

flacNews

FREE LEGAL ADVICE CENTRES

Legal aid for those in debt?



Recently FLAC co-ordinated evidence and testimony from civil society to produce a parallel or 'shadow' report to the State's assessment of progress on economic social and cultural rights. The inside cover of this report, entitled *Our Voice, Our Rights*, features a quote from the late Eleanor Roosevelt from 1958 where she said: 'Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person....

where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination...'

The report itself speaks about the right to housing and also about the right to access fair systems, but the quote is a timely reminder that the issue of mortgage arrears and repossessions for failure to pay a mortgage is a human rights one. The numbers can be overwhelming. The number of private homes in mortgage arrears is 110,336 of which 37,778 are in arrears of two years or more. The average

arrears owed on each account for these longer-term arrears is nearly €50,000. The number of applications for repossessions of private dwelling houses in 2014 was 11,424. This does not take into account the many tenants left vulnerable because of their landlords' mortgage problems.

But each of these debts relates to the home, the household, the world of a person, a group, a family. It is for most the most important asset they will ever own. It is chosen with great care and all sorts of decisions and consequences hang on its

Continued on page 3

in this edition...

Legal aid for those in debt?	1 & 3
Waiving, reducing or paying civil legal aid fees by instalment	2
Watching the watchers: Financial Service Ombudsman Review 2014 raises more questions than it answers	4-5
Government makes concessions to Gender Recognition Bill	6
German Judge offers insight on Transgender Recognition laws	7
Quick action needed to help people in mortgage arrears difficulty	8
Civil Society bodies voice concerns in Oireachtas over protection of basic rights	9
Ethics & the Human Right to Health	10
Focus on FLAC: Eamonn Tansey	11
Focus on FLAC: FLAC Centre @ Maynooth	12-13
PILA update: PILA's work with NGOs: Inclusion Ireland in focus	14
'Changing Ireland, Changing law'	14
Landmark legal development: Collective housing complaint under European Charter deemed admissible	15
First ever survey on pro bono work in Ireland published	15
Second report identifies challenges for immigrants accessing social protection	16

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Waiving, reducing or paying civil legal aid fees by instalment

The Legal Aid Board has the power to waive all or part of its fees on hardship grounds. Fees can also be paid in instalments. Below we provide some more detail about both of these options.

The Legal Aid Board may reduce or cancel its fee where not doing so would cause what it calls 'undue hardship' to the client. There is no one definition of hardship, but the Board does take into account a person's current finances and personal circumstances. If the legal aid applicant has not already applied to have the fee waived in full or at least reduced, then he or she may want to do so by setting out some of his or her circumstances that might earn a waiver.

While many clients of the Board may know about the possibility of paying by instalments, they may believe that all of these instalments must be paid up before they can get legal aid. Indeed it appears many employees of the Board also believe so, although this is not actually the case. There is no provision in the legislation that instalments must be paid in advance. The actual regulation provides:

The contributions payable by an applicant will normally be payable in advance of the granting of legal services. Exceptionally, however, contributions may, at the discretion of the Board, be paid by instalments over a period not exceeding twelve months from the date of the offer of legal aid or advice but this method of payment shall apply only if the Board is satisfied that the applicant cannot obtain credit elsewhere, or that it would cause hardship or would be unreasonable in all the circumstances, to require payment in advance.

(Regulation 21.5 of Statutory Instrument 2731/1996)

In other words, to facilitate payment by instalments, the legal aid applicant must also prove hardship. In fact a client may apply for both deferred payment by instalment AND waiver or reduction in fees by reason of hardship. Therefore at the same time as requesting that

instalments be deferred, the applicant would be advised to also ask that the fees be reduced on hardship grounds.

A person can make these applications by writing to the Managing Solicitor of the relevant Legal Aid Board Law Centre, requesting a waiver of the fee as payment would cause hardship and providing details of why this is the case.

Should a person's application to have the fees waived or to pay by instalment be refused, he or she may appeal that decision to the Head Office of the Legal Aid Board. It will be necessary to have the refusals in writing and then appealing the decision, again in writing, to:

The Appeal Committee, Legal Aid Board, Quay Street, Cahirciveen, Co. Kerry.

The countrywide network of FLAC centres is an additional resource which may be useful to those seeking legal aid. A list of all FLAC centres in the country is available on www.flac.ie/help. In these centres, a person can speak to a solicitor or barrister free of charge regarding his or her situation while waiting for civil legal aid. The volunteer legal advisor will not offer a 'second opinion', but may be able to provide some useful basic legal information and advice.



▼ You can download **FLAC's Guide to the Civil Legal Aid System** at www.flac.ie/publications

Legal aid for those in debt *Continued from front page*

removal or surrender. Therefore even if we accept that mortgages may be unsustainable and that there must be consequences for refusal to pay, it is quite extraordinary how little support has been made available to distressed mortgage holders. With something as important as a person's home at stake, it would seem logical that those at risk would be given access to appropriate financial and legal services to allow them to assess their situation fully and correctly, to present their case to the lender in an organised and informed way and to be supported in their interactions with the institution that was pressing for repayment or their house.

Yet such support is only available piecemeal, despite repeated government assurances that solving this crisis is a priority. The state-funded Money Advice and Budgeting Service, apart from its useful mortgage information line, has not been expanded or resourced to deal with mortgage debt cases at the level required. The state Legal Aid Board provides a service which is itself struggling to deal with its caseload, primarily in the family law area. Private advocacy organisations have sprung up and deal with some cases.

Pro bono lawyers and accountants handle some more. About 50 cases have gone through a scheme which converts a mortgage to a rental arrangement by transfer of the property to a voluntary housing association. Lenders will pay an accountant €250 to advise someone on the consequences of an alternative offer from the lender but only after negotiations are finished.

In a three-point suggestion made in March for solution of long-term arrears in particular (see page 8), FLAC yet again repeated its urgent plea to Government to recognise the need for adequate financial and legal support to allow people to understand their own situation, to be supported in their negotiations with lenders and, where necessary, to be represented in repossession proceedings. It is our strong contention that if such support structures were put in place, people would be more confident and informed, negotiations would be more thorough, better systems would evolve and better outcomes would be achieved.

It has been recently suggested that people with difficult arrears, whose cases have not

been restructured, are 'un-co-operative'. While there may be such people, they are not the people coming to FLAC's door. We see people doing their level best with too little knowledge, experience and support to deal with what can often be a chaotic system. It has also been suggested that repossession proceedings are just being used by lenders to bring borrowers to the negotiating table. This, surely, cannot be an acceptable use of the law and the judicial system. Why would any institution put a person, a household, a family through the stress and anxiety of the potential loss of their home as a negotiating tactic? Would it not make more sense to at least ensure a more level playing field by ensuring both sides have legal representation before coming to proceedings? Or at the very least, to guarantee that any person in danger of repossession has urgent, immediate access to adequate legal and financial advice?

We can come up with a saner system than we have right now. We must, if we want to maintain our view of ourselves as a society that believes in justice; if we are to have any respect for the human rights to a fair hearing, to family and to shelter.

Cavan Volunteer Award Night



In March, to recognise the long-standing and vital commitment of Cavan FLAC volunteers, the local Citizens Information's Centre (CIC) invited Noline Blackwell (FLAC Director General) and Zsé Varga (Volunteer Manager) to award the volunteers with the FLAC Volunteers Golden Pin Award. Congratulations and thank you for all your hard work!

Watching the watchers: Financial Service Ombudsman Review 2014 raises more questions than it answers

The Financial Services Ombudsman's Bureau recently published its Annual Review for 2014. Appointed by statute, the FSO is the independent body funded by levies on financial services providers that handles complaints from consumers on financial services such as insurance, investments and lending. FLAC News readers will recall our in-depth report published in 2014, in which we analysed the operation of the FSO as part of the continuum of legal protections afforded to consumers of financial services in Ireland.

Our conclusions are presented in that report, *Redressing the Imbalance*. In this article, we critically evaluate the latest data from the Financial Services Ombudsman's Bureau and present some of the figures from its most recent review.

A general reduction in complaints

The Executive Summary notes a 42% decrease in the number of complaints in the year and states that 'it has now become clear as to the reason for this significant reduction in the numbers of complaints: the changes in the policy and powers of the FSOB in September 2013'. This refers to the power to name and shame financial services providers and the obligation (which already existed in the Consumer Protection Code) to make a complaint to the provider's internal complaints process before proceeding to the Financial Services Ombudsman's Bureau.

This conclusion seems to be presented without supporting evidence. FLAC would ask: Were consumers canvassed on this? Did an increased number of potential complainants state that their complaint was satisfactorily dealt with at the internal complaints stage, thus removing the need for a further complaint to the Bureau? Have providers reported that they have significantly improved their complaints handling processes as a result of fearing being named and shamed?

While some of the decrease may well be



attributable to the increased powers, it is more than a little presumptuous to assume that it is entirely down to this.

Low success rates

This brings us to another factor that may also have had an effect on the decrease in complaints but which goes unremarked in the Review itself: The continuing low numbers of substantiated complaints. Of those complaints that proceeded to a formal investigation and decision, only just over 6% are described as 'upheld'. This is a very low figure. To what extent might the slim chances of success be a deterrent to people bringing complaints in the first place?

A further 15% are described as 'partly upheld'. In our 2014 report, we note the dissatisfaction of some of our interviewees with the FSOB's conclusion that their complaint was partly upheld, when the redress ordered was viewed as somewhat derisory. We do not believe, based on the limited evidence uncovered by these interviews, that the 'partly upheld' category is necessarily an indication of a successful complaint.

Settlements

The number of formal complaints that proceeded to an investigation but were settled at some point during that

investigation continues to be high. At 929, it amounts to 29% of complaints closed in 2014. The Review makes some comments about settlements that, again, we might take issue with.

On page 22, it notes 1) that 'the Bureau will only note that a complaint is settled where the **Complainant** [FSOB emphasis] confirms to us that they are satisfied with the outcome'; and states 2) that settlements are welcomed and encouraged by the Bureau, as every settlement is a positive outcome for **both** parties [our emphasis].

A number of further questions and issues arise here.

- ▼ How does the FSOB's check whether a settlement is adequate? Does it simply ask the complainant whether he or she is satisfied with the outcome?
- ▼ Is there no attempt made to look at the settlement in the context of, for example, the strength of the complainant's complaint, the stage at which it occurs, whether the complainant has access to professional assistance to discuss the settlement, and any related issues?
- ▼ Is the assertion that 'every settlement is a positive outcome for both parties' not a very sweeping statement that glosses over the imbalance of power that often exists between complainant and provider?

Several factors may potentially induce a complainant to settle even where he or she is not satisfied. He or she will already have had to exhaust the provider's mandatory internal complaints procedure under the terms of the Central Bank's Consumer Protection Code and there is anecdotal evidence at least of providers not meeting the timelines under those rules. By the time the complainant gets to the Financial Services Ombudsman's Bureau and finds out that the complaint is essentially an exchange of documentation

Watching the watchers *Continued from page 4*

and a paper investigation with very few oral hearings, he or she may be starting to have second thoughts. Finally, a complainant need only look at the very limited success rates set out above to see that a settlement might be a better idea than a FSO decision.

Complaints disappearing off the radar

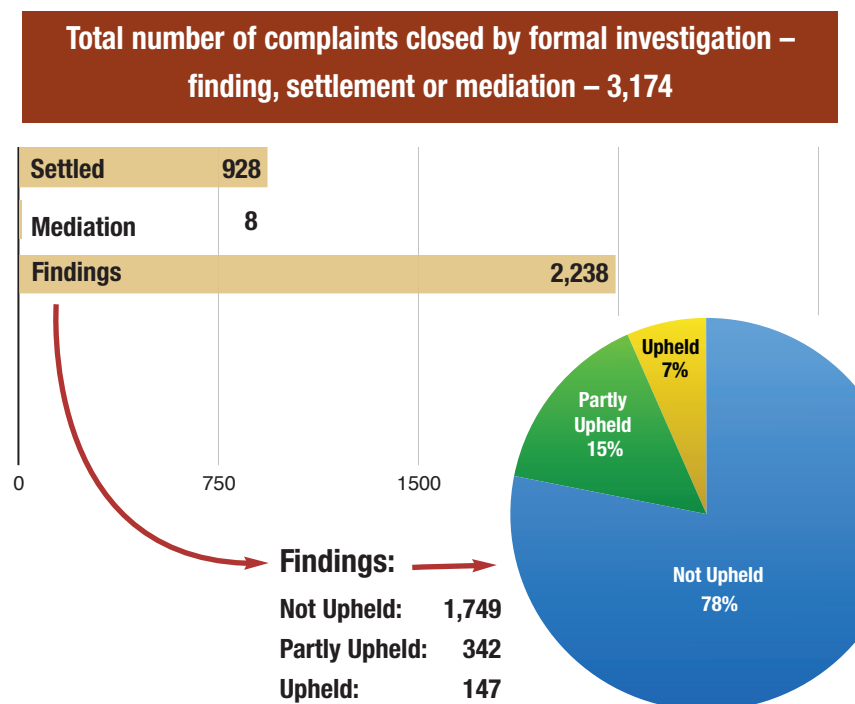
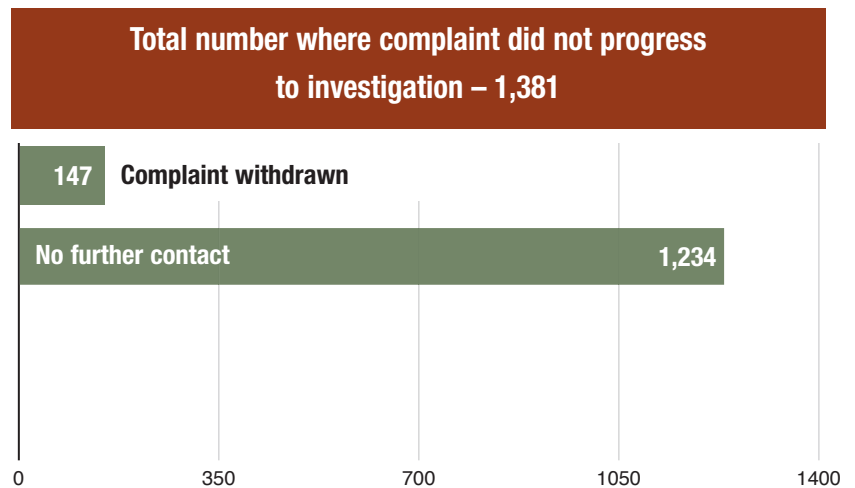
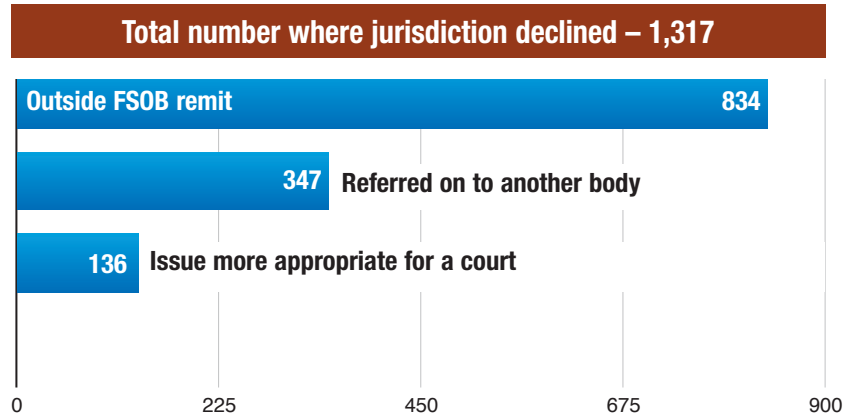
A related worry is the substantial numbers of formal complaints that do not progress because of 'no further contact' from the complainant. That figure in 2014 of 1,234 is again very high and like the settlements figure surely warrants further investigation. However the disappearing complaint phenomenon passes with little comment or concern. A footnote on page 31 of the Review does point out that these are not regarded as settlements, stating that 'although we prompt for responses from the complainant, unless we hear to the contrary, then the case is 'closed due to no further contact from Complainant'.

Again we might ask: How does the Bureau prompt for responses? Is it a phone call, a letter or a more detailed enquiry? The Bureau should have full contact details for each complainant, so there is nothing to stop it from researching in a more formal way why the complaint has not been progressed, apart from perhaps resource issues.

The high drop-off rate should give serious pause for thought; it is conceivable that if it got in touch with these complainants with the necessary urgency to show it was itself very concerned with the trend, the Bureau might uncover valuable information to guide future practice. FLAC's concern is that some complaints may disappear simply because, as found in *Redressing the Imbalance* the consumer becomes disillusioned with the procedures, the time taken to process them, the lack of advice to assist with framing complaints, low success rates and related issues. The scheduled amalgamation of the FSOB with the Pensions Ombudsman later in 2015 will offer a chance to revisit how the Bureau does its work and take a more even-handed approach to consumer complaints on financial services.

- ▼ **Read the FSO Review at** <https://www.financialombudsman.ie>
- ▼ **Download FLAC's analysis paper 'Owner-Occupied Mortgage Arrears' at** <http://www.flac.ie/priorityareas/d-ebt-law-reform/>

Snapshot: FSO 2014 statistics



Government makes concessions to Gender Recognition Bill

Following an agreement in November 2014 to settle the Lydia Foy case, the Gender Recognition Bill was introduced in the Seanad or Upper House of the Irish Parliament on 21 January 2015. This was one of the key terms of the settlement and the Foy case was formally concluded a week later.

The Bill was introduced by Minister for Social Protection Joan Burton TD. There was a detailed debate with no-one opposing the principle of Gender Recognition and many Senators urging broader, more inclusive provisions.

Three main problems with the Bill as introduced were outlined:

- ▼ Applicants would be required to obtain a certificate from a medical practitioner to the effect that they had transitioned or were in the course of transitioning to the gender opposite to the gender in which they had been registered. This certificate could be issued only by highly qualified medical specialists, psychiatrists or endocrinologists, and after a “medical evaluation”.
- ▼ The Bill required an applicant for gender recognition to be single, thus forcing married couples to divorce as a pre-condition for recognition of the Trans partner in her/his preferred gender.
- ▼ The minimum age for recognition was set at 18 years. This could be set aside for young persons between 16 years and 18 years but only if they could get medical certificates from two medical specialists, had the consent of both parents, and obtained a court order permitting them to be officially registered in their preferred gender.

Following three further Seanad debates, the Bill was passed on 17 February, with the Government making three concessions. It agreed to drop the requirement for a “medical evaluation” before the required medical certificate could be obtained. It introduced a clause providing for an official review of the legislation two



Former FLAC intern Maria Victory, Lydia Foy and Michael Farrell

years after it had come into force. And the Junior Minister dealing with the Bill, Deputy Kevin Humphreys, said they were considering using the Bill that would provide for same sex marriages if the referendum set for 22 May is passed to repeal the “single status” requirement.

The Bill was introduced in the Dáil on 5 March. Some 27 Deputies from both sides of the Chamber supported the principle of recognition and a number of Government Deputies called for further amendments to make the Bill less restrictive.

During the debate many referenced the bravery of Lydia Foy, with Deputy Anne Ferris referring to her as a “champion of gender equality” whose “commitment to human rights and gender rights has inspired Irish people affected by these issues to speak up and have their voices heard.” Deputy Ferris said Lydia “deserves to be thanked by this House and at the same time given a public apology” due to the fact that she has “led the struggle in Ireland” and emphasising that “it is shameful that it has taken her more than 17 years and three court cases to have the human rights of so many Irish people recognised by the Oireachtas”.

Some days later Minister Humphreys announced that the Government was now prepared to talk to General Practitioners about including them among the medical practitioners who could provide the

certificates required as a pre-condition of applying for Gender Recognition. Minister Humphreys also announced that further discussion of the Bill would be deferred until negotiations with GPs had been concluded. At the same time, the Government published the draft Marriage Bill to implement the Marriage Equality referendum, if it is carried. The Bill provides for the repeal of the ‘single status’ clause in the Gender Recognition Bill. There was now a distinct possibility that the Bill would not be passed until after the same sex marriage referendum.

Therefore if consideration of the Gender Recognition Bill is deferred until after the referendum, the issue may no longer arise.

Overall, while the Trans community and allies are disappointed that the Bill is not more progressive and has not kept pace with some European countries and Argentina, they have achieved some significant improvements in the Bill compared with the first draft which was published just under two years ago. It seems that the level of medical involvement will be significantly reduced, the ‘single status’ requirement will be removed if the marriage equality referendum is carried, and there will be another chance to secure further improvements when the legislation is reviewed in two years’ time.

Insight from German Judge on planned Transgender Recognition laws

Judge of the *Bundesgerichtshof* – or German Federal Supreme Court – Professor Dr Johanna Schmidt-Räntsch delivered a keynote speech to a rapt audience on '(Trans)Gender Recognition in Germany: The Role of the German Courts' in UCD's Sutherland School of Law on 5 February 2015. The event was organised by FLAC in association with the UCD Human Rights Network and UCD Sutherland School of Law. It was chaired by former Judge of the Supreme Court, the Honourable Mrs Justice Catherine McGuinness.

The event was organised as the Gender Recognition Bill has come before the Irish parliament, which will finally give transgender people in Ireland legal recognition. However despite the broad welcome for the Bill as initiated, many campaigners feel it is still not inclusive enough (see page opposite for update). The event organisers felt there was much to learn from the experience of other European countries like Germany, where the Constitutional Court struck down a similar 'compulsory divorce' provision and other provisions of the German Transsexual Law as being in breach of the German Constitution.

Since 2002, Judge Schmidt-Räntsch has been a judge of the German Federal Supreme Court, the highest court in Germany for criminal and private law matters. She is Professor of Law at Humboldt University in Berlin and is an expert and co-author of the leading text on the German Judiciary Act as well as being an expert on property law. Before her appointment to the Court, she was a senior advisor to the German Federal

Justice Department from 1991; prior to that she was a judge in the higher regional courts of Cologne and Bonn.

Following an introduction from Mrs Justice McGuinness, Judge Schmidt-Räntsch gave a clear and comprehensive overview of how transgender recognition laws had developed in Germany since their first introduction in the 1970s. She contrasted the current Irish and German legal provisions, saying the first trans recognition law in Germany dates as far back as 1978 and required applicants to have undergone a sex-change operation. This caused a lot of controversy because many transgender people could not afford surgery, which was also risky in terms of health. Another requirement was that applicants be unmarried, which meant married Trans people were forced to seek a divorce regardless of whether they wanted one. These factors left many Trans people uneasy about the legal recognition process. This led the way to a partial recognition option which allowed a person to change his or her first name but not the gender designation and did not require a divorce or surgery.

Because health insurance companies in Germany will not cover the cost of necessary medical treatments, such as reassignment surgery, unless the applicant is medically certified as suffering from an illness, this remains a problem for the Trans community in Germany. The insurance company will seek two independent expert opinions approved by the local court for legal recognition. However, apart from the health insurance issue, other legal barriers to Trans recognition – such as forced divorce, age and citizenship have all

been removed through various court rulings. Until 1982, applicants had to be over 25 to register a different sex or first name; in 2007 the age limit was abolished altogether. Today, an applicant need not even have reached the age of maturity. From 2007 Germany also abolished a requirement that applicants be German citizens.

FLAC Senior Solicitor Michael Farrell and Executive Director of the Transgender Equality Network Ireland (TENI) Broden Giambrone responded to the keynote, with Michael outlining the circumstances of the Lydia Foy case, which is the landmark legal action driving the introduction of legislation. Ms Foy was also present at the lecture and was praised by all speakers as a champion of Trans rights and recognition in Ireland. Broden spoke eloquently of the campaign for recognition and described how many Trans people felt let down by the Bill given its provisions as outlined above. Both called for the most generous and inclusive legislation possible, given how long it has taken to arrive and the opportunity to learn from best practice and new understanding of Transgender identity from other jurisdictions. The audience had many remarks and questions to speakers, including several from members of the Trans community who outlined their own personal experiences in the Irish context.

FLAC and its co-hosts are very grateful to Judge Schmidt-Räntsch for her excellent overview of German law with many lessons for the Irish situation.

▼ Irish Times interview with Judge Johanna Schmidt-Räntsch: <http://bit.ly/JSRreview>



Dr Liam Thornton, TENI's Broden Giambrone, Judge Johanna Schmidt-Räntsch, Mrs Justice Catherine McGuinness and FLAC's Michael Farrell

Quick action needed to help people in mortgage arrears difficulty

An earlier version of this article appeared in the *Evening Echo* on 12 March 2015 and is reprinted here by kind permission.

Every week in Circuit Courts the length and breadth of this country, an increasing number of borrowers face legal proceedings for repossession of their family home without access to legal assistance from the State to defend their position. Recently updated figures from the Central Bank confirm that a total of 11,424 such applications were brought by lenders in 2014.

No more than 12 months out from an election, it can be difficult to spin hard facts, but that does not stop the current administration from trying. Minister for Finance Michael Noonan is reported as saying that banks are using the threat of repossession to get home owners to engage with them. The figures, he said, don't show a lot of houses being repossessed by the banks. It is true that an application does not necessarily result in repossession. However, some other relevant figures for 2014 include:

- ▼ 968 Possession Orders granted on family homes.
- ▼ 313 family homes repossessed on foot of Possession Orders.
- ▼ 998 family homes voluntarily surrendered or abandoned.

Critically, the numbers rose with each quarter in 2014, so that in the last three months of the year 314 orders were granted, 123 homes were repossessed and 306 homes were voluntarily surrendered. The rise in applications also means a large number of cases in the system, all of which take time to be processed; even when an order is granted, a stay may be put on it and there may be delays in carrying it out. Thus these numbers will inevitable increase as cases work through the system.

Some will be put on hold or adjourned generally as the lender and borrower reach a new agreement on payments - the 'engagement' referred to by the Minister. Quite apart from how fair or indeed realistic the engagement can be when the

borrower's back is firmly against the wall, we might ask whether Minister Noonan believes it is appropriate for lenders to conduct negotiations with their customers via the courts, especially when many of them have already been substantially bailed out by the taxpayer.



Nevertheless, it might be asked what a lender can do when a borrower will not co-operate, but take him or her to court? And here is where the spin comes in again. This time it is the turn of Minister for Justice Frances Fitzgerald, who in her contribution to a recent debate (on the Family Home Settlement Arrangement Bill proposed by Michael McGrath TD) stated '[i]t is a fact that the majority of those in long term mortgage arrears – i.e. arrears subsisting over 720 days – are considered by the Central Bank as “non-cooperating” borrowers in that they have not engaged with their lender in any meaningful way under the Code of Conduct on Mortgage Arrears.’’

We in FLAC have been monitoring Central Bank statistics very closely for the past few years, but have never seen it produce this alleged 'fact' – that most of the almost 38,000 account holders in arrears for more than two years are not co-operating. Granted, there has been much speculation about the extent of borrower non-cooperation. So where is Minister Fitzgerald getting this information from? Is it speculation dressed up as fact or is it information that the Central Bank has not made public? If it is speculation, it is ill advised at a time of extreme difficulty for so many households. If it is new information, why is it not published so it can be scrutinised and questioned by debtor advocates?

Indeed, we might ask how many times lenders have been declared as not co-operating? We are talking here about how arrears cases are sometimes processed by lenders under the Code of Conduct on Mortgage Arrears – such as files going missing, correspondence mysteriously never received, excessive harassing phone calls, decisions with very little detail, appeals turned down with no explanation and assorted instances of misinformation. The answer is none, because the Code of Conduct on Mortgage Arrears contains no definition of a non-cooperating lender.

The situation is now as urgent as it was always destined to be in the absence of a coherent, rigorous and above all well-informed approach to resolution; one where the state, not the lending industry, is in control of the process. In FLAC's view, three things now need to happen quickly.

- ▼ Borrowers in mortgage arrears must have access to the full range of debt, financial and legal advice to help them reach sustainable restructuring arrangements on their mortgage and other debts with their creditors, including access to legal representation in repossession cases where necessary.
- ▼ Lender decisions under the CCMA and the Personal Insolvency Act must be open to review by an independent third party before repossession becomes a possibility, a role that could be played by the currently underused Insolvency Service of Ireland.
- ▼ For those whose mortgages are unfortunately financially unsustainable in the long run, an expanded and properly resourced mortgage-to-rent scheme option with far less rigorous qualification criteria should be put in place.

Speaking ahead of a recent Cabinet meeting, the Taoiseach said the government did not want to see houses repossessed and that he would like to see the banks doing more for people in mortgage difficulty. FLAC would like to see the government doing more for people in mortgage difficulty. Leaving it largely up to the banks is what has got us to this point.

Civil Society bodies voice concerns in Oireachtas over protection of basic rights

In March a delegation of Irish organisations addressed members of the Oireachtas on human rights issues outlined in *Our Voice, Our Rights*, a civil society report coordinated by FLAC. It is part of the UN process under the International Covenant on Economic, Social and Cultural Rights and examines how economic, social and cultural rights in Ireland have been protected over the last thirteen years from viewpoint of organisations working on the ground.

The Irish State must also report to the UN Committee and respond to a list of specific questions from December last. The process culminates in an examination in June by the Committee of how the State has met its obligations on economic, social and cultural rights. The Irish government response was due 17 March.



Launched in November 2014, *Our Voice, Our Rights* features contributions from over fifty organisations and endorsements from more than thirty to date. The human rights issues in the report reflect everyday concerns around access to public services, adequacy and provision of these services and affordability for people to basic services to ensure a person's right to an adequate standard of living.

The groups assembled in the Leinster House AV Room, on the kind invitation of Deputy Pearse Doherty. FLAC's Noeline Blackwell gave an overview of the importance of human rights law in protecting the most vulnerable in society, the credence



A delegation of Irish organisations addressing members of the Oireachtas on human rights issues

the government gives its human rights record internationally and how this can be wielded properly by civil society to achieve specific outcomes.

Five organisations – Inclusion Ireland, INOU, Focus Ireland, Irish Heart Foundation and Pavee Point – presented specific issues of concern, with others speaking from the floor. Jim Winters of Inclusion Ireland focused on employment, where the state is failing to meet international obligations to persons with disabilities. Sheltered workshops offer employment to disabled persons as well as receiving personal support services, but there are grave concerns around the level of protection afforded employees; no inspections are carried out of such workshops. Jim reminded all present that Ireland has yet to ratify the International Convention on the Rights of Persons with Disabilities.

The INOU's Brid O'Brien stated that government cannot ensure the right to social security and the right to work if support services and adequate funding are not part of the equation. Although the government mantra post-recession has been activation and jobs, she said quality opportunities and quality jobs should be part of the discourse.

Housing, in particular the provision of social housing and increasing homelessness since the recession, was addressed by Mike Allen of Focus Ireland. He welcomed proposals to increase social housing stock as well as the state response to emergency

accommodation for homeless people in Dublin. Although these are moving in the right direction, Mike was concerned at the pace and level of action required to address the overwhelming numbers of people in need of adequate accommodation.

The Irish Heart Foundation's Cliona Loughnane talked about the right to access the highest attainable standard of health. Ireland's two-tier healthcare system was named as the major factor in the widening of health inequalities and health outcomes in Ireland, in particular during austerity. Cliona explained that the shift in healthcare costs from the state to the individual has led to financial hardship for people and many are as a result not seeking necessary medical care. The government must make better informed decisions on where to prioritise resources and on the future direction of the Irish healthcare system, she said.

Martin Collins of Pavee Point spoke about the recognition of Traveller ethnicity, which was been recommended by the Joint Oireachtas Committee on Justice and Equality. He outlined what such a move would mean in terms of greater protection and promotion of Travellers' overall economic, social and cultural rights. The briefing finished with questions and further contributions from the floor.

▼ **Ireland will be examined at the UN Headquarters in Geneva on 8 & 9 June. Keep up to date on developments at www.ourvoiceourrights.ie**

Ethics and the Human Right to Health

A conference on the Human Right to Health took place on Friday 6 February 2015 in NUI Galway, as part of the President's 'Ethics' initiative which aims among other things to encourage an ethical discussion about the connections between economy and society. The event was convened by the Irish Centre for Human Rights and the NUI Galway College of Medicine, Nursing & Health Sciences.

In his opening address, President Higgins said there is an economic and fiscal shadow over any human rights discussion. At present, he contended, a clear separation existed between economics and human rights. In this regard, the contradiction of our times is the dilemma faced by elected governments in terms of seeking to respond to citizens' wants but having to stay within the lock of the invisible fist of markets, he said.

The President said the project of developing a recognition and vindication of rights of this nature was a political one, but clear examples of its success existed. Judicial protection of the right to health in South Africa had led to positive developments in relation to the provision of retroviral care, and this was supported by a positive political environment. He suggested a focus on ethics would help reconcile the differences between the values of human society and those of the market.

Professor Sofia Gruskin of the University of Southern California's Institute for Global Health spoke about the importance of recognising and protecting rights when it comes to improving health care. If we want to achieve health and wellbeing, we need to know the constellation of rights that exist, she said. She said awareness of economic, social and cultural rights should be at the foundation of education, training and research in relation to health.

Cliona Loughnane of the Irish Heart Foundation discussed the interconnectiveness between economics and human rights when it comes to the provision of health care. She used the example of the need to make adequate rehabilitation care available to stroke victims to demonstrate how vindicating human rights could make economic sense too. More patients would be able to live independently for longer and make an economic contribution if given an adequate standard of care. She

echoed President Higgins' comments about the separation between the economy and human rights, saying that childhood obesity was an example of the dissonance between human rights and market forces.

Les Allamby, Chief Commissioner of the Northern Ireland Human Rights Commission, said the Commission's human rights enquiry into emergency health care in the North revealed the connection between spending decisions and upholding human rights. As an example, he explained that a third of people who are reported to police as missing had recently been in hospital. The net result of leaving vulnerable people for extended periods of time in Accident

and Emergency was that it was using up scarce policing resources.

Journalist, lecturer and health policy analyst Sara Burke spoke on the impact of austerity on the Irish health system. She mentioned how Ireland has been described as an extreme outlier when it comes to cost for patients. During the boom, fundamental issues of access and quality had not been addressed. She echoed the President's comments that vindicating human rights in relation to health care was fundamentally a political project.

▼ **More information on the event at <http://bit.ly/R2Hconf2015>**

FLAC legal information in print and online



FLAC produces basic guides to legal issues in print and also available to download from our website. We also have FLACsheets explaining law and highlighting concerns in our specific campaign areas, such as personal debt, social welfare and civil legal aid. Check out www.flac.ie/publications to see the full range online – our info leaflets are available at your local Citizens Information Centre or FLAC centre.

separation

mainenance

domestic violence

family law and children

divorce

change of name by deed poll

enduring power of attorney

probate

wills

landlord and tenant

FOCUS ON FLAC

Eamonn Tansey, PILA Project Officer

Eamonn Tansey joined FLAC in 2013 as a Legal and communications Intern, before progressing in mid-2014 to become Project Officer for the Public Interest Law Alliance (PILA) team. He completed an undergraduate Arts degree in Legal Science and Geography followed by a Bachelor of Laws (LLB) at NUI Galway, before going on to do a Masters degree in Public International Law at the University of Utrecht in the Netherlands.

During his LLB, Eamonn found the most interesting modules were those surrounding 'The Law of the Sea'. For this reason, on completion of his law degree Eamonn began an internship with the Department of Transport as Junior Legislator for maritime legislation, describing this as his 'first contact with human rights' during which time he learnt a great deal while attending Dail debates and conducting legal research.

Eamonn was then accepted into a Masters programme in Public International Law at the University of Utrecht. The university is renowned for its work on human rights and environmental law, also housing the Netherlands Institute for the Law of the Sea. Eamonn enjoyed this time greatly especially the work he completed as a part of his thesis. In his thesis on 'Slavery on Fishing Vessels', Eamonn argued that although it has generally been abolished in legislative terms, the definition of 'slavery' is still relevant; de facto slavery continues as a reality for many, therefore he concluded that the definition of slavery is still the best concept to use in cases of 'slavery' on fishing vessels.

Originally Eamonn was given 3 months to do his thesis, but extended this time by 6 months in order to complete a legal internship with the international environmental protection organisation, Greenpeace. Combining his appetites for human rights, environmental law and the law of the sea, Eamonn thrived during his time with Greenpeace supporting their campaigns in a legal capacity.

In 2013, he returned to Ireland, joining FLAC in September and PILA the following year. Eamonn believes the biggest challenge he faced in his latest role as PILA Project officer was "to maintain the important relationships developed with our many



non-governmental organisation partners in the previous five years of the project." Despite already being aware of PILA's great work on a variety of policy areas, he believed that "getting to grips with the PILA pro bono Referral scheme was of utmost importance, as it is often our most common point of contact with our NGO partners."

Eamonn has enjoyed his work with FLAC on a variety of campaigns over the last year, most notably the human rights budgeting campaign and the ongoing work in relation to the Irish State's examination under the International Covenant on Economic, Social and Cultural Rights (ICESCR). This latter work "engages a variety of civil society organisations, both PILA partner NGOs and others, in developing a parallel report on Ireland's human rights record under the covenant over the past 13 years," he explains.

Eamonn has found the most satisfying part of his work to be the provision of legal assistance to partner NGOs on a daily basis on a variety of policy areas. As he describes, "This work allows our partner NGOs to concentrate on what they do best, be it campaigning for gender recognition legislation, marriage equality or the rights of persons with disabilities." He concludes: "To say the work is rewarding would be an under-statement!"

VHI Women's Mini Marathon 2015

Register now to run, walk or jog for FLAC!



The 2015 Women's Mini Marathon will take place on Monday 1 June. Over 40,000 participants will run, jog or walk their way along the 10km route through the streets of Dublin. If you are interested in taking part while at the same time promoting equal access to justice, consider joining Team FLAC!

The first steps to getting involved are:

- ▼ Sign up for the Race: you can either register online at www.vhiwomensminimarathon.ie external link or using the official entry form which will appear in the Herald every Wednesday and Saturday. The cost is €18 through the herald and €19 online (€1 supplement applies for card payments). The deadline for registration is 17 April, or when the maximum number of entrants is reached. This has happened quite early in the past so sign up ASAP to avoid disappointment!
- ▼ Let us know: get in touch with us here in FLAC to let us know that you are taking part for Team FLAC. We will then send you a FLAC t-shirt and fundraising materials to assist you. Either phone us on 01 887 3600 and ask to speak to Emer or email emer.butler@flac.ie. We look forward to hearing from you!

All money raised will go to supporting equal access to justice in Ireland.

FOCUS ON FLAC

Maynooth FLAC and Maynooth University FLAC

In the Kildare town of Maynooth, the Free Legal Advice services available to the public differ considerably from other parts of the country. Here Maynooth FLAC, which is based in the town's Citizens Information Centre, works in co-operation with the FLAC student society based in Maynooth University (previously NUI Maynooth).

Maynooth CIC was set up in 1986 by local volunteers. The service has evolved over the years and today it has two full-time and two part-time staff supported by six volunteers providing free advice to over 20,000 people in the North Kildare area every year.

The FLAC clinics in Maynooth were established by local solicitors and barristers in 2000. The service in Maynooth CIC take place every second Thursday, while the FLAC student society provides its free clinic every third week at the University. Maynooth CIC is managed by Breda Gormally, Development Manager of the North Kildare Citizens Information Services, while solicitor Jessica Hickey manages the volunteers in the FLAC clinics.

Amongst other activities, the FLAC University Societies organise advice clinics under the supervision of a qualified lawyer. At the University, the clinic was set up with the help of the Law Department, in particular Deirdre McGowan, a FLAC Volunteer whose support for the student society was crucial during her time as a PhD student. The two services have developed a good relationship over the years and represent a partnership that not only helps to provide extensive legal support to a large community but also allows law students to gain vital experience in pro bono work.

Emmet Lande, President of the FLAC student society, explains that the clinic helps an average of 8 callers once every 3 weeks. The clinics are predominantly student-run where in the student will accompany a barrister or solicitor into meetings with callers. Emmet talks about how beneficial the service is not only in terms of reducing the pressure on Maynooth Town FLAC, but that it's also a chance for the students to 'give back', a



Left: Maynooth Citizens Information Centre and Right: Maynooth student FLAC members

system where "each student has their own experience, starting with first years, who help to facilitate the whole evening." He says the most common legal queries at the University FLAC at present involve landlord & tenant law, separation or domestic issues and road traffic offences.

Jessica Hickey praises the success of the service, explaining that "there are a number of factors that makes this FLAC a successful one: The group of volunteers is very mixed in every sense, solicitors

and barristers, mix of age groups, mix of expertise. Also there is a strong sense of community within the service." She underlines the importance of the "inter-referrals" between the university and the services of the Money Advice & Budgeting Service, the CIC and FLAC.

Jessica highlights "the fantastic and committed support from Breda Gormally in the CIC and the great facilities of the service". She stresses the importance each volunteer's contribution, as she believes



FLAC volunteers Mike Hennigan, Kulwant Gill and David Powderly with CIC Development Manager Breda Gormally (second from right).

FOCUS ON FLAC

that the system “would not work without the individual commitment of each volunteer who turn up every time”.

Michael Heneghan has been a FLAC volunteer for over a year and talks about what he believes is a ‘death’ of legal aid in Ireland, “exacerbated by the financial crisis of 2008”. He also highlights the importance of collaboration to ensure that advice services remain strong throughout such difficult times.

Kulwant Gill talks passionately of her very positive experience as a volunteer with Maynooth FLAC since 2013: “I recently had a woman who was bullied, harassed and victimised in work. She came in looking for legal advice and left with a sense of pride, self-worth and dignity. The act of compassion and kindness cannot be learned from books, but once you show it, it has such a colossal effect on the other person.”

The experiences of all these volunteers

show the huge level of dedication and hard work involved. This collaboration is an example of a very efficient relationship that extends the reach of the volunteer legal advisors in Maynooth while allowing students to develop their knowledge of law and expertise by helping people. The benefit to the local community is essential, as Michael Heneghan points out, at a time where people do not have the means to access legal advice any other way.

Help make access to justice a reality

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 a month to providing legal information and advice to members of the public who otherwise would not be able to access it.

Centres needing new volunteers at the moment include: Letterkenny, Tuam, Portlaoise, Wicklow Town, Arklow, Naas, Stillorgan, Swords, Blessington, Limerick, Navan, Newbridge, Bray, Tallaght, Finglas and Blanchardstown.

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 Zsé Varga, Volunteer & Centres Manager by e-mail at volunteers@flac.ie or by phone at 01 887 3600.



FOCUS ON PILA



**PUBLIC INTEREST LAW ALLIANCE
UPDATE**

**PILA's work with NGOs:
Inclusion Ireland in focus**

Inclusion Ireland is the national organisation advocating for the rights of people with intellectual disabilities. It has been providing information and support to people with disabilities and their families for over fifty years.



One of the earliest NGOs to engage with the Public Interest Law Alliance (PILA), Inclusion Ireland recognised the enormous value and benefit of using the pro bono referral scheme. There are a number of ways in which organisations can engage with the referral schemes; from legal advice in conjunction with an organisation's policy and campaign work, to strategic law reform work and/or litigation, to bespoke legal education sessions delivered to staff and volunteers.

Over the years, Inclusion Ireland has utilised the PILA pro bono referral scheme on a number of occasions and found it very useful, as explained by Jim Winters, Advocacy and Rights Officer with Inclusion Ireland. Quite often, the organisation requires independent advice or opinion on a particular area of law reform, policy or practice. It does not have the in-house legal expertise required and cannot afford to pay for such work. With a register of 17 law firms and over 250 barristers, PILA is able to 'match' Inclusion Ireland's legal needs with the interests and expertise of a volunteer legal practitioner.

Commenting on the service, Jim notes that "Inclusion Ireland has received independent and fresh perspectives over a broad range of issues, including charges for persons in receipt of patient services, legal capacity and decision making, the use of seclusion, restraint, regulation and inspection of disability services and reasonable accommodation for voters." The legal advice is linked directly to Inclusion Ireland's advocacy work and as Jim says, "it is often used to inform submissions to government departments or public bodies. Sometime the information provided just helps to consider the issue in a different light, with a new lens".

PILA's contribution to Inclusion Ireland's work was recognised in their most recent annual report, a copy of which is available on their website.

If you would like to learn more about the PILA pro bono referral scheme, either as an organisation using our services or would like to join the register as a pro bono practitioner you can contact PILA Legal Officer Eithne Lynch at Eithne.Lynch@flac.ie for further details!

▼ **Learn more about Inclusion Ireland's work at**
<http://www.inclusionireland.ie/>

'Changing Ireland, Changing Law' project wins research award



PILA is delighted to join Dublin Institute of Technology (DIT) and Trinity College Dublin (TCD) as lead community partner for a new project called 'Changing Ireland, Changing Law'. The project recently won a New Foundations Award from the Irish Research Council.

The Council launched the New Foundations Award as a way of ensuring that high-quality research coming out of Ireland contributes to social innovation, and helps socially excluded and marginalised groups. It has awarded almost €400,000 in funding to more than 40 research projects under its 'Engaging Civic Society' initiative.

'Changing Ireland, Changing Law' sees PILA team up with Mary Rogan of DIT and Ivana Bacik of TCD, along with the Gay and Lesbian Equality Network, the Immigrant Council of Ireland and the National Women's Council of Ireland. The project will examine the connections between social and legal change in Ireland. It will facilitate reflection by lawmakers, judges, academics and interest groups on three themes: how laws have changed society and societal attitudes; how strategic litigation has changed Irish society; and whether the law has kept pace with societal change.

Updates will be posted on the PILA website and in the PILA Bulletin so stay tuned!

Landmark legal development: Collective housing complaint under European Charter deemed admissible

A landmark collective complaint against Ireland, which outlines appalling and widespread sub-standard housing issues affecting thousands of people across 20 Local Authority housing estates, has been deemed admissible for further investigation by the European Committee of Social Rights.

The complaint was lodged in July 2014 by FIDH – International Federation for Human Rights, which has the required standing, in collaboration with its associate member in Ireland FLAC, and facilitated by PILA. The Committee’s decision was adopted on 17 March and made public on Tuesday 24 March.

The Collective Complaint – the result of five years of evidence-gathering across 20 communities facilitated by Community Action Network – alleges that Irish law, policy and practices on Local Authority housing do not comply with European standards for families. These comprise standards relating to housing, social protection and anti-discrimination standards. The complaint states that poor conditions and other issues on estates violate key articles of the Revised European Social Charter, which Ireland signed up to in 2000, including the right to health and the right of family and children to have social, legal and economic protection.

The revised Charter is a regional human rights treaty protecting economic, social and cultural rights, drafted by the Council of Europe. It is a complement to the European Convention on Human Rights which protects civil and political rights. The Charter provides a platform upon which signatory states will be judged in relation to their compliance with and realisation of economic, social and cultural rights nationally.

Following the declaration of admissibility, the Irish Government have been invited to make representations to the Committee with a deadline of 28 May. Following this, it is most likely that FIDH will be given an opportunity to make further representations before a decision on the merits of the Complaint are published.

At a press conference to announce the decision, tenants from old and relatively new local authority estates spoke about the experiences of families living with dampness, mould, sewerage, poor maintenance and pyrite among many dire conditions. Tenants spoke of their frustration with successive Governments, resulting in a trend of neglect and a failure to progressively realise the rights set out under the RESC.

Debbie Mulhall, a resident of Dolphin House Estate, said that breaches of tenants’ social and economic rights had resulted in a third-class citizenship for some 130,000 households and their families – or close to 355,000 people across the country. “Your home and where you raise your family is so much more than just bricks and mortar. It is the starting place for so many basic rights essential for life – the right to health, the right to education, the right to work. We are being denied these basic rights and being treated like third class citizens simply because we are tenants of the state.”

Another tenant, Carol Quinn, spoke about the abandonment of Bluebell Estate for

decades, with tenants left to cope with serious dampness and mould problems. Most children and adults living with damp have asthma and other respiratory problems. Despite numerous requests for a proper assessment of the conditions and their impact, Carol said the Local Authority has never acted upon them.

For FIDH, the complaint is very important on a European level. “This will potentially affect millions of people living in sub-standard accommodation and suffering discrimination and social exclusion throughout Europe,” said FIDH vice-president and FLAC Director General Noeline Blackwell, welcoming the news. “We hope that other organisations and social movements will be inspired by today’s development to use this valuable mechanism to highlight and challenge rights violations across the board and enforce human rights at home.”

▼ More information at
<http://bit.ly/CChousingPR>

First ever survey on pro bono work in Ireland published

The first ever survey on pro bono legal work in Ireland reveals a strong and growing appetite among the legal professions for providing help to those who cannot afford it. Despite recognition of pro bono as something that lawyers typically do as part of their work, this study shows that such work, done for the public good without any expectation of payment, needs to be more structured and more visible in legal businesses. PILA’s Rachel Power who conducted the research in December 2014 says PILA has seen growing enthusiasm from lawyers to get involved in this kind of work and a corresponding increase in awareness from NGOs in seeking to avail of such help.

Some 464 individual solicitors and barristers responded to the survey from all over Ireland. Almost three-quarters of those say they have done legal work for free in their career with almost 40% doing pro bono work regularly. Most of the legal work being offered for free involves legal research, advice or document drafting (62%) followed by providing legal advice in a clinic (33%) and representation (21%). The survey also contains a section on law students, many of whom have already been involved in pro bono work and the majority of whom (86%) plan to do pro bono work when qualified.

▼ Read the full survey on both the PILA and FLAC websites.

Second report identifies challenges for immigrants accessing social protection

A report compiled by Nasc, Crosscare Migrant Project, FLAC, Doras Luimni, and Dublin City Citizens Information Service was launched by Minister Aodhán Ó Riordáin at Crosscare's offices on 20 January 2015. Entitled *Person or Number? 2, A Second Examination of Issues faced by Immigrants Accessing Social Protection*, the report takes up the issues first visited some four years ago for the first *Person or Number?* report. The groups continue to assist migrants with ongoing issues and challenges in accessing social protection.

New research and case studies for this report were examined in 2014 to evaluate the situation for migrants accessing or attempting to access support from the state via the social welfare system. As part of the research, thirty-five randomly sampled cases of migrants who access Department services were anonymised and summarised; the research also comprised an online survey of thirty-seven managers of state-funded Citizen Information Services nationally. Both studies were analysed in the findings section of the report.

Overall, the report is critical of how the Department of Social Protection deals with immigrants, identifying key shortcomings including:

- ▼ Customer service issues in the Department of Social Protection including rudeness, inappropriate behaviour, inappropriate or abusive language and instances of racism.
- ▼ Basic administrative procedures, tasks and duties not always being carried out by Deciding Officers and Designated Persons, leading to incorrect refusals of payments.
- ▼ The Community Welfare Service in particular found to have poor service levels.
- ▼ Interpreters not always being provided to people when there is a clear need.
- ▼ Omission of key pieces of information by officials in their dealings with the public continues to be an issue.

There are nineteen recommendations in the report which would lead to better



Person or Number? (2) launch – Joe O'Brien Crosscare, Karen McHugh Doras Luimni, Minister Aodhan O'Riordain, Fiona Finn Nasc, Yvonne O'Sullivan FLAC

customer service, accountability and performance:

- ▼ the establishment of a Performance, Monitoring, Evaluation and Implementation Unit in the Department to raise the quality of practice and decision making at the front line and
- ▼ the introduction of name badges for frontline staff would improve customer service, decision making and accountability
- ▼ Compulsory training
- ▼ Supports for local office staff
- ▼ Various targeted measures to tackle racism – including a specific internal Departmental plan
- ▼ Customer views and complaints to be proactively sought
- ▼ Community Welfare Service needs special attention and needs to operate to same standards
- ▼ Administration of Emergency Needs Payments need to reflect the flexibility of the law
- ▼ Better use of interpreters
- ▼ Guidance and monitoring needed on arrears payments

Following the launch, in February a number of organisations including FLAC were invited to present to the Dail Committee on Public Service Oversight and Petitions on the report and its findings. Joe O'Brien, Policy Officer with the Crosscare Migrant Project, spoke about the deficiencies in the Department and how they impact on not just on immigrants but on all customers of the social welfare system in asserting their right to access payments.

A key recommendation highlighted was the need to address performance issues within the Department through a special dedicated unit and to initiate this process by establishing a working group to assess how this unit would operate in terms of benefits to the quality of customer service. Secondly, the issue of visibility of staff through the introduction of name badges gained a certain level of support from members of the Committee.

As a follow on from the presentation, the Chair of the Committee Pdraig MacLochlainn TD will communicate certain recommendations to the Department of Social Protection.

- ▼ <http://www.flac.ie/publications/report-person-or-number-2/>