gender.

The process was barbaric. I faced many losses – my home, my family, my job, my privacy, my dignity. After all that, my back was to the wall. I had nothing else to lose. I had no choice but to fight.

People sometimes say to me: "You're either very brave or very stupid". I wasn't particularly brave. Many's the time, I wondered if I would be able to carry on. I reached depths of depression: I was heartbroken and isolated. One day I collapsed. I thought I was dead, but I felt cold, and I realised I couldn't be cold if I was dead. And so I went on: afraid to live and afraid to die.

There are amazingly good people in FLAC. And they listened. They might ask me hard questions, but at least they'd wait for me to reply.

Sometimes, things about my case spread to the evening news before I even heard about them. I feel I can't win with the media: if I keep my head down it's because I'm a criminal; if I hold my head up then I'm publicity-seeking and out for money. And I have no right to reply.

I might not have been brave, but I wasn't very stupid either. I studied up on law,



L-R: Maria Victory, Dr Lydia Foy and Michael Farrell pictured at FLAC's offices

journalism, medicine, computers – what I needed to engage on an equal footing. And I didn't give up.

Whatever happens, my privacy has been absolutely violated. Destroyed. And it will be, indefinitely. What I have lost will stay

lost. But I'm still going to battle on for everyone else. It's not going to be as bad for the next generations in Ireland.

I suppose that sounds like I'm a martyr, but I'm not. It's just that no matter what I get now, it won't make up for the loss.

Lydia Foy goes back to court

Twenty years after she first applied for a new birth certificate showing her female gender, Dr Lydia Foy has had to go back to court. Despite a High Court ruling over five years ago that her rights under the European Convention on Human Rights had been violated by the failure to recognise her gender identity, Dr Foy has still not received that birth certificate.

The current and previous administrations both pledged to legislate to recognise trans persons in their lived-in gender. The Minister for Social Protection said this government would make it a priority. But when there was still no sign of even draft legislation by January 2013, Dr Foy and FLAC, which has represented her throughout her legal battle, reluctantly concluded she would have to go back to the High Court to try to enforce the decision given in her favour in October 2007.

As part of that decision, the Court also issued the first-ever declaration that Irish law was incompatible with the Human Rights Convention as it made no provision for legal recognition of transgender persons. This was a key provision of the European Convention on Human Rights (ECHR) Act 2003, which was brought in to enable people to obtain their rights under the Convention without the long delays involved in taking a case to the European Court of Human Rights in Strasbourg.

The idea was that when a court issued a declaration of incompatibility, the government would move promptly to change the law.

The lack of any action on this issue has been a major blow to Dr Foy, who thought her 20-year struggle was finally ending, and to all the other trans people in Ireland whose hopes had been raised when Dr Foy won her case in 2007. And it also shows very little respect by the government for the judgment of the High Court, or for the State's commitments under the ECHR.

Lydia Foy's new legal action asks the High Court to order the government to make provision for issuing her with a new birth certificate; to rule that her right to an effective remedy under the ECHR and the Irish Constitution have been violated; and/or to declare that the ECHR Act, 2003 is ineffective and is itself incompatible with the ECHR.

If it has to go to trial, this case will be a major test of the State's human rights legislation and the Government's commitment to the ECHR. All this could be avoided if the Government would simply act on its pledge to introduce Gender Recognition legislation now.

Legal recognition of trans persons would be a key step towards combating the ignorance and intolerance that fosters their abuse.

FOCUS ON FLAC:

Maeve Regan, PILA Legal Officer

Maeve is a solicitor, lecturer and author specialising in employment and equality law. She joined the PILA team as Legal Officer in 2011. Maeve trained with Arthur Cox Solicitors in Dublin and after qualifying worked with the firm's Employment Law Group. On secondment from Arthur Cox, Maeve worked with Herbert Smith, London and in the international legal department of Schering-Plough in New Jersey. On the NGO side, Maeve worked on a forced labour issue for MRCL, alongside barrister Claire Bruton.

She is course tutor on the Law Society's Diploma in Employment Law. Maeve is also the Editor and co-author of *Employment Law* (Bloomsbury Professional, 2009), which she co-authored with 22 leading employment, pension and tax lawyers. In 2011, Maeve worked as a solicitor with Northside Community Law Centre, advising the North Dublin community on employment and equality law and social welfare law.

On why she felt drawn to PILA, Maeve says "Through my work and contact with PILA, I had an insight into how well-organised and dynamic the organisation is. I am also good friends with my predecessor Jo Kenny, who with Lianne Murphy, was instrumental in establishing PILA."

Maeve had previously encountered the concept of public interest law and *pro bono* work in her career. "While working in Herbert Smith, my supervising solicitor,



Joanne Cross, did a considerable amount of *pro bono* public interest law work. I hugely admire Joanne for the balance she achieved in her work. Yet I found when I worked in a corporate firm here, that there wasn't a structured *pro bono* scheme in Ireland. At the same time, there is a clear desire on the part of Irish lawyers to do this kind of work. PILA broke new ground in establishing a way to do this and has changed the legal landscape. When the opportunity arose to work with PILA, and continue this, I jumped at it!"

As Legal Officer, Maeve is responsible for liaising with lawyers and law firms that work with PILA, developing the register of such lawyers, making legal advice referrals to the lawyers, convening working groups

and organising events and seminars. As she says, "PILA is very much a team. I work closely with Lianne Murphy, Project Officer, and Kim Watts, Legal Information and Communications Officer." She also contributes to PILA's regular electronic newsletter of developments and news in public interest law, the *PILA Bulletin*.

Maeve is enthusiastic about her work in PILA, commenting that "It is so heartening to meet and work with so many lawyers who want to do public interest work *pro bono*, and who do it with such enthusiasm and to such high standards." Equally, she enjoys contact with the many organisations who have used PILA's services to access legal expertise and information. "It has been wonderful too to meet with the NGOs that we work with and get an insight into the real issues that they are working on. Working with the PILA team is really energising and inspiring as we work to develop the project!" she says.

As for the future, Maeve is hopeful that *pro bono* legal work becomes a completely normal part of the work of lawyers in this jurisdiction. "More and more, we are seeing that lawyers recognise that they have unique and valuable skills, that those most in need of them can often not afford or access them and that through organisations such as PILA they can share those skills *pro bono*," she says.

You can read more about PILA's work at www.pila.ie – the Bulletin is free to subscribers by e-mail, log on and sign up!

On meeting Lydia Foy

by Maria Victory

Maria Victory is a Legal Intern with FLAC. As well as working on our telephone information & referral line, Maria assists FLAC's Senior Solicitor Michael Farrell on casework.

I remember reading about the Lydia Foy case in college as a landmark piece of litigation in public interest law. I am now working on the case with Michael Farrell in FLAC and I have had the privilege of meeting this remarkable woman. Lydia Foy is a fascinating, extremely intelligent individual who despite her inhumane treatment has managed to retain an infectious sense of humour.

I think what society and perhaps especially

the media tend to forget is the human being behind this case. This is a person who has weathered a highly adversarial court system and felt the 'fangs' of the media for twenty years.

Her life has been – and still is – subject to the scrutiny of the courts and of journalists. But we should remember that Lydia Foy did not want this attention; all she wants is to be legally recognised as a woman.

It's remarkable to think that what stands out for Lydia in twenty years of litigation is the rough treatment she has endured at the hands of the courts. No one would listen to her; society wanted her to have no voice, 'to be locked away'. FLAC gave her a voice and for the first time someone listened.

I am truly honoured to have worked with Lydia Foy and I will remember my experience in FLAC forever.



PUBLIC INTEREST LAW ALLIANCE UPDATE

Focus on PILA Register lawyers:

Michael Kinsley BL

An interview with one of the volunteer lawyers who have signed up to PILA's Pro Bono Referral Scheme.

How did you find out about the PILA Pro Bono Referral Scheme?

I have volunteered with FLAC since I started practicing at the Bar. I became aware of PILA and the Referral Service through my work with FLAC and was immediately interested in becoming involved, so I e-mailed PILA to register my interest in being included on the register.

What was your experience of dealing with the scheme?

The scheme is very professionally run and easy to deal with. Referrals are first advertised in a group e-mail, containing general information about the organisation and their legal query. If the volunteer is interested and feels that they can provide advice, the next step is to contact PILA for more information. When the volunteer agrees to take on a referral, a meeting is set up between the organisation seeking assistance and the lawyers in the group. The meeting allows volunteers to establish the exact requirements of the requesting organisation and divide up the work involved. PILA is available to answer queries for the volunteer at any stage of the process and provides an effective intermediary between the working group and organisation.

What were the most challenging aspects of referrals that you have taken on?

I have been involved in a number of referrals through PILA, mainly involving areas of law with which I would be very familiar, such as employment law and family law. Referrals may contain issues concerning the interaction of law and public policy and require a comparative analysis between legal provisions in Ireland and abroad. The challenge in each of the referrals in which I have taken part has often been to source reliable information concerning the law in foreign jurisdictions.

How did the experience benefit or affect your regular work?

It has allowed me to gain experience in researching legal provisions in other jurisdictions and in comparing them with equivalent provisions in Ireland. It is valuable as a practitioner to have a good overall knowledge of the public policy implications of legal rules and systems.

Would you do more pro bono work like this?

I enjoyed the experience of working with PILA. It gave me an insight into how law reform is researched, proposed and advocated by interested parties and NGOs. The process is well managed by PILA. They make great efforts to ensure that volunteers are given the time and flexibility needed to complete the work for each project while at the same time running their own practices. So, I do intend to take on more pro bono work.

Would you recommend doing pro bono work through PILA's referral scheme to other barristers?

I would recommend it. The experience of being involved in a research project or a proposal for law reform gives the volunteer a much more in-depth and rounded understanding of the law in Ireland and elsewhere. I think that this can only be positive for a practitioner's knowledge of the law and ability to advise in particular cases.

Lawyers are in a privileged position in that they have expert knowledge of the law and training in research. Access to legal advice should not be the preserve of the wealthy. I believe it is important that lawyers assume a responsibility to wider society to make their expertise available to those with limited access to the legal system. The PILA Referral Scheme provides the perfect opportunity for barristers and solicitors to give some of their time and expertise in addressing an unmet legal need, while at the same time hopefully improving their own knowledge of the law.



Clinical Legal Education conference to take place in Galway

The School of Law at NUI Galway, in conjunction with PILA, will host a conference entitled 'Developing Clinical Legal Education in Ireland' on **26-27 April 2013**. The conference will launch the newly-formed Irish Clinical Legal Education Association (ICLEA). ICLEA seeks to enhance and expand clinical legal education programmes in law schools in Ireland by providing a forum to share experiences and foster collaboration; by lobbying collectively for necessary resources; and by ensuring optimum international engagement with clinical legal educators in other jurisdictions.

Taking place on the NUIG campus, the event aims to bring together practitioners, academics, clinical partners and students to explore the emergence and assess the future potential of clinical legal education in Ireland. Keynote speaker will be Kevin Kerrigan, Executive Dean of the Faculty of Business and Law at Northumbria University. A National Teaching Fellow of the Higher Education Academy since 2010, he is also a practising solicitor and Human Rights Act consultant with experience of conducting criminal and human rights cases.

Registration for the conference is free. There will be an optional conference dinner on NUI Galway campus on Friday evening which will cost €20.

For further information & registration see http://conference.ie/Conferences/ind_ex.asp?Conference=217.

Charter of Fundamental Rights seminar

On 7 February, PILA held a practitioner seminar on *Using the Charter of Fundamental Rights of the EU – from theory to practice*. There was great interest in this seminar, with over 180 people attending. The speakers were Jonathan Cooper OBE, a barrister with Doughty Street Chambers, the leading human rights Chambers in Britain, and Dr Suzanne Kingston, Lecturer in Law at University College Dublin and a practicing barrister. Jonathan has particular expertise in human rights law and the Charter while Suzanne has published widely on EU law issues, including EU human rights law. The seminar was chaired by Michael Farrell, FLAC Senior Solicitor. The two guest speakers discussed how the Charter could be used in public interest litigation and in other ways and the practical obstacles that there may be in doing so.

Jonathan Cooper, in a lively and detailed presentation, explained that following the Lisbon Treaty, the Charter was given effect by being given the same legal value as the EU Treaties. He gave a very interesting outline of how the Charter was negotiated and agreed upon and the detail of the rights actually contained in the Charter. Jonathan gave an excellent, user-friendly summary of “The Application of the Charter in 10 Easy Steps”, emphasising that the Charter only applies where EU law is implemented. He concluded with summaries of key cases that have come before the European Union’s Court of Justice and the English courts in relation to the Charter.

Suzanne Kingston then gave a compelling and deeply layered overview of how the



L-R: Dr Suzanne Kingston, Michael Farrell and Jonathan Cooper, at the Fundamental Rights seminar

Charter fits into the Irish legal framework, what difference it makes to the law here, and the use of the Charter to date before the EU Court of Justice, the European Court of Human Rights and before the Irish courts. Suzanne also considered the potential of the Charter in Ireland to widen the scope of workers’ rights, and to give greater force, weight, visibility and clarity to rights. Suzanne made clear that one of the limitations on the impact of the Charter is that the Charter only applies where the Member State is acting within the scope of EU law. Suzanne concluded with practical points on using the Charter, including the advice that lawyers should not be afraid to ask for a preliminary reference in relation to the application of the Charter.

The Charter is a blind-spot for many lawyers. Jonathan and Suzanne’s clear and compelling presentations, into which they had distilled complicated and wide material, shone a bright light on the Charter for all those who attended. Thank you to Jonathan and Suzanne for this! PILA

also thanks Michael, who advised on the establishment of the seminar and who provided practical and useful questions and points at key points in the seminar. And of course many thanks to everyone who attended!

The presentations and materials from the seminar are available now at:

<http://www.pila.ie/events/archive/pila-practitioner-seminar-using-the-charter-of-fundamental-rights-of-the-eu-from-theory-to-practice/>

Legal education for NGOs through PILA

Through its *pro bono* referral scheme PILA organises legal education sessions for NGOs that are delivered by lawyers signed up to the PILA register. In January 2013, barrister Kevin Baneham delivered a session on the Habitual Residence Condition and the social welfare appeals. Kevin dealt with a range of issues within this topic, including social welfare contributory payments, the kind of payments EEA migrant workers can receive, the application of the HRC and social welfare appeals. Almost 30 people from 14 different NGOs attended the session and the feedback was excellent. The presentation is available on the PILA website, as are other recent presentations on topics like landlord and tenant law (again delivered by Kevin Baneham) and health & safety law (by Alan Roberts and Deirdre St John from A&L Goodbody).

Help us make a difference

We are an independent non-governmental organisation and we provide legal information and advice to thousands of people free of charge each year. But to deliver on our mission of promoting access to justice for all, FLAC has to seek funding each year through donations from the public, grants from statutory bodies and foundations, and contributions from the legal professions.

FLAC works hard to ensure that all funding is put to best possible and most efficient use. If you would like to help us promote equal access to justice for all people in Ireland, please visit our website or e-mail us at fundraising@flac.ie for more information. Thank you!

Equality and Identity: Transgender and Intersex Experience In Ireland

On 15 March, the Transgender Equality Network Ireland launched its latest book, 'Equality and Identity'. FLAC Senior Solicitor Michael Farrell spoke at the launch, as reported below. You can obtain a copy of the book, compiled by Dr Orlaith O'Sullivan from a host of fascinating contributions, by contacting TENI at office@teni.ie

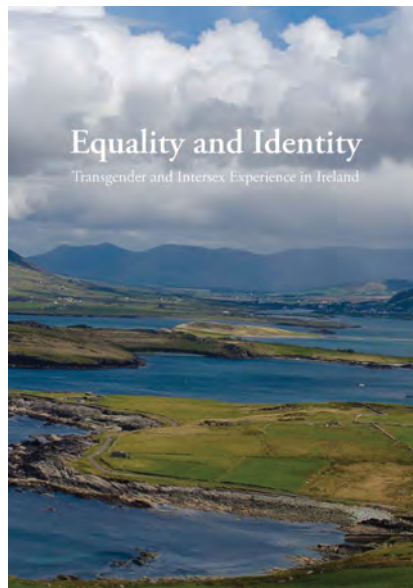
Firstly, Lydia Foy has asked me to convey her best wishes for the launch of "Equality and Identity". She is unable to be here but she has written an article for the book which gives some idea of the pain and stress she has suffered during her landmark legal case – and that is a perspective you do not always think about when you hear about important and ground-breaking legal cases – the price people have to pay in order to take such cases in terms of the invasion of their privacy and exposing themselves to abuse and worse.

I would also like to pay tribute to TENI and in particular to Dr Orlaith O'Sullivan for her remarkable achievement in organising the production of this very impressive book in a little over two months. I don't know how she did it, but the result is a very moving document which brings home to those of us who do not have to suffer it ourselves, the cruel and frightening abuse to which many trans people are subjected and the need for education in tolerance and respect for difference. And a key part of that is official recognition of trans people in their true and lived-in gender.

It is 20 years this month since Lydia Foy first applied for a new birth certificate in her female gender. And it will be 16 years next month since she began legal proceedings seeking that birth certificate and legal recognition in her proper gender. And she is not there yet.

Five and a half years ago, the High Court held that the Irish State had violated Lydia's rights under Article 8 of the European Convention on Human Rights (ECHR) and declared that Ireland's laws in this area were incompatible with the European Convention.

Since then Lydia has had promises from two successive governments. There has been an interdepartmental Working Group on Gender Recognition legislation,



a sub-committee in the Department of Social Protection to draw up legislation, and an opinion from the Attorney General. But there is still no legislation and Lydia still does not have her birth certificate.

When the European Court of Human Rights held in July 2002 that the UK had violated the rights of trans woman Christine Goodwin, they had a Gender Recognition Act in place by 2004. That Act is not perfect and we in this country should be able to do better nine years later but currently we do not seem to be getting anywhere.

And there is another aspect to all this. The Government has basically ignored a decision by the High Court that it is in clear breach of the European Convention on Human Rights. That shows very little respect for the decision of the High Court, for the European Convention, or for the European Convention on Human Rights Act, which was brought in in 2003 to implement the European Convention in Irish law. We tend to criticise the British government for its current hostility to the European Convention and to human rights

in general, but at least in almost all the cases where the UK courts have made declarations that UK law is incompatible with the Convention, the law has been changed.

I am not saying all this to attack Minister for Social Protection Joan Burton, whose Department is responsible for the issuing of birth certificates. She has indicated her support for introducing Gender Recognition legislation and she is probably nearly as frustrated as we are by this stage. But it is deeply unfair and unreasonable for Lydia Foy – and all the other trans people whose hopes were raised by the High Court decision five and a half years ago – to have to wait any longer for what they are entitled to.

That is why a few weeks ago we issued new legal proceedings in Lydia Foy's case. This time we are asking the Court to declare that the Government must act now to end the violation of Lydia's rights and to bring Irish law into line with our obligations under the European Convention on Human Rights.

We have done this reluctantly. Lydia has had enough of court cases over the last 16 years. But, sadly, we have come to the conclusion that whatever the reason for the delay in dealing with this issue and doing justice to Lydia and the trans community in general, it is going to take more than just lobbying and polite persuasion to break this log jam.

On the other hand, legal action by itself, even if it is successful, does not automatically deliver change. Campaigning, awareness raising, and combating ignorance and prejudice are needed too. And I believe that this book, "Equality and Identity", will make a major contribution to that process.

The book can be obtained from
TENI at Unit 2, 4 Ellis Quay, Dublin 7
or by e-mail from info@teni.ie.

Austerity on trial in the UK: Is there a case for economic cuts?

A guest contribution by Balqis Abdulkadir Mohamud & Jonathan Butterworth, JustFair

Does UK government policy on economic austerity breach international human rights law? London-based campaigning organisation Just Fair, in partnership with London School of Economics' Department of Law and Matrix Chambers, set up a trial to test the hypothesis. Charges were brought, and 'Austerity' defended, by a team of legal experts, backed by distinguished human rights and other specialist witnesses from the UK and around the world.

Karon Monaghan QC (Matrix Chambers) led the Prosecution case with Jamie Burton (Doughty Street Chambers and Chair of Just Fair). They alleged that austerity had failed in its duty to secure the progressive realisation of the rights recognised in the International Covenant on Economic, Social and Cultural Rights, including the rights to work, fair wages, health, social security, education and an adequate standard of living. In short, according to the Prosecution, austerity is illegal.

The Defence, led by Martin Howe QC with Richard Honey, strongly contested the charge. Firstly, they cried, this was a case of mistaken identity. There had been no reduction in public spending; rather, a modest trimming in its rate of increase compared with the previous plans which were wholly unsustainable. In any event, they alleged, there has been no material retrogression in the enjoyment of human rights and austerity has not been operating in a discriminatory manner. Finally, the Defence argued that there was no remedy which could cure the breaches alleged by the Prosecution, other than possibly an order that little green men from Mars should descend to Earth and shower money on the UK.

The Prosecution, however, were in fighting spirit and called Will Hutton (Oxford University), Polly Toynbee (The Guardian) and Magdalena Sepúlveda (UN Special Rapporteur) as expert witnesses. Hutton lambasted the UK Government,

stating that there was no necessity to make the kinds of choices that have been made. The time scale to eliminate the structural deficit could have been extended, possibly to 10 years, he argued.

“‘at risk’ groups, including women, children and disabled people, will be hit hardest by austerity... the ‘bedroom tax’ may force 600,000 people out of their homes”

The UK did not have to cut in such a manner that 4/5 of the burden was borne through expenditure cuts and 1/5 via tax increases. Toynbee told the court that ‘at risk’ groups, including women, children and disabled people, will be hit hardest by austerity. Childcare subsidies have been cut, 400 “Sure Start” centres have been closed and child benefit has been frozen. Further, Education Maintenance Allowance has been abolished, 36% of disabled people have been pushed off benefits and the ‘bedroom tax’ may force up to 600,000 people out of their homes.

Sepúlveda contended that austerity has failed on its duties. Firstly, it must mobilise all necessary resources to progressively realise rights and ensure minimum essential standards through basic health care, social services, education etc. Further, the UK must

avoid deliberate retrogressive measures, uphold the principles of equality and non discrimination, as well as ensuring that all austerity processes are open, transparent and accountable.

The Defence held their nerve and called Andrew Lilico (Europe Economics), Ruth Porter (Institute of Economic Affairs) and Tim Frost (Cairn Capital Group). Lilico boldly argued that austerity just has not been present. Rather this was its ugly brother: profligacy. In short, while austerity would solve the economic crisis, the Coalition policy of profligacy had led to shameless economic dissoluteness. Porter tagged in for Lilico. She declared that economic growth has the greatest potential to transform the lives of the poorest. Pro-growth policies are likely to be pro-poor in the long run. Poverty in Britain is not a symptom of trying to reduce public spending, Porter suggested. It is a consequence of centralised government obsessed with benefits and social services which fail to help people get into stable and well paid jobs. In conclusion, Frost opined that austerity stands as the champion of our future lives. Austerity knows that resources saved today can be used to secure more rights in the future. Frost called on the audience to consider the consequences of big government and its attempt to spend out of recession. It will be the poor, the weak, and the vulnerable that will suffer the most.

The arguments were done, the court was cleared and the jury entered into deliberations. Tensions mounted to a fever pitch. Would austerity be found guilty or not guilty? Finally, the public were ushered back into the court and the jury gave their finding: not guilty by 9 to 2! The court erupted with a cacophony of cheers and jeers. Defiantly, the Prosecution demanded a retrial. Beneath the din, austerity was unchained, stretched her legs and walked free...

Watch the full trial at:
<http://just-fair.co.uk>

Tri-City Project conference on EU migrants' experiences of accessing social welfare

As previously reported in *FLAC News*, FLAC has been partnered with the AIRE Centre in London and Lize Glas, legal consultant and former AIRE intern, in Amsterdam, in an EU Commission-funded Tri-city project. The project focuses on EU migrants' access to special non-contributory benefits which include Jobseekers' allowance; State pension (non-contributory); Widow/er's (non-contributory) pension; Disability allowance; Mobility allowance and Blind Pension.

The overall aim of the project is to improve the information that EU migrants in Amsterdam, Dublin and London have about their right to access special non-contributory benefits. Three round-tables took place in London, Dublin and The Hague in the Netherlands respectively during the course of 2012. Leading practitioners and NGOs in each of the three project countries discussed issues such as the application of the right-to-reside test and administrative delay as well as highlighting the problems faced by certain vulnerable groups like victims of trafficking and domestic violence, homeless EEA nationals, disabled people

and pregnant women.

On 7 February 2013, FLAC, in conjunction with its project partners, concluded the project with a conference and training session at the London office of Skadden Arps LLP. The event aimed to bring together NGOs, welfare benefits advisers, lawyers and those interested in the area of EU social security rights. The conference was a great success and was attended by NGOs, lawyers and interested parties from Member States such as UK, Ireland, Belgium, Sweden and the Netherlands. It was an opportunity to network with colleagues from across Europe, improve one's understanding of EU nationals' rights to claim social welfare benefits and learn about the special rules applying to special non-contributory benefits.

Nuala Mole, Senior Lawyer at the AIRE Centre, began the conference by giving the attendees an overview of EU law on special non-contributory benefits. Legal Director of the AIRE Centre Adam Weiss delivered a presentation on EU law issues of claiming special non-contributory benefits in the UK & Ireland. Martin Williams, Welfare Rights Worker at the Child Poverty Action Group, discussed

the UK's upcoming Universal Credit regime and the position of jobseekers in the UK. FLAC's Policy and Advocacy Officer Saoirse Brady provided an overview of the situation of jobseekers in Ireland while Lize Glas of Radboud University delivered a presentation on the *Hendrix* decision and on the exportability of special non-contributory benefits. Finally Sarah St. Vincent of the AIRE Centre discussed how to litigate refusals of special non-contributory benefits in the UK.

A new interactive advice website will soon be launched and will assist EU migrants in seeking to apply for special non-contributory benefits in Ireland, the UK or the Netherlands. A report of the Tri-city project is also due to be published shortly. The project partners will then meet with relevant stakeholders to discuss the implementation of the recommendations outlined in the report.

More information on the project and the materials from the roundtables and the conference are available at:
<http://www.airecentre.org/pages/ec-social-security-materials.html>.

Government recognises foreign Trans persons, but no Irish need apply

The Irish Government has told the Council of Europe that it will recognise transgender persons from other countries in their acquired gender and allow them to marry or enter into civil partnerships. But this will not apply to people born in Ireland.

The Government informed the Council of Europe's Steering Committee on Human Rights that "Gender reassignment is not yet recognised in Ireland". "However", it said, "the General Register Office in Ireland (GRO) will accept a birth certificate amended by another state where gender reassignment is recognised in support of notification of intention to marry or to enter into a civil partnership, from a person born out of Ireland".

This follows a case last year where FLAC represented a transgender woman from another EU country, who was working in Ireland and wanted to enter into a civil partnership. The woman was recognised as female in her own country and FLAC successfully argued that if she was prevented from

entering into a civil partnership, it would be in breach of her rights under EU free movement legislation.

The Government made its statement in the course of replies to a questionnaire about the treatment of lesbians, gay men and transgender persons in Council of Europe member states, which was discussed by the Steering Committee on Human Rights in Strasbourg in March 2013.

The new policy extends recognition to Trans persons from all countries where they are recognised by the national authorities, not just EU or Council of Europe member states. But persons born in Ireland are still excluded from recognition, giving a new twist to the old notice "No Irish need apply".

This absurd situation just underlines the urgent need to bring our law into line with the European Convention on Human Rights and almost every other state in Europe.