

flacNews

FREE LEGAL ADVICE CENTRES

Making access to justice a reality

The fifth Dave Ellis Memorial Lecture took place on Thursday 1 December in Dublin's Rotunda Hospital. The annual event is intended to underline how important access to justice is for everyone and to remind us that there is no point in having systems for redress in law if there is no way for a vast majority of people to access them. This year's lecture was delivered by former Northern Ireland Police Ombudsman, Baroness Nuala O'Loan, who talked about making access to justice a reality. In particular, she addressed the obstacles posed by sky-high legal costs and a complex legal system to accessing justice in Ireland. As a long-standing champion of disadvantaged people, Baroness O'Loan has much in common with the late Dave Ellis, making it fitting that she speak at his memorial lecture.

Nuala O'Loan asked some hard questions about how the state approaches its funding of legal services to its people. In particular, she singled out the twin barriers of an overly complex legal system and high costs for legal services. These pose huge



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Baroness Nuala O'Loan delivering the 5th Dave Ellis Memorial Lecture, 1 December 2011.

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

FLAC issues Guide to Civil Legal Aid in Ireland

In November, FLAC produced a guide explaining the system of civil legal aid in Ireland and highlighting the difference between FLAC and the Legal Aid Board and between the different types of assistance available to those needing help on a legal matter.

In Ireland, legal aid in civil cases is funded by the State and provided through the Legal Aid Board. Over the past number of years there has been a considerable increase in demand for the Legal Aid Board's services. However, this has coincided with a decrease in available funding which has resulted in significant delays for people seeking legal aid and advice from the State-funded system.

People are therefore turning to FLAC in even greater numbers for once-off legal information and advice; however, as a non-governmental voluntary body, FLAC cannot offer legal representation to clients. By 1 November this year there were 4800 people awaiting their first

appointment with a Legal Aid Board solicitor and in some Law Centres there is a waiting time of up to 11 months for their first appointment.

Sadly, therefore, there is a clear gap between the public's actual need for help in civil legal matters and the ability of the Legal Aid Board to provide that help. This is where FLAC, as an independent legal rights body, aims to supplement but not replace the state system while raising awareness of this glaring deficiency and campaigning to improve the State's provision.

The new FLACsheet on Civil Legal Aid provides an overview of the civil legal aid system, including eligibility, application, costs, termination, appeals process, complaints and cross-border civil legal aid.

Download the FLACsheet at:
<http://www.flac.ie/publications/flacsheet-on-civil-legal-aid/>

Free Ales Bialiatiski Campaign



FLAC staff and interns call for justice in support of Ales Bialiatiski, a human rights activist in Belarus who was arrested in August 2011 and sentenced to 4.5 years in prison for 'tax evasion' on 24 November. Ales is chairperson of the Belarusian human rights centre Viasna. Many see the trial as an attempt by Belarusian authorities to end Ales' activism and discourage other human rights defenders. More info at bit.ly/FLACales

EDITORIAL:

On reforming legal services

The Legal Services Bill 2011 is one of the most extensive and radical proposals for change in how lawyers deliver their services in a long time. As access to legal services is crucial to access to justice, the Bill deserves examination from the perspective of that fundamental human right.

The Bill's main proposal is for a new regulatory authority and disciplinary tribunal. The regulatory authority is to deal with the admission and regulation of practitioners and handling complaints against lawyers. The Disciplinary Tribunal will sanction misconduct. It is clear from FLAC's contacts with the public that many people are unhappy with the current system for complaint about the legal service that they receive. They see it as unfair and biased towards lawyers. Whatever protest the Law Society or Bar Council might properly make that the system is fair and that clients get a thorough investigation of their complaint, the problem is that the system is devised by and rooted in the professional bodies and therefore has great difficulty jumping the hurdle that not only must justice be done, but that it be seen to be done.

The proposed authority, principally comprised of lay persons appointed by the government is undoubtedly intended to reform that unease. However, as currently structured, it may only have shifted the risk from a perceived bias towards the legal professions to a new bias to the will of the government of the day. A government appointed and removed authority where the Minister for Justice of the day has a high level of directive power all raise serious questions about its independence. Hopefully, the debate on the Bill as it passes through the Oireachtas will see a revised and manifestly independent modern structure emerge which is clearly compliant with the democratic separation of powers as well as principles of international human rights basic principles relating to the independence of lawyers.

THE EU/IMF requirement to tackle legal costs was a clear impetus for this Bill. Despite improvements in recent years, callers to FLAC consistently complain about legal fees. This Bill will impose

increased obligations for lawyers to be clear about their fees so that shock and confusion should be greatly reduced. While this alone will not reduce costs, it should allow people to be better informed in dealings with their lawyers. However, the proposals for adjudicating on legal accounts disputes remains complex and indeed may be even more complicated than the existing one.

The Bill also has the capacity to increase costs rather than reduce them. It proposes the removal of restrictions on partnerships between barristers, between barristers and solicitors and between multiple disciplines. That may be in the interest of lawyers, but may not be in the interest of consumers. Currently, a solicitor will form an ad-hoc partnership with a barrister for the duration of a case. Thereafter they have no duty to each other. This facilitates clients and makes a greater pool of barristers available to solicitors. It is foreseeable that under the proposed system, particularly if specialist barristers merge into large commercial firms, those who might need occasional specialist advice would find they could only avail of it through a more expensive system – if indeed they can get access to the

barrister at all; entirely contrary to the spirit of the Bill.

The Bill is focussed on commercial law practice rather than on access to justice and as it currently stands does not address a number of barriers particularly identified by the Public Interest Law Alliance as barriers to public interest litigation. In spite of the fact that those who need the courts to vindicate rights will almost always be able to engage a lawyer to act on their behalf, public interest litigation remains extremely stressful and risky for those who bring such cases. This Bill, seeking to reform legal services, is a vehicle for the Oireachtas to ensure that such people are better protected through clarification at the outset that public interest litigants will not face a massive costs order against them if they lose. It may also provide for the capacity to bring a case through a multi-party action or through a representative body.

Overall therefore, while the need for reform of legal costs and legal services is clear and the current Bill has capacity to advance access to justice, it will need significant adjustment in the course of its passage through the Oireachtas if it is to do so.

Thomas Addis Emmet Fellow 2011 Award



FLAC Chairperson Peter Ward SC with Thomas Addis Emmet Fellow 2011 Fiona McNulty, Baroness Nuala O'Loan and FLAC Director General Noeline Blackwell. Fiona was awarded her certificate on 1 December at the Dave Ellis Memorial Lecture. She had spent her summer at the University of Washington, Seattle, where she obtained first-hand experience in human rights and public interest cases as part of the Thomas Addis Emmet Fellowship.

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Joining forces to tackle personal

On 19 October, FLAC and a number of other organisations and researchers working in the fields of debt, housing, homelessness and poverty launched a joint statement on the need for personal debt law reform. The initiative was titled '9 Principles to Overcome Personal Indebtedness'. Deeply concerned by government inaction on the personal debt crisis, these organisations joined forces to pool their knowledge and to alert policymakers and the general public to the economic and human cost of further inertia.

This initiative marked the culmination of several months' discussion on the personal debt crisis by these stakeholders. It aimed at encouraging Government to adopt a holistic approach vis-à-vis personal debt. This issue was particularly pertinent given that a government-appointed group led by accountant Declan Keane had reported on solutions to the debt crisis a few weeks earlier.

The '9 Principles' document advocates 9 key principles, which can be broadly summarised into three points. First, there is a pressing need for an all-debt response to the crisis – frontline organisations such as those who signed the 9 principles document are reporting that a growing number of debtors have multiple debt problems - credit card bills, personal bank loans, hire purchase agreements, credit union debts as well as a mortgage. Another important facet of this all-debt response is that it must encompass new personal insolvency legislation.

Secondly, there is a need for the establishment of a debt settlement agency to adjudicate on debt settlement cases. To this end there ought to be an independent adjudicatory body which has the power to impose binding decisions, with the right of appeal to the courts. Debtors should have access to an advocate as part of this process, not least to satisfy the requirement of fairness. Thirdly, the joint statement advocates keeping homeowners in their homes where possible and appropriate.

The joint statement thus urges immediate action to offer hope to hard-pressed debtors. It also emphasises that there are



Pictured L-R at press conference: John Mark McCaffrey (SVP); Bob Jordan (Threshold); Paul Joyce & Noeline Blackwell (FLAC); Joyce Loughnan (Focus Ireland); David Hall (New Beginning).

a number of spillover effects from the current debt crisis – such as increases in mental health problems, crime and the huge strain placed on social welfare. These organisations further urge that the government adopt these policies as a template for reform because the cost of inaction is too high.

This is borne out by the Central Bank's quarterly figures on mortgage arrears, which illustrate a steady quarter-on-quarter increase. While the Code of Conduct on Mortgage Arrears offers some respite, it remains a weak mechanism. Furthermore, even where mortgages have been restructured, there is a high incidence of people relapsing into arrears. This is testament to the kernel of the joint statement: a lasting, durable solution must be put in place as the current approach is falling considerably short of what is required. However, there must be the political will to do this.

The joint statement has been well received in many quarters, not least in the Oireachtas where it has been referred to by numerous members of the Seanad and Dáil. The launch itself was attended by several public representatives. Later that same day after the event, members of the grouping appeared before the Joint Oireachtas Committee on Finance, Public Expenditure and Reform to present their views on these issues.

Following on from this process, the

participating organisations launched an action inviting people to email their local TDs to endorse the '9 principles' document as a means to tackling the debt crisis. To date there has been a good response to this with over a thousand e-mails sent to TDs around the country.

The organisations and individuals who signed up to the initiative are: FLAC, Threshold, Focus Ireland, New Beginning, Society of Saint Vincent de Paul, Northside Community Law Centre, Ballymun Community Law Centre, Respond! Housing Association, Dr Stuart Stamp (NUI Maynooth), Ciara Murray (Public Information Consultant), Simon Brooke (Housing and Social Policy Consultant), Dr Michelle Norris (University College Dublin), Dr Pdraic Kenna (NUI Galway).

- ❑ You can download the full '9 principles' statement from FLAC's website at: <http://www.flac.ie/publications/nine-key-principles-to-overcome-debt/>
- ❑ Get involved in the campaign online at [\t "_blank" http://bit.ly/act9debt](http://takeaction.focusireland.ie/takeaction/call-for-urgent-action-on-mortgage-arrears)
- ❑ Keep up to date with FLAC's work on personal debt and mortgage arrears at <http://bit.ly/flac1debt>

debt: A question of 9 principles

The nine principles outlined by the group are:

- 1. Over-indebtedness** – It is inability to pay rather than a lack of willingness to do so that is at the heart of the personal debt crisis. Over-indebtedness is a deep social and economic problem that requires a multi-dimensional strategic response from government.
- 2. The need for data** – Comprehensive information is urgently needed to quantify the extent of the debt problem. Policy initiatives undertaken must be constantly evaluated in light of such data.
- 3. Multiple debt** – Proposed solutions must take all debt liabilities into account to be effective and workable.
- 4. Personal insolvency legislation** - There is an immediate need for the introduction of personal insolvency legislation. A Debt Resolution Agency should be established to oversee the legislative scheme to ensure transparency and consistency.
- 5. Debt write-off** - Insolvent debtors should pay to the best of their ability for a limited time period and remaining debt should then be written off.
- 6. Access to representation** - Debtors must be entitled to have an advocate represent their interests in negotiations to agree or processes to contest debt repayments.
- 7. Minimum income** - Debtors must be entitled to a minimum income to meet their basic needs while repaying debts.
- 8. Unsustainable mortgages** - The fact that some mortgages are unsustainable must be recognised and where repossession results, appropriate social housing and social welfare rights must be provided to such households.
- 9. Retention of dwelling** - State supports should aim to keep people in their homes where possible, whether in an ongoing mortgage or as a tenant where appropriate.

Action urgently needed in face of rising mortgage arrears

The latest figures on mortgage arrears nationwide, released by the Central Bank on 18 November, show the number of family home mortgages in arrears of three months or more continues to rise. There has been an increase of more than 55% in the last year alone. When the number of mortgages which have been renegotiated to make payments more manageable is also taken into account, the figures reveal a total of 99,346 distressed loans, or 12.85% of all home mortgages.

The Central Bank's Director of Consumer Protection, Bernard Sheridan, has said that consumers struggling with mortgage repayments or who fear they will fall into difficulty need to make contact with their lenders as early as possible. "The earlier you make contact with your lender the more likely you are to come to a manageable solution," he advises. However, the figures indicate that current arrangements which see borrowers paying interest-only, paying less than interest or taking a moratorium on payment now account for at least 54% of all rescheduled mortgages. In addition, more than one-eighth of rescheduled mortgages involve changes to the actual term of the mortgage, which means many people are building up more long-term debt. FLAC is

concerned that these types of arrangements are not in fact manageable in the medium to long term, and the continuing absence of legislation to reschedule personal indebtedness is being keenly felt by many of these households. The reality is that legislative action was urgently needed when the Expert Group on Mortgage Arrears (the Cooney Group) was formed in March 2010 and issued its report in November of that year; since then the situation has deteriorated considerably. The most recent report, the Interdepartmental Report on Mortgage Arrears (or Keane Report), contains some worthwhile proposals but is also far from a complete solution, given that it focuses almost entirely on mortgage arrears.

As of the end of 2011, there is still no Bill published nor firm proposals made that set out the government's blueprint on how to attempt to resolve the personal debt crisis, despite the assistance of a series of reports from the Law Reform Commission culminating in a draft personal insolvency bill in December 2010. We still have incomplete data on how much over-indebtedness actually exists, most critically in the interplay between mortgage debt and other unsecured personal debt. For example, we do not seem to know how many of the



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99,346 households in difficulty with their mortgage also have other significant indebtedness, vitally important information that must inform the forthcoming legislation if the required 'all debt' approach is to be put in place.

The current crisis in personal debt has exposed like never before the inadequacies of our current system in dealing with ever more complex financial situations. FLAC calls on the government to take this opportunity to totally revisit its position on personal indebtedness and address the mistakes of recent misguided policy. We urge the Ministers involved to fully engage with all stakeholders to implement a complete overhaul of the legal system in this area and to continually monitor the effectiveness of the new regime thereafter. For the growing number of households facing into future of a future of financial distress, this must be a priority.

- See above for FLAC's recent joint statement with other national organisations advocating on behalf of people struggling with debt problems.

A positive equality duty for the Irish public service?

On 16 November the Equality & Rights Alliance held a seminar on the feasibility of a positive equality duty for the Irish public service. With examples from other jurisdictions and proposals for the Irish context, the event was very worthwhile for anybody interested in promoting equality in Ireland.

A positive duty requires public sector organisations to have due regard to eliminating discrimination and promoting equality for groups covered by equality legislation, and to protect and fulfill human rights. This requirement covers the functions of public sector organisations as employers, service providers and contractors of goods and services.

As it stands, Irish public sector organisations must take steps to avoid discriminating against employees and service users as demanded by equality legislation. ERA argues that a positive duty would require them to actively promote equality and human rights for both service users and employees. The promotion of equality and human rights would become core to how public sector bodies operate as employers, service providers and contractors of goods and services.

Further, the Programme for Government 2011 contains a commitment to 'require all public bodies to take due note of equality and human rights in carrying out their functions'. A positive duty would be an efficient way to both realise this commitment and strengthen the statutory equality and human rights infrastructure.

ERA Co-ordinator Rachel Mullen opened the event explaining the Alliance's belief in the benefits of a positive duty for equality and human rights in Ireland, as summarised above. Chief Commissioner of the NI Equality Commission Bob Collins then set a

context of equality in Northern Ireland as central to overcoming decades of conflict and as delimited by the Northern Irish Act and Good Friday Agreement. The duty in NI is not to deliver equal outcomes but to 'have due regard to promote' equality. Public bodies are explicitly designated by statute and must produce an equality scheme for approval by the Equality Commission. Bob explained that the NI scheme required public bodies to report on equality issues in relation to their individual schemes as well as consult on strategy. Also, funding to NI government departments is contingent on them delivering an equality impact assessment. He acknowledged that a general equality duty may deliver better equality outcomes for people's lives in NI. Bob highlighted three issues to think about for a statutory duty: the need to embrace equality in policy development; a focus on equality outcomes; and engaging the public when formulating policy.

Aasulv Solstad, Senior Adviser with the Norwegian Equality & Anti-Discrimination Ombud, described the Norwegian duties, which centre mainly on the public service as an employer promoting equality on grounds of gender, disability and ethnicity for the most part. While bodies must report on measures they take, the Ombud has no competence to impose a duty on an employer, being limited to suggesting activities. Also, the various equality strands have differing levels of obligation. Aasulv felt that while the Norwegian equality duty had been successful in terms of raising awareness of equality, and of the gender ground in particular, due to lesser requirements for other grounds it had had a correspondingly lesser impact. In general, the Norwegian duty had tracked progress on equality in the public sector as a workplace, but there was a need to strengthen its protections and provide greater resources and stronger institutions.

Finally, Professor Seamus Taylor of NUI Maynooth talked about his time in

England as lead official in the roll-out of the UK public sector race equality duty for the Commission for Racial Equality. He then changed jobs to implement the range of public sector duties for the Crown Prosecution Service. By 1999, the UK government accepted it had to go beyond an individual complaints model to tackle inappropriate public sector responses to racism and indeed institutional racism. Following a series of discrete equality duties on race, gender and disability, the Single Equality Act of 2010 led to a general public sector equality duty. This requires public bodies in the UK to eliminate unlawful discrimination, advance equality of opportunity and foster good relations.

Independent evaluations of the UK model by Schneider Ross Consultants over 2004 to 2009 backed the duties approach and particularly the use of community involvement to drive improvements. Seamus' experience in the CPS showed the positive results: reduced crime figures, greater diversity in senior ranks and higher public confidence in the police. He argued that the Irish government might well see a congruence between the public sector reform agenda and an equality duty. He even proposed a wording:

Public authorities are required to have due regard to the need to take planned actions to advance equality and social inclusion, to protect and promote human rights; to promote good relations and to report publicly annually on their achievements.

Seamus concluded that an equality duty is wholly appropriate to any modern public service, noting the importance of community involvement and a focus on outcomes rather than the process itself. Ultimately, a positive duty is "one lever in wider efforts to realize a better, more equal Ireland".

More information at:
<http://eracampaign.org>

Consultation on ESC rights before UN treaty examination

On 3 November 2011, the Department of Foreign Affairs held a public consultation in advance of the State submitting its third national report under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in December 2011. The State was last examined by the Committee on Economic, Social and Cultural Rights in 2002.

The State published a draft of its third report in advance of the meeting and invited organisations and individuals to make submissions about issues of particular concern. FLAC submitted a preliminary list of issues which firstly called on the Government to incorporate the Covenant into domestic law. The government states that all of its obligations under the Covenant are met through policies designed to combat poverty and eradicate social exclusion. However, we also highlighted the cuts which have already been made to bodies which serve the particular needs of marginalised people, in particular the complete abolition of the Combat Poverty Agency which the Committee had commended during the previous examination. We reminded the State of its obligation to make the best possible use of its resources while at the same time progressing rights.

Other FLAC areas of work were highlighted including the impact of the direct provision and dispersal system on asylum seekers, the ability to access the social security system and the right to housing, particularly in the context of over-indebtedness and mortgage arrears and the right to civil legal aid.

The consultation was attended by academics, students and a range of civil society organisations. Various issues were raised including the treatment of asylum seekers, non-denominational schools, self-determination and recognition of Travellers' ethnicity as well as other economic, social and cultural issues.

Colin Wrafter, Director of the

Department's Human Rights Unit, explained that the State Report would only deal with events up to December 2010. As it usually took up to four years to schedule an examination by the Committee, it was important to submit the report as early as possible.

Given the timeframe, FLAC will be

updating its initial list of issues nearer to the time of the hearing.

Information about the process and relevant documents can be found at:
<http://www.dfa.ie/home/index.aspx?id=319>

Trócaire governance and human rights group visits FLAC

FLAC was delighted to welcome a group of governance and human rights programme officers from Trócaire to its Dublin headquarters on Wednesday 9 November. The group had gathered for a week-long global meeting in Trocaire's office in Maynooth and took the opportunity to meet with FLAC as well as the Irish Penal Reform Trust to discuss and share experiences of working on access to justice issues. The discussion ranged from bonded labour to access to the courts to the challenges faced by civil society organisations advocating for human rights. While the experiences were diverse, all were underpinned by a common commitment to equal access to justice.



Back row, left to right: Noeline Blackwell (FLAC), Tanja Kleibl (Maynooth), Lawrence Mwangabi (Kenya), Conor Kelly (Pakistan), Didace Kanyugu (Burundi), Sosena Lemma (Ethiopia), Liam Herrick (Irish Penal Reform Trust)

Front row, left to right; Triona Pender (Malawi), Lizette Montoya (Honduras), Maria-Ines de Leon Mannion (Maynooth), Sandra Sierra (Guatemala), Mark Cumming (Maynooth), Emer Butler (FLAC)

Making access to justice a reality

Continued from front page

obstacles for people who need to access justice – and virtually every person will have to encounter the legal system at some stage. If we are to vindicate the human rights of all people in Ireland, she stressed, we need to remove these barriers.

Baroness O'Loan made some stark observations about the barriers faced by Irish citizens in accessing justice. While the legal system is daunting even for people of means, she said that it was even more intimidating for people with limited resources. Poor regulation of public spending on legal costs has meant that most of it goes towards funding endless tribunals, where Senior Counsel is paid anything up to €2,500 a day. There is little or nothing left over to subsidise legal support for the increasing number of people experiencing financial hardship.

And demand for assistance from the state in civil legal matters has indeed increased substantially in the last number of years, primarily because more people are passing the means test due to loss of employment or reduced wages. Baroness O'Loan drew attention to the growth in waiting lists for state legal aid, with some people having to wait as long as 11 months just to see a solicitor. The simple fact is that if people cannot access even basic legal advice and representation, they stand

"One of the crucial factors in enabling access to justice is creating systems which will be robust, fair and inclusive and which will not lead to endless Tribunal appeals and court actions"

— Baroness O'Loan

little chance of successfully navigating an increasingly complex legal system and achieving a satisfactory resolution of their problems. It is difficult to see how the state Legal Aid Board can improve its service, however, given its inadequate funding and ever-increasing workload.

On the other hand, Baroness O'Loan praised the help provided by FLAC as an independent, non-governmental legal rights body through its countrywide network of advice centres and its first-stop legal information phone-line. She noted the mounting calls to FLAC relating to the trifecta of family law, employment law and debt law. She pointed out that in order to ensure that as many people as possible can access their legal rights, FLAC has had to try to bridge the gap created by the state's lack of funding and resources for its own legal aid services. In addition, she said, FLAC is assisting those people who cannot meet the extremely narrow criteria for state legal aid, but who still cannot afford to engage a private solicitor.

She drew a link between the "human cost" of mounting legal problems resulting from economic hardship, and the rise in suicide rates. Baroness O'Loan suggested the state might take a different approach to cost-effective assistance for people in need of assistance:



Catherine Ghent, Mary Ellen Ring SC, Sile Larkin, Baroness Nuala O'Loan



Kevin Clarke, Sandra Sierra, Hilary Daly, Mark Cumming

"Would better information about legal and welfare rights and obligations reduce problems and disputes? Has enough been done to try and ensure that the complex communication needs of some welfare recipients are met? Are there policies that you can only communicate through written correspondence? Are there help lines which actually work? Are the forms decipherable, comprehensible? Is there additional material which would assist? Can government be persuaded to provide enhanced funding to facilitate preventative work?"

In bureaucratic public structures like the social welfare system, Baroness O'Loan also proposed that investing in better first-instance decisions could widen access to justice by reducing the need for time-consuming, expensive-to-administer appeals. "One of the crucial factors in enabling access to justice is creating systems which will be robust, fair and inclusive and which will not lead to endless Tribunal appeals and court actions," she said.

FLAC is very grateful to Baroness O'Loan for travelling to Dublin to give the Dave Ellis Memorial Lecture for 2011. The lecture was very warmly received by the 250 attendees in the Rotunda Hospital's palatial Pillar Room.



Baroness O'Loan with Sarah Flynn, wife of Dave Ellis

© Photo by Derek Speirs

- ❑ You can download the text of Baroness O'Loan's address at: <http://bit.ly/nualatext>
- ❑ Baroness Nuala O'Loan is a former Senior Law Lecturer in the University of Ulster. She served as the first NI Police Ombudsman from 2000 to 2007. She has been commended for her courage and independence, which made the Northern Ireland Police Ombudsman a model for police complaints authorities in many other countries. Since then Baroness O'Loan was made the Irish Government's Special Envoy for Conflict Resolution in Timor Leste, as well as the Irish Special Envoy on Women, Peace and Security. She has also become a member of the House of Lords. Former SDLP policing spokesman Alex Attwood said of her: "From the time Nuala O'Loan took up the post of Policing Ombudsman she was fearless and determined to tell the truth," he said.
- ❑ Dave Ellis was a community activist dedicated to working with local groups in areas like welfare rights, legal aid, legal education and legal entitlements generally. The memorial lecture was first held following his death in 2007 and has since gone from strength to strength, firmly establishing itself as one of the high points in the FLAC year. It has featured respected speakers such as Professor Gerry Whyte of Trinity College Dublin, Steve Shapiro of the American Civil Liberties Union, Dr Maurice Hayes and Michael Mansfield QC.



Eoin Coffey, Saoirse Brady, Aisling McHugh, Jackie Heffernan, Niamh McEvilly, Lianne Murphy.



Aideen Collard BL, Liz Mitrow, David Wheelahan BL, Michael Farrell.

© Photos by Derek Speirs

Court refuses access to appeal decisions in 'Jama' case

Applications also made under FOI

In a disappointing decision, the High Court in October rejected an application by a FLAC client for access to previous decisions of the Social Welfare Appeals Office (SWAO) relevant to her case (*Ikraan Jama v. Minister for Social Protection*). The applicant, a refugee with two children, had sought a review by the Chief Appeals Officer of a decision on her Child Benefit claim.

She had asked for copies of any previous decisions that might have a bearing on her case and had relied on a Supreme Court decision that had led to the Refugee Appeals Tribunal providing access to its previous decisions. She had also pointed out that in Northern Ireland and Britain social security

appeals decisions are available on the web.

Surprisingly, for an appeals body whose role is to help claimants to obtain their rights, the SWAO strongly resisted the application. They said that until recently they had no database of their own decisions and it would be too expensive to search for relevant cases. They made no alternative proposals to assist the applicant.

The Court accepted the expense argument and held that “in these straitened times” there was no duty on the SWAO to maintain a database of decisions to which the public could have access.

Form the point of view of claimants,

however, it is very difficult for them to know their entitlements and argue for them if they do not know how similar cases have been decided in the past and the reasons given for those decisions.

Meanwhile, another FLAC client has sought copies of previous appeal decisions under the Freedom of Information Acts and has appealed a refusal to the Information Commissioner. In the meantime, the SWAO has now set up an internal database of decisions so there should no longer be any argument that it would be too expensive to search for such decisions. It is time the Appeals Office accepted that appellants are entitled to know the arguments for and against them and to consistency in decision-making.

European law seminar looks at access to social security

On 3 November 2011, the Irish Centre for European Law (ICEL) hosted a seminar in Dublin on “Union Citizenship in Practice: Its scope of application, impact on residence rights, social security entitlements, and immigration procedure”. The seminar was chaired by the Honourable Mr Justice Gerard Hogan and was well attended by legal practitioners and community activists.

Much of the discussion at the seminar focused on the recent developments in EU citizenship case law, particularly the seminal *Ruiz Zambrano* case, which concerned the rights of a family living in Belgium (the parents were Colombian citizens and the children were Belgian citizens) to remain in the State on the basis of their children’s EU citizenship rights. The application of the judgment has been the subject of much debate; for example, Michael Lynn BL presented a paper at the seminar highlighting the Irish government’s restrictive interpretation of the judgment. However, Dr Siofra O’Leary reassured seminar attendees that the principles emanating from the judgment can be traced in case law on EU citizenship over the last number of years.

Advocate General Eleanor Sharpston QC of the EU Court of Justice, who authored the Opinion in the *Zambrano* case, offered some blue sky thinking to attendees as a means of understanding the complexity of recent case law. She reflected on the origins of the concept of citizenship and equated the statement in *Zambrano* about citizenship being a “fundamental status” to a statement in the seminal EU law case of *Van Gend en Loos* that the EU represented a “new legal order”.

Interestingly, in *Zambrano* the EU Court of Justice held that Article 20 of the Treaty on the Functioning of the European Union precludes national measures which have the effect of depriving Union citizens of the genuine enjoyment of the substance of the rights conferred by virtue of the status. In a more recent decision in *Dereci and Others v Bundesminister fuer Inneres*, the Court reaffirmed this statement. It now appears that the Court has given some leeway to the Member States to refuse a third country national residence where their arguments for the rights of residence centre on convenience,

economic reasons and a wish to keep the family together. However, Member States must examine the effect of measures on family and private life, particularly where minor children are at question.

The effects of both the Habitual Residence Condition and the right to reside test on access to social security was also discussed in the context of EU citizenship rights. Dr O’Leary noted that States may stipulate eligibility requirements for a social welfare payment, but it remains to be seen whether such tests will be deemed to infringe EU citizenship rights. This issue is currently being explored by the European Commission, which has issued a Reasoned Opinion on the application of the UK’s residence test for certain social welfare payments under UK legislation. This may have implications for Irish law; when this issue was raised in the Dáil recently, the Minister for Social Protection acknowledged the lack of clarity and noted that it may be necessary to examine any necessary changes to Irish law in that context.

Continued rise in demand for FLAC services

In the first 9 months of 2011, FLAC has received 10,102 calls to its telephone information and referral line. This increase of 41% over the same period last year highlights an increasing demand for the service.

Family law queries remain the most frequent area of enquiry, accounting for almost one-in-four calls, and higher by 34% on the same period last year. Debt-related queries continue to rise, with 1166 debt related calls in the first nine months of the year; compared with 680 last year, which is a 71% increase. Debt is now the second most frequent query to FLAC's telephone information line, accounting for 11% of all calls.

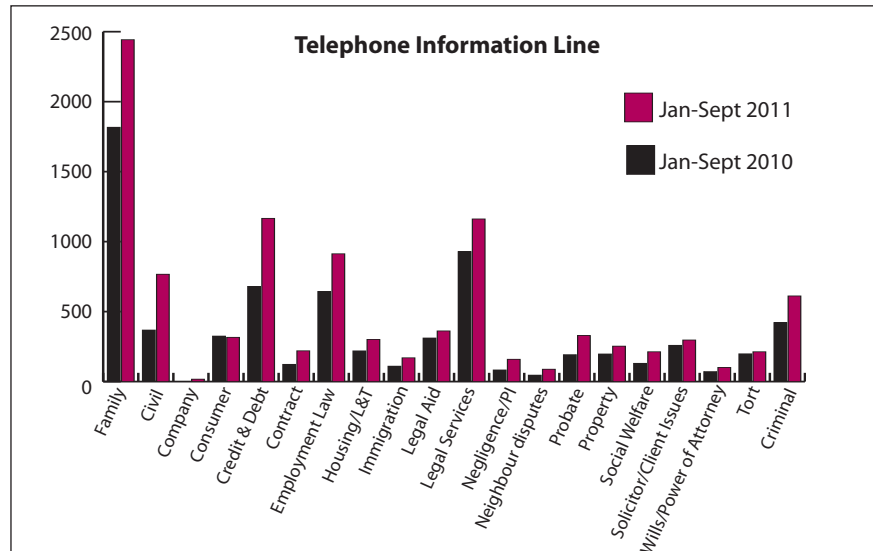
Employment queries rose by 41%, while consumer law queries fell by 2%, the only area of law to see a decrease in the number of calls.

In the first nine months of 2011 FLAC received data collection forms with information on 9559 clients who visited 67 centres around the country, which translates as 19% more forms than the same period last year. In total, 10,068 queries were recorded.

Family law is again the most common legal query in the centres, accounting for 31% of all queries, up 19% on same period last year. Employment law queries are the second most frequent, making up 15% of all queries, and rose 25% on same period the previous year. Credit and debt queries rose by 60% and are the third most common type of query.

Social welfare queries saw a 211% rise in the first nine months of this year, from 80 appointments last year to 249 this year. Queries relating to Wills/Probate also rose by 100% compared with the same period last year.

Meanwhile, neighbour disputes, immigration and client/solicitor matters fell slightly compared with last year. The complete figures for 2011 should be



available early in the New Year and are expected to show queries well up on

last year in line with the trend so far.

Transgender legislation soon?

Minister for Social Protection Joan Burton announced at the end of November that she intended to bring the heads of a Bill for legal recognition of transgender persons to the Cabinet in the first quarter of 2012. She said her Department had been working on draft Heads of the Bill since the report of the Gender Recognition Advisory Group in July 2011.

FLAC made a detailed submission to the Minister after the publication of the

report: (<http://www.flac.ie/publications/flacs-submission-to-the-gender-recognition-advisory-group/>) and Transgender Equality Network Ireland (TENI) has been working on a draft Transgender Recognition Bill.

We hope the Minister's Bill will be introduced before the 15th anniversary of the beginning of Dr Lydia Foy's historic legal challenge on 14 April 1997.

Success for FLAC clients

A FLAC client in the asylum system, who is the mother of two Irish citizen children, was repeatedly refused Child Benefit for her children on the basis that she did not satisfy the Habitual Residence Condition, thereby discriminating against the children because of their mother's status. FLAC represented her in a series of appeals.

The woman was recently given leave to remain and has now been paid substantial arrears of Child Benefit covering most of the time that she was in the asylum process.

Another woman was refused payment of Supplementary Welfare Allowance, even after a successful appeal, until FLAC assisted her in making a complaint to the Ombudsman. She was then paid substantial arrears but after the payment, she was cut off again. FLAC assisted her in a second successful appeal but once again she was not paid what was due and it took several months of correspondence by FLAC to finally extract what was owed to her. Fortunately it came in time for Christmas!



PUBLIC INTEREST LAW ALLIANCE UPDATE

Farewell to PILA Officer Jo Kenny

In December PILA regretfully said farewell to its Legal Officer Jo Kenny, who has taken a position with the Pensions Board. Along with Project Officer Lianne Murphy, Jo was instrumental in the creation of the PILA scheme as it now exists and continues to grow today and she will be greatly missed by all in FLAC.

However, PILA is delighted to welcome Maeve Regan on board as its new Legal Officer. Maeve is a solicitor, lecturer and author with a specialism in employment and equality law. Maeve has been a member of PILA since 2010 and has carried out work on a forced labour issue for a migrant rights NGO. Maeve trained with

Arthur Cox and upon qualification worked with the Arthur Cox 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. She is a consultant to the Law Society's Diploma in Employment Law and is the course tutor on the Law Society's Certificate in Employment Law Advocacy.

Maeve is 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



Jo Kenny

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Northside Community Law Centre, advising on employment and equality law and social welfare law. She continues to volunteer with Northside.

PILA & PILS Project Joint Annual Conference

PILA and its Belfast-based sister project the PILS Project held a European Convention of Human Rights (ECHR) conference on 11 November 2011. Entitled "Political Commitment, Practical Protection: Using the ECHR North and South", the conference was a huge success and attracted over 300 people.

Shami Chakrabarti was the conference's keynote speaker, and her presentation centred on the UK's Human Rights Act since its enactment in 1998, and proposed changes to the legislation currently being considered in that jurisdiction. FLAC Senior Solicitor Michael Farrell's presentation considered the Lydia Foy case as an example of how a Declaration of Incompatibility with the ECHR can be used to protect the rights of marginalised communities. Northside



Shami Chakrabarti of Liberty

Community Law Centre Managing Solicitor Colin Day spoke about using the ECHR from a community law centre's perspective. Engaging and practically-focused workshop sessions were held in the afternoon on the themes of children, housing, mental health, prisoners and Travellers.

Attendees described the conference as "uplifting and inspiring... excellent variety and quality of speakers... very practical... thoroughly enjoyable and engaging... extremely worthwhile".

Many of the speakers' presentations (and a video recording of Shami Chakrabarti's presentation) are available at: www.pila.ie



Michael Farrell speaking at the conference

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PILA talks pro bono to President of American Bar Association William (Bill) Robinson III

PILA was delighted to recently meet the President of the American Bar Association William (Bill) Robinson III and to hear his inspiring views on pro bono and the legal profession.



Q - As President of the American Bar Association, what is your role in relation to pro bono?

A - We are celebrating and promoting *pro bono* work by lawyers and developing a plan to sustain and strengthen current *pro bono* programs in the United States. The ABA has encouraged *pro bono* and volunteerism throughout its history. In our Model Rules of Professional Conduct, rule 6.1 suggests every lawyer has a professional responsibility to provide *pro bono* legal service to those unable to pay. To fulfill this responsibility, the ABA asks legal professionals to perform at least 50 hours of *pro bono* legal services per year.

Indeed, lawyers are making a difference. There are more than 1,200 organized *pro bono* programs in America. The ABA's centre for *Pro Bono* is actively engaged to help these programs improve and grow. Plus, more than 600 events around the U.S. during "Celebrate *Pro Bono*" week in October helped thousands of people and highlighted the exceptional volunteer work by lawyers.

Pro bono is an integral part of the legal services delivery system, and we have seen even more improvement in these programs over the last few years. Yet it's clear that many in the legal community, like many Americans, are under increasing pressure from commitments to work and to family. So we are also gathering ideas to create a new model for *pro bono* that is workable, sustainable and achievable.

Q - What difference can pro bono make?

A - Simply put, *pro bono* legal services ensure access to justice. Last month, the U.S. Census Bureau announced that the percentage of Americans living below the poverty line last year was 15.1 percent – the highest level since 1993.

In America, 40 of 50 states cut funding for their judiciaries in 2010 and legal aid groups were forced to turn away about half of the people who came to them for help.

The problems of underfunded state judiciaries and underfunded legal aid groups are clearly interconnected. Legal aid and court funding are two sides of the same "access to justice coin." We should continue to educate the public and policymakers about why these budget cuts are so harmful, and why people have a right to timely and fair justice.

But frankly, there isn't a lot of extra money in government bank accounts these days. That is why lawyers' contributions in *pro bono* work can help fill the void left by budget cuts while also strengthening our justice system now and for the future.

Q - What personal benefit is there for the individual lawyer who becomes involved in pro bono work?

A - *Pro bono* work helps individuals in need in our communities. But it also helps lawyers be better lawyers. We learn about fields outside our expertise. We develop new skills and sharpen the ones we already have. We improve our ability

to manage projects efficiently and develop better client relationships. Then there are the skills we learn that can't be measured easily like leadership, judgment and empathy – the very core of who we are as officers of the court.

Pro bono work reminds us why we wanted to become lawyers in the first place. And, as officers of the court, lawyers have a duty to uphold the most essential values of our profession.

Q - What benefits are there for law firms which put in place a structured pro bono programme?

A - The ABA believes that providing opportunities for lawyers to perform *pro bono* service can help law firms reduce attrition. Many young lawyers enter the profession eager to make a difference. They often become frustrated when their practice leaves them little opportunity to do *pro bono* work. We are encouraging America's law offices to enable lawyers to volunteer their skills to those in need, as my own firm did for me, to help improve their communities and find greater satisfaction in their legal careers.

Pro bono work provides lawyers with a sense of responsibility, autonomy and accomplishment. It also offers professional skills development and client contact – opportunities that may otherwise be unavailable in some large firms.

For smaller firms or solo practitioners, it's important to develop partnerships with bar associations and legal services providers that can provide the resources and support that they lack. A structured environment can help with *pro bono* referrals, client screening, training, mentoring, malpractice insurance, forms and materials, and other kinds of assistance that is not otherwise available.

Q - What steps can a law firm take to encourage lawyers to do pro bono?

A - There are a number of strategies that serve the interests of America's law firms by providing lawyers with opportunities to enrich their professional lives while helping those in need. It's important to create a culture that promotes and rewards volunteerism.

Several states have developed ideas that have worked well. They include: counting *pro bono* hours as billable hours; setting goals regarding the number of hours contributed through firm *pro bono* programs and goals that increase the number of attorneys who participate; and establishing a structured, well-run program supported by firm management.

I believe that, for lawyers, volunteerism is in our professional souls. It's part of our DNA. And it may often be some of the most interesting, challenging and rewarding part of our careers. That's the message I hope law firms will use to promote volunteerism. Our responsibility is great, but the reward can be that much greater.

FOCUS ON FLAC:

Iseult O'Malley SC

Iseult joined FLAC as a volunteer in the old North Earl Street office in 1985 while completing her undergraduate degree in law from Trinity College. She has stayed involved over the years with FLAC's work, most notably becoming a member of FLAC's National Council (the organisation's Board) in 1990.

Iseult has a lot of fond memories of her early involvement with FLAC, a time where the phone line had not yet been properly established. The sort of queries that were frequently asked back then related to issues such as copyright, employment and family law problems. There were minimal amounts of queries on personal debt and mortgage arrears, a situation which has completely been reversed today.

Iseult's role on FLAC Council has also evolved over the years as FLAC itself has grown and become a more professional body. Twenty years ago the main function of the Council was to raise funding in order to keep FLAC running and, whilst that is still an important aspect of its role today, the main issues that the Council now deals with are in relation to policy decisions and staff management. The biggest achievement FLAC and the Council have achieved, she feels, is this professionalization of the organisation and the streamlining of its focus on certain policy areas, such as social welfare and personal debt reform.

On the work that FLAC does day-to-day, Iseult says that it is a "unique professional voluntary service, which at the very least provides timely and immediate basic information from which to lead people in the right direction." This is particularly vital in a time where people are queuing up for legal representation at the Legal Aid Board and often for cases that might not eventually be taken or are delayed - by up to 11 months in some cases.



Iseult O'Malley

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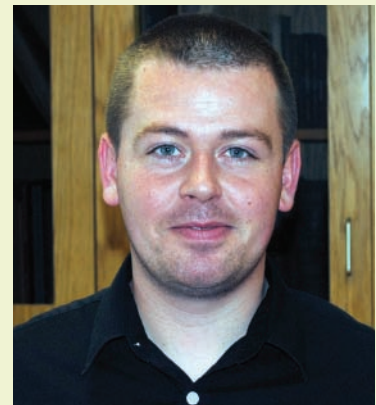
Even though the Legal Aid Board is doing its utmost with the resources it has been given, Iseult acknowledges that there are fears its service has regressed to the early years of its establishment – with only the most desperate being able to obtain access to justice.

Iseult believes that at this juncture in our legal systems development we need to step back and assess what exactly the role of the Legal Aid Board should be, for example whether it should aim more to replicate a private practice model of providing legal services or conversely aim to take a more public law approach. Iseult also works with the Criminal Legal Aid Scheme as a Barrister and has described how despite an increase in workload they have received a 17.5% cut in fees over the last few years. This is a situation which is unsustainable and, most worryingly of all, which is diminishing the quality and access to

justice for those most in need.

With regards to Iseult's future aspirations for FLAC itself, she believes that, in particular during this time of austerity, the focus needs to remain on the basic issues and trying to achieve further progress in FLAC's key areas of work. One difficulty in furthering the organisation's work and disseminating its message is that there is no permanent constituency of people needing legal representation and thus a lot of people do not feel the issues relate to them personally. This is something which FLAC is keen to dispel, having seen first-hand how important legal advice and representation is to people and how this need is rapidly growing in our society.

Congratulations to Dr Liam Thornton



All at FLAC send their heartiest congratulations to Dr Liam Thornton on the completion of his PhD from University College Cork, entitled "Reception Conditions and Asylum in Ireland and the United Kingdom: Human Rights and the Emergence of Control". Liam has been a valued Council member for the last few years and we look forward to working with him into the future under his new title.

CENTRE FOCUS:

Inside the Centre: FLAC @ Dundalk CIC

The Dundalk Citizens Information Centre provides a comprehensive and increasingly busy service to the local community. Whether assisting with legal queries through the Free Legal Advice Centre based within the CIC, empowering people through information on their rights and entitlements or simply helping a caller to fill out a form. Marie Hayes, the development manager of Dundalk CIC, summed up the importance of the work that is being done on a daily basis, saying “people come into the office and leave knowing about their rights and entitlements - if you can achieve that much, it is worth it alone. There is no value you can put on something like that.”

Marie has been working with the Citizen Information Centre for more than eleven years and has been the Dundalk centre's development manager since 2009. In that time, she has seen demand on the service increase steadily; in 2010 Dundalk CIC had 15,501 callers and 21,222 queries, whereas in 2008, there were 14,113 callers and 14,911 queries. As with every service, they could do with more resources. The centre is currently run by a team of paid staff, CE staff and volunteers, and Marie says that without that combination they would simply not be able to run the service - the volunteers are crucial. “Everyone plays a huge part whether they are providing information or part of the administrative staff, including filling out forms for clients,” she notes. To celebrate the hard work of these volunteers and to mark the European Year of Volunteering, the CIC is hosting an evening where everyone will receive a presentation, regardless of whether they have just started or have been volunteering for thirty years.

Cases on which people are seeking advice are increasingly complicated, says Marie. “This is part of our advocacy service and it is often complex. We now



Pictured L-R: James Egan BL, Dundalk CIC Manager Marie Hayes, solicitors Peter Lavery, Caroline Bear and Conor McGuill, and FLAC Volunteer & Centres Manager Zsé Varga.

have queries we never would have dealt with before. There is a quickly evolving landscape in employment law, for example; up until 2010 many people were being unfairly dismissed, whereas now people cannot get their redundancies from their employer. Legal issues in general, we [in the CIC advice service] refer onto the FLAC volunteer solicitor on a Tuesday night. Maybe that is why they are getting so busy!”

FLAC operates a legal advice clinic in Dundalk CIC every Tuesday evening from 7pm to 8pm. Marie observes that most people want to know if they can get free legal aid for their query and it has to be explained that unfortunately there is no such thing as free civil legal aid. It is important that legal information is timely and in simple basic language. The FLAC service is therefore crucial in providing early intervention and advice. Marie has seen the importance of obtaining information at an early stage reinforced many times over the years; “It still never ceases to amaze me that people are simply not aware of their entitlements and rights and that nothing comes automatically.”

The legal system can be overwhelming to someone who is not accustomed to it, which is where the work of FLAC's volunteer solicitors and barristers in

network of centres is most valuable. James Egan has been a volunteer with FLAC for five years, the last two of which in Dundalk CIC. James says “the benefits of providing advice to people at the early stages is that they can be pointed in the right direction, for example if they need to get a solicitor or if they can deal with the matter themselves in the local district court, or even if they have a case to begin with.” He has also noted higher demand in recent years, there often being a queue of people waiting to speak with one of the volunteer solicitors or barristers on a Tuesday evening. “We need more young solicitors/barristers to bolster the service – we definitely need more volunteers here in Dundalk. It is generally only once a fortnight for a few hours so it is not too taxing on your time, but you get an awful lot out of it and it means so much to people.”

The services provided by both the CIC and FLAC volunteers in Dundalk are varied and vital and will hopefully continue to thrive.

Dundalk FLAC is located in the Dundalk CIC, 4 Adelphi Court, Long Walk, Dundalk, Co. Louth.

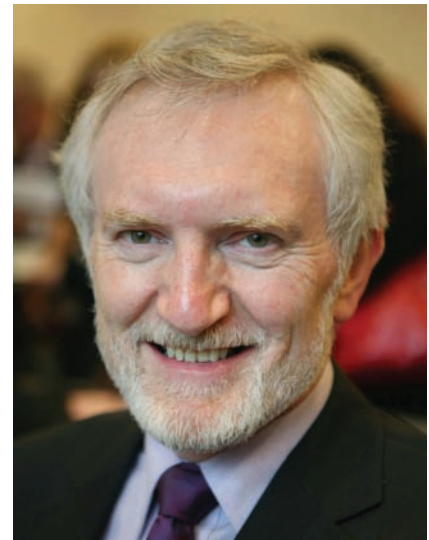
For a list of all FLAC centres see:
<http://www.flac.ie/gethelp/>

Michael Farrell appointed to racism monitor

Congratulations are due to FLAC's Senior Solicitor Michael Farrell on his new role as the Irish member of the Council of Europe's European Commission against Racism and Intolerance (ECRI). He was nominated by Minister for Justice, Equality and Defence Alan Shatter to replace Dr Mazhar Bari, whose term expired in November 2011.

ECRI is composed of independent experts from Council of Europe Member States. It monitors problems of racism, discrimination on grounds of ethnic origin, citizenship, colour, religion and language, as well as xenophobia, anti-semitism and intolerance. It also prepares reports and issues recommendations to Member States. FLAC wishes Michael all the best in his work to aid the commendable mandate of the body.

Separately, following the announcement of the planned merger of the Equality Authority and Irish Human Rights Commission, Michael was also appointed to a 10-person interim Working Group to produce recommendations on a merged structure. That report should be out in early 2012 and the new Human Rights and Equality Commission will be established by statute following the Minister's consideration.



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- ❑ FLAC has made a submission around its concerns for a merged equality and human rights infrastructure as did other member of the Equality and Rights Alliance (ERA). Many of ERA members' submissions are available to download on the ERA website (see www.eracampaign.org).
- ❑ Further information on the work of the ECRI can be found at: http://www.coe.int/t/dghl/monitoring/ecri/default_en.asp
- ❑ FLAC's submission on the merged Human Rights and Equality Commission is at: <http://www.flac.ie/publications/submission-on-merger-of-ihrc-and-equality-authority/>

BREAKING NEWS... BREAKING NEWS... BREAKING NEWS

In addition to the above assignments, on 6 January 2012 Michael was appointed by President Michael D Higgins as one of his seven nominees to the Council of State. This is a huge credit to Michael and a much-deserved recognition of his lifetime's work and dedication in the cause of justice. We in FLAC are extremely proud that our colleague has been singled out for this honour.

Tribute to Longford volunteer

**by Connie Gerety,
Longford CIC Manager**

County Longford recently bid farewell to Padraic Gearty, one of its most active community members, who was buried on Wednesday 5 October.

A successful and very well respected solicitor, Padraic combined his legal expertise and influence with a strong desire to improve the lives of others in offering legal advice to many local social services over the years.

Padraic was a founding member of Co Longford Citizens Information Service in 1981. He was extremely dedicated to providing accurate information to the public and believed very deeply that information and access to one's entitlements were most crucial to improving people's lives.

Furthering his vision for free access to information and uniting it with his legal background Padraic focused attention on the establishment of FLAC in Longford in 2002 and securing support for FLAC from the entire Longford Bar Association. He was a stalwart supporter of all that FLAC represents and his reputation as a real trailblazer meant legal eagles around Longford took example from him on using their skills to facilitate access to justice and equality for all and in particular those who could least afford it through the FLAC service.

As a very well-liked, high profile figure in Longford and further afield, Padraic was influential and one could be assured that if he supported a cause, the cause was a good one. He will be missed by all who knew him.