FLAC Submission to the Joint Committee on Key Issues affecting the Traveller Community:

Access to Housing and Accommodation, Including Traveller-Specific Accommodation

March 2021

About FLAC

FLAC (Free Legal Advice Centres) is a voluntary independent human rights organisation which exists to promote equal access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights. We work particularly in the areas of the protection of economic, social and cultural rights. We identify and make policy proposals on laws that impact on marginalised and disadvantaged people, with a particular focus on social welfare law, housing law, personal debt & credit law and civil legal aid.

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

Since early 2020, FLAC has operated a dedicated **Traveller Legal Service**, supported by The Community Foundation and in cooperation with a Steering Group made up of representation from all of the national Traveller organisations.

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Introduction

FLAC welcomes the opportunity to make a submission to the Joint Committee on Key Issues affecting the Traveller Community on the subject of "*Access to Housing and Accommodation, Including Traveller-Specific Accommodation*".

In 2017, FLAC was invited to be an associate partner in the JUSTROM Programme, a joint programme of the Council of Europe and the European Commission, aiming to improve the access to justice for Roma and Traveller women. Within JUSTROM, FLAC supported the running of legal clinics for Travellers and Roma until early 2018. After the completion of that programme, FLAC continued to provide legal representation to members of the Traveller Community. In July 2019, FLAC made a submission to, and appeared before, the Seanad Public Consultation Committee on Travellers; "*Towards a more equitable Ireland post-recognition*".[1]

Since early 2020, FLAC has operated a dedicated a Traveller Legal Service ("the TLS"), supported by The Community Foundation and in cooperation with a Steering Group made up of representation from all of the national Traveller organisations. The purpose of the TLS is to address and highlight the unmet legal need of the Traveller community, through legal representation and the provision of legal training and assistance to Traveller advocates.

Since its launch, the TLS has received over 60 referrals or enquiries from Travellers and Traveller advocates requesting legal assistance.[2] To date, the TLS has formally represented Travellers, either through entry into or bringing proceedings, or preparing a case and issuing pre-action correspondence, in 15 cases. While many of these cases involve consideration of multiple areas of law, the majority concern housing law issues, such as failure to provide Traveller specific accommodation, inadequate standards in Traveller specific accommodation, evictions and failure to provide emergency accommodation.[3]

[1] That submission is available at: https://www.flac.ie/publications/flac-submission-to-the-seanad-public-consultation/

[2] Unfortunately, the TLS is unable to provide representation in every case and prioritises cases most significant to the Traveller Community generally.

[3] Apart from housing law issues, the remaining TLS case files are principally concerned with discrimination in the provision of goods and services within the meaning of the Equal Status Acts 2000 – 2018.

Access to housing and Traveller-specific accommodation also emerged as the single most pressing issue for Travellers attending at JUSTROM legal clinics. Behind these figures are Traveller people and families; this submission includes a number of case studies to illustrate the nature and extent of the difficulties they encounter in seeking to access housing and vindicate their fundamental rights.

FLAC's experiences of those legal clinics and services are drawn on in this submission, as well as FLAC's expertise and experience in the area of access to justice.

FLAC is happy to meet with members of the Joint Committee or the individual members to discuss any of the issues contained in this submission or other matters relevant to our work.

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Executive Summary & Recommendations

1. Access to Justice & Traveller Accommodation

This submission addresses the theme of "*Access to Housing and Accommodation, Including Traveller-Specific Accommodation*" from an access to justice perspective. Access to Justice is a fundamental human right. It encompasses states' obligations to vindicate and protect human rights and access to fair systems of redress, effective remedies and just outcomes.

As a starting point, FLAC recommends that:

- NGOs which are representative of the Traveller Community should be given unambiguous legal standing in appropriate cases to initiate proceedings on behalf of victims of discrimination, including discrimination in access to housing.
- Traveller organisations should be adequately resourced to carry out advocacy and representation.

2. Provision of Traveller Accommodation

The *Traveller Accommodation Expert Review* (the "Expert Review") recognised that Housing (Traveller Accommodation) Act 1998 must be "overhauled". Figures published by the Department of Housing show that the number of Traveller families living on the roadside rose every year between 2011 and 2018 and remained over 500 in 2019. Figures in relation to the drawdown of funding for provision of Traveller accommodation demonstrate what the the UN Committee on the Elimination of Racial Discrimination described in 2019 as "persistent underspending".

The present model for the delivery of Traveller accommodation allows the deep prejudice that lies within most communities against the development of specific accommodation for Travellers to hamper the implementation of Traveller Accommodation Programmes.

FLAC recommends that:

- The Committee seek a commitment from the Minister for Housing, Local Government and Heritage to implement the recommendations set out in

the *Expert Review Group on Traveller Accommodation* without delay, and within a specified timeframe, through legislation and any other measures necessary.

3. Standards in Traveller-Specific Accommodation

There are no statutory minimum standards in relation to halting site accommodation, whether temporary, permanent or transient.

FLAC recommends that:

- The Committee recommend that the Minister for Housing, Local Government and Heritage immediately review the Guidelines published in 1998 in relation to Traveller Accommodation; to update guidance in relation to the design and delivery of Traveller Accommodation standards, and; to amend the Housing (Standards for Rented Houses) Regulations 2019 to include halting sites (including transient, temporary and permanent halting sites).

4. Evictions

The European Committee of Social Rights has found that a number of mechanisms which are available to local authorities to eliminate unauthorised encampments by Travellers breach Article 16 of the Revised European Social Charter. The constitutionality of such mechanisms is questionable, as are their compliance with the European Convention on Human Rights. However, all such legislation remains in place and is still being used against Traveller families, even during the Covid-19 pandemic.

FLAC recommends that:

- The Committee call on the Minister for Housing to review the legislation allowing for summary evictions without judicial oversight. The Government should bring forward reforming legislation in relation to evictions that ensures that, other than in the most exceptional of circumstances, a family home can never be interfered with in the absence of a merits based determination involving a proportionality assessment by a Court

accompanied with a requirement to offer alternative appropriate accommodation to homeless families.

- The Committee should seek the repeal of Section 19C of the Criminal Justice (Public Order) Act 1994 (the so-called “criminal trespass” legislation).
- The Committee seek a review of the frequency of the use of the eviction procedures identified by the European Committee of Social Rights as transgressing Article 16 and the establishment of a central database to record use of the relevant provisions against Travellers.
- The Committee recommend a review of the reasons for the withdrawal of legislative protections against evictions insofar as they applied to Travellers and in the interim, in circumstances where the COVID-19 pandemic is ongoing, reinstate a level of statutory protection.

5. The “Normal Residency” & ”Local Connection” Requirements and Access to Social Housing & Emergency Accommodation

A recent report by the Mercy Law Resource Centre has noted that the requirement, under regulation 5 of the Housing Assessment Regulation 2011 that a household applying for social housing support either apply to the authority for the functional area in which they normally reside, or the authority in which the household has a local connection; “disproportionately affects Traveller applicants who are seeking to access social housing”. They also note that “applicants have been denied access to emergency homelessness accommodation because they have no connection to the housing authority”.

These findings are also reflected in FLAC’s experience and FLAC recommends that:

- The Committee recommend that the Minister for Housing, Local Government and Heritage issue guidance to local authorities on the proper exercise of discretion in applying Regulation 5 of the Housing Assessment Regulation 2011 in respect of Traveller applicants.

6. Garda vetting prior to allocation of housing

The legislation dealing with Garda vetting prior to the allocation of local authority housing is vague and imprecise. FLAC has identified particular concerns regarding the practices of certain local authorities in this regard and at the nature of certain disclosures being made by An Garda Síochána, including disclosures of irrelevant information and hearsay.

Separately, there is no explicit prohibition on racial profiling in Irish law and the functions of An Garda Síochána may not be challenged as discrimination under domestic equality legislation.

FLAC recommends that:

- Section 15 of the Housing (Miscellaneous Provisions) Act 1997 should be amended to clarify the exact nature of the information which may be exchanged between local authorities and An Garda Síochána, having regard to the right to privacy and proportionality.
- At a minimum, the Minister for Housing should issue guidance to local authorities on the statutory vetting process for applicants for social housing setting out the statutory limits on that process and their obligations under the GDPR. Similar guidance should also be provided to members of An Garda Síochána about their role in vetting applicants for local authority housing.
- The Government should engage in periodic reporting outlining the monitoring of racial profiling in practice, including through the public sector duty under Section 42 of the Irish Human Rights and Equality Commission Act 2014 and in relation to any proposals to address deficits in the area. Consideration should be given to legislative measures that would allow individuals, or groups representing their interests, to make complaints through GSOC and the WRC in relation to discrimination including discriminatory profiling that would allow for such allegations to be investigated and remedied independently.

7. Equality Legislation

While discrimination in the provision of accommodation is prohibited under the provision of the Equal Status Acts 2000–2018, that legislation also exempts discrimination complaints against actions required by legislation. This creates a difficulty in challenging issues in relation to the Traveller accommodation under domestic equality legislation.

Secondly, the definition of "services" in section 2 of the Acts is broad enough to include the services provided by public bodies. However, the scope of the Acts does not explicitly extend to the performance of the functions of public bodies generally. Therefore, it is unclear to what extent the prohibition on discrimination and harassment in the Equal Status Acts applies to public authorities, including An Garda Síochána.

Both issues have been subject to criticism and calls for reform from the United Nation Committee on the Elimination of Racial Discrimination.

FLAC recommends that:

- The Committee propose an Amendment of Section 14 of the Equal Status Acts 2000 – 2018 to ensure that an effective remedy is available for discrimination that has a legislative basis.
- The prohibition on discrimination in the Equal Status Acts 2000 – 2018 should be broadened to explicitly include (with only necessary exemptions) the functions of public bodies, including An Garda Síochána.
- The Committee should seek further details from the Minister for Children, Equality, Disability, Integration and Youth in relation to the proposed review of Ireland's Equality legislation and seek to have the matters outlined above addressed by that review.

8. Legal Aid

The absence of civil legal aid before quasi-judicial tribunals represents a further barrier to Travellers seeking to challenge discrimination in the provision of accommodation under the Equal Status Acts 2000-2018. Further, legal aid is not available for "disputes concerning rights and interests in or over land", which means that there may be

difficulties in obtaining legal aid for evictions. Again, both of these issues have been subject to criticism and calls for reform from the United Nations Committee on the Elimination of Racial Discrimination.

It has emerged from FLAC's experience and engagement with the Steering Group of the Traveller Legal Service, that there may be a lack of awareness of the Civil Legal Aid Scheme amongst the Traveller community. Similarly, FLAC is concerned about the perception that legal aid is not available in housing and homelessness cases against the State and local authorities. The Civil Legal Aid Act 1995 allows for the Legal Aid Board to provide representation in such cases but this is not reflected in practice.

FLAC recommends that:

- The scope of the Civil Legal Aid Scheme should be expanded to include provision of legal aid where legal advice and representation is required in quasi-judicial tribunals and other areas currently not covered by the Civil Legal Aid Act 1995. This includes equality cases before the Workplace Relations Commission in relation to discrimination in the provision of accommodation, in the provision goods and services and in employment.
- FLAC's draft amendment to the Civil Legal Aid Act 1995 should be enacted to ensure that legal aid is available in eviction cases.
- The Committee should seek commitments from the Minister for Justice that relevant external stakeholders such as the national Traveller organisations are meaningfully consulted during any review of the Civil Legal Aid scheme, and that the issues most relevant to Travellers (referenced in the recommendations above) will be addressed by that review.
- The Legal Aid Board should be encouraged to provide information to the Traveller community in relation to the Civil Legal Aid Scheme.

9. The Public Sector Duty

Section 42 of the Irish Human Rights and Equality Act 2014, introduced the Public Sector Duty, providing one of the most important national mechanisms for mainstreaming equality and human rights for Travellers. It imposes a positive obligation on a broad range of statutory and public bodies to have regard, in performance of their functions, to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff and persons to whom it provides services. This includes Government Departments and local authorities.

FLAC believes that the comprehensive roll out of the public sector duty would have an impact on addressing the stigma, prejudice, discrimination, racism, social exclusion and identity erosion experienced by Travellers. More specifically, future initiatives in relation to the provision of Traveller accommodation should be underpinned by the Public Sector Duty. FLAC recommends that:

- The Public Sector duty should be a core consideration in the work undertaken by all Government bodies and statutory agencies, including those involved in the provision of Traveller accommodation.
- All relevant public bodies should carry out an assessment of the human rights and equality issues relevant to their functions, including an assessment of the human rights and equality issues that impact on Travellers relevant to their functions, and the policies, plans and actions being taken or proposed to be taken to address those issues.
- The Committee should recommend Government departments, agencies and statutory bodies that come within the scope of the Public Sector Duty should report annually on their work to meet their section 42 obligations, beyond just providing cultural and awareness training to their staff.

1. Access to Justice & Traveller Accommodation

Access to justice is a fundamental human right and is recognised as such under a range of regional and international instruments.[4]

While it has no single precise definition, access to justice includes knowledge of and access to the legal system as well as whatever legal services are necessary to achieve a just outcome. Access to justice also includes access to legal aid. It encompasses states' obligations to vindicate and protect human rights and access to fair systems of redress, effective remedies and just outcomes.

In the absence of access to justice, people are unable to exercise and vindicate their rights, have their voices heard, challenge discrimination, or hold decision-makers and executive power to account.[5]

In Ireland, Travellers face deeply embedded and structural discrimination, including as regards their access to housing. The passing of the Housing (Traveller Accommodation) Act 1998 signified a significant shift in Government policy towards the provision of accommodation to Travellers. The legislation was intended to address the range of accommodation needs of Travellers, from standard housing to transient halting sites, and to require a programmatic process of planning, funding and delivery by local authorities and central government on a multi-annual basis.

However, the 1998 Act also increased the controlling and punitive powers of local authorities in dealing with unofficial encampments by extending the scope of the circumstances in which a local authority could require a temporary dwelling to be moved, when placed within proximity to a halting site or other Traveller accommodation.[6] Clearly, the legislation twinned better accommodation provision with

[4] The right of access to justice is enshrined in Articles 6 and 13 of the European Convention on Human Rights (ECHR) and Article 47 of the EU Charter of Fundamental Rights which guarantee the rights to a fair trial, to an effective remedy and to legal aid to those who lack sufficient resources so far as this is necessary to ensure effective access to justice. Access to justice is also reflected in our constitutional system of justice, where access to the courts is guaranteed. Article 7 of the Racial Equality Directive obliges EU Member States to ensure that judicial and/or administrative procedures are available to victims of racial discrimination to enforce their right to equal treatment.

[5] See United Nations Development Programme website at: http://bit.ly/204OeWJl and European Union Agency for Fundamental Rights and Council of Europe (2016) Handbook on European law relating to access to justice, Luxembourg: FRA and CoE, p.16

[6] See Housing (Miscellaneous Provisions) Act, 1992 as amended by section 32, Housing (Traveller Accommodation) Act 1998.

the elimination of unofficial encampments. Now, more than twenty years, it is clear that there are major issues with both strands of this approach and serious questions about its overall efficacy. These issues, and others in relation to access to Traveller accommodation, will be addressed in this submission.

In light of the principles of access to justice set out above, this submission will also address the difficulties Travellers encounter in seeking access to effective remedies and just outcomes as regards their housing rights. Barriers to justice, including deficiencies in the equality framework and the absence of legal aid, increase vulnerability to poverty and the violation of Traveller's rights. In turn, their increased vulnerability and exclusion further hampers their ability to engage with the justice system, either directly or through a legal representative.

A UN Special Rapporteur on extreme poverty and human rights has noted that certain groups that suffer from structural discrimination and exclusion and are disproportionately represented among the poor, particularly ethnic minorities such as Travellers, encounter additional barriers to accessing justice. Research in the area of social exclusion has suggested that those who may be considered socially excluded groups within the general population are more likely to suffer justiciable problems (meaning problems for which there is a potential legal remedy within a civil and/or criminal justice framework).[7]

Unless the right of access to justice for marginalised or vulnerable communities is vindicated, the risk of social and economic exclusion, is greatly increased. Knowledge of legal rights, entitlements and services and access to legal information, advice and representation would empower Travellers to enforce their rights, challenge inequalities and discrimination and combat social exclusion.

Finally, it is relevant to note that Article 7 of the Racial Equality Directive[8] obliges EU Member States to ensure, in accordance with national law that associations, organisations or other legal entities may engage in judicial or administrative proceedings on behalf of, or in support of victims, with the victim's permission. The role of NGOs is particularly valuable in facilitating the enforcement of human rights

[7] A Buck, NJ Balmer and P Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice problems among Vulnerable Groups' (2005) 39 Journal of Social Policy and Administration, 302- 320.

[8] Directive 2000/43/EC.

and anti-discrimination law. However, their ability to provide assistance or engage in litigation is dependent upon expertise and resources. The EU's Fundamental Rights Agency has stated that one of the ways by which the existing frameworks to combat discrimination on the grounds of racial and ethnic origin could be strengthened is to widen access to complaints mechanisms, including by increasing funding for voluntary organisations in a position to assist victims.[9]

FLAC recommends that:

- NGOs which are representative of the Traveller Community should be given unambiguous legal standing in appropriate cases to initiate proceedings on behalf of victims of discrimination, including discrimination in access to housing.
- Traveller organisations should be adequately resourced to carry out advocacy and representation.

[9] European Union Agency for Fundamental Rights (2012) *The Racial Equality Directive: Application and Challenges*, Luxembourg: FRA, p.25.

2. Provision of Traveller Accommodation

The *Traveller Accommodation Expert Review* (the "Expert Review") recognises that Housing (Traveller Accommodation) Act 1998 must be "overhauled"; its failings having been evidenced by an "extremely high rate of Traveller homelessness", failures to meet the scale of accommodation needed by Travellers, and an increase in those living in "overcrowded conditions".[10]

The most recent statistics published by the Department of Housing indicate that the number of families living on unauthorised sites rose every year between 2011 and 2018. Although those figures declined somewhat in 2019, the total number of roadside families remained over 500.[11]

These figures relate to an overall undersupply of housing nationally, and particularly social housing. However, they are also linked to the failure of local authorities to provide adequate accommodation to Travellers, including temporary halting sites, since the passing of the 1998 Act.

The Expert Review identifies "local authorities' failure to draw down the funding available for Traveller-specific accommodation provision made available to them as "a key barrier to delivering Traveller-specific social housing".[12] In December 2019, the UN Committee on the Elimination of Racial Discrimination (UNCERD) highlighted its concern at "the persistent underspending of available budgets by local authorities on culturally appropriate housing for Travellers".[13]

While central funding has increased, this has not necessarily met with an increase in drawdown. Coupled with the lasting effects of capital cuts during the period from 2008

[10] Department of Housing, Planning and Local Government (2019), *Traveller Accommodation Expert Review*. Available at: https://rebuildingireland.ie/news/minister-english-publishes-the-report-of-the-expert-review-group-on-traveller-accommodation/

[11] See: https://www.gov.ie/en/publication/6f4e1-2019-estimate-all-categories-of-traveller-accomodation/

[12] *Traveller Accommodation Expert Review* at page 48.

[13] UN Committee on the Elimination of Racial Discrimination (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 27.

to 2013[14], this has resulted in an acute shortage of accommodation available to Travellers and a consequent increase in homelessness.

The allocation and drawdown figures also indicate that drawdown rates vary significantly between local authorities. The Expert Review notes with concern that "drawdown rates were particularly low in some of the local authorities where the Traveller population has expanded most in the 2011 to 2016 intercensal period" [15].[16]

The Expert Review cites independent research commissioned by the Housing Agency in 2017 which set out the challenges facing local authorities in relation to the provision of accommodation to Travellers.[17] Notably, the primary difficulty was identified as emanating from the local authorities themselves, coupled with hostility from the settled community to the development of Traveller accommodation. In that regard, the report stated:

> "Through the findings of the consultation conducted in this research, it was identified that the key challenges facing local authorities in implementing their TAPs are:
>
> - Planning issues, specifically in relation to opposition to planning applications by settled residents and Elected Representatives, as identified by Traveller and local authority representatives;

[14] In March 2016, the UN Committee on the Right of the Child criticised "drastic reductions" in the capital budget for the provision of Traveller accommodation over the previous ten-year period.
See: United Nations Committee on the Rights of the Child*, Concluding observations on the combined third and fourth periodic reports of Ireland*, Geneva: OHCHR, para.69(c).
See also: Pavee Point (2013), *Travelling with Austerity*, at pp 24 to 26.

[15] *Traveller Accommodation Expert Review* at page 49.

[16] In response to a Parliamentary Question in July 2020, the Minister for Housing stated that "[his] Department is no longer allocating specific budgets to individual local authorities from the… funding available overall" in order to "facilitate ease of access to such funding". However, there is nothing to suggest that those allocation figures were ever binding, either in law or in practice.
See PQ [16553/20]: https://www.oireachtas.ie/en/debates/question/2020-07-21/283/

[17] RSM & The Housing Agency (2017), *Review of the Funding for Traveller-Specific Accommodation and the Implementation of Traveller Accommodation Programmes*.

- Providing an effective assessment of need process, as the consultation highlighted that the current process underestimates need; and
- Delivery of effective monitoring and reporting processes.
- Consultees highlighted that the planning process is the most significant issue limiting the delivery of capital output under TAPs. It was reported by Traveller representatives and local authority representatives that objections from local "settled" residents and political pressure exerted by Elected Representatives tend to delay the planning process. It was suggested that this can have a direct impact on the achievement of targets, as developments may face extensive delays, hence, the opportunity to utilise funding is lost."

It is a serious flaw in the 1998 Act that elected representatives may adopt a Traveller Accommodation Programme which the local authority is legally bound to implement, but then block the delivery of the objectives of the Programme though the planning process.[18] The above-referenced research indicates that local authorities may ignore their legal obligations in this manner and, indeed, largely do so with impunity. The present model for the delivery of Traveller accommodation allows the deep prejudice that lies within most communities against the development of specific accommodation for Travellers to hamper the implementation of Traveller Accommodation Programmes.

The Expert Review sets out detailed recommendations in relation to the delivery of Traveller Accommodation.

[18] Section 16 of the Housing (Traveller Accommodation) Act 1998 provides: "A housing authority shall, in securing the implementation of an accommodation programme, or an amendment to or replacement of an accommodation programme, take any reasonable steps as are necessary for the purpose of such implementation."

Case Study: Provision of Traveller-Specific Accommodation

In 2019, FLAC acted for three Traveller families living on a severely overcrowded halting site, in mobile homes that had long outlived their useful life span, and with limited access to services. The case concerned the failure of the Local Authority to complete a planning process to build proposed houses for the three families on a site adjacent to the scheme. The Local Authority received planning objections from local residents which made reference to a written agreement between the Local Authority and a Residents Association from many years previously when the halting site was originally developed and purportedly agreeing not to expand the halting site. It was argued that reliance on the purported agreement was discriminatory and in conflict with the statutory duty of the local authority. These legal cases settled after the Local Authority agreed to restart the planning process and not to be restricted or fettered by the purported agreement with the resident's association.

A set of 3 related judicial review proceedings were commenced late in 2019 when it became apparent that the 3 houses intended to be developed for FLAC's clients and which had been included in the Draft Traveller Accommodation Programme had subsequently been removed without notice in the Traveller Accommodation Programme as adopted by the local authority. It was asserted that this deliberate removal of the housing scheme from the TAP undermined the legal obligation on the Council and the elected members to proceed with the proposed development. Those proceedings were subsequently settled when the local authority conceded that it was going ahead with the development.

FLAC recommends that:

- The Committee seek a commitment from the Minister for Housing, Local Government and Heritage to implement the recommendations set out in the *Expert Review Group on Traveller Accommodation* without delay, and within a specified timeframe, through legislation and any other measures necessary.

3. Standards in Traveller Specific Accommodation

In addition to the flaws in the legislation that frustrate the delivery of Traveller accommodation, even where such accommodation is delivered there are no statutory minimum standards in relation to halting site accommodation, whether temporary, permanent or transient. While the Minister of the Environment (as he then was) introduced Guidelines in relation to the design and specification of Traveller Accommodation in tandem with the passing of the Housing (Traveller Accommodation) Act 1998, these guidelines have never been updated and have never been placed on a statutory footing.

While the Guidelines are no doubt useful in informing local authorities in relation to the minimum requirements for sites in order to qualify for capital funding, they are of no benefit in ensuring that standards on halting sites meet a minimum standard for residents, or indeed in relation to health and safety, on an ongoing basis. It is notable that the fire that tragically claimed the lives of ten people at a temporary halting site in Carrickmines, Dublin, occurred in a context where the relevant Council had no specific legal standards to meet in relation to halting sites. In contrast, there are detailed regulations in place in relation to rented accommodation in housing, and such regulations extend, with relevant modification, to social housing provided by local authorities.[19] The inadequacy of conditions on a significant proportion of halting sites was also a basis on which the European Committee of Social Rights found Ireland in breach of Article 16 (the right of the family to social, legal and economic protection) of the Revised European Social Charter[20] (a collective complaint which is discussed in further detail below). In its Findings on a follow-up to its decision in the collective complaint, published in March 2021, the European Committee of Social Rights noted that Ireland remained in contravention of Article 16 of the Revised Social Charter (the right of the family to social, legal and economic protection).

[19] Housing (Standards for Rented Houses) Regulations 2019. While the standards for rented accommodation are elaborated in some detail, it is questionable how effective they are in relation to local authority housing, when it is the local authority that is responsible for inspection and enforcement, and this is also a matter that should be addressed.

[20] *ERRC v Ireland* Complaint 100/2013. Decision on the Merits published 16 May 2016. See: https://www.coe.int/en/web/european-social-charter/processed-complaints/-/asset_publisher/5GEFkJmH2bYG/content/no-100-2013-european-roma-rights-centre-errc-v-ireland?inheritRedirect=false

Case Studies: Standards in Traveller Specific Accommodation

In 2019, FLAC made representations to a Local Authority on behalf of a Traveller family in relation to the condition of the mobile home which the family were renting from the Local Authority. The condition of the mobile home was such that the family's health was suffering and they had been forced to leave their home and reside with relatives on numerous occasions. Following positive engagement from the Local Authority, the mobile home was inspected and the family were provided with a suitable replacement.

In 2020, FLAC entered into pre-action correspondence with a Local Authority on behalf of Traveller families whose mobile homes, which were rented from the Local Authority, and the site on which they were kept, were in an uninhabitable state. FLAC's clients were able to provide medical letters linking the state of their mobile homes, which were damp and mould ridden, to detrimental health consequences. The site on which the mobile homes were located was also subject to frequent rodent infestation. FLAC's correspondence challenged the Local Authority's failure, among other matters, to drawdown its budget allocation for Traveller specific accommodation. These cases are ongoing. However, against a backdrop of legislative neglect in relation to the provision of mobile homes and caravans, and in relation to the standards to be maintained, the remedy in such cases is far from clear.

FLAC recommends that:

- The Committee recommend that the Minister for Housing, Local Government and Heritage immediately review the Guidelines published in 1998 in relation to Traveller Accommodation; to update guidance in relation to the design and delivery of Traveller Accommodation standards, and; to amend the Housing (Standards for Rented Houses) Regulations 2019 to include halting sites (including transient, temporary and permanent halting sites).

4. Evictions

The extensive powers available to local authorities and the State, including An Garda Síochána, to forcibly evict Travellers should require a very high level of justification to be legally defensible. This is so because the forcible removal of a temporary dwelling may interfere with a number of constitutionally protected rights, such as the inviolability of the dwelling, the right to fair procedures, the right to privacy and the right to education.

The collective complaint submitted by the ERRC against Ireland listed a number of mechanisms that are available to local authorities, either directly or indirectly, to eliminate unauthorised encampments by Travellers, by essentially allowing the forcible removal of temporary dwellings, backed up by criminal sanctions for non-cooperation.

Those provisions are as follows:

- Section 19C, Criminal Justice (Public Order) Act 1994;
- Section 10 of the Housing (Miscellaneous Provisions) Act 1992;
- The Roads Act 1993;
- Planning and Development Act 2000, and
- Local Government (Sanitary Services) Act 1948

We note each of these provisions (aside from the Planning and Development Act 2000) all have common features in terms of coercive enforcement on short notice without any form of judicial review or sanction resulting in forced evictions and sometimes seizure of the family home. There is no merits based hearing in relation to any evictions under the above legislation. Seeking urgent injunctive relief in the High Court to stop an eviction is a completely illusory safeguard in the majority of cases.

Although none of this legislation has been determined to be unconstitutional, this of course does not mean that the legislation is immune from such challenge. Even if the State can put forward a rationale for the various legislative measures, it is still questionable whether the rights of Travellers, and the circumstances of homeless families, have been taken into account in the legislation such that it could be shown to impair the constitutional rights concerned to the least degree possible, or be a

proportionate interference with those rights in light of the objective sought to be achieved.

The European Committee of Social Rights found a breach of Article 16 of the Revised European Social Charter in relation to section 10 of the Housing (Miscellaneous Provisions) Act 1992, and also section 19C, Criminal Justice (Public Order) Act 1994. This finding was based on the lack of safeguards incorporated into the legislation, including an absence of legal aid, the constrained time limits for compliance with the requirements of the legislation and the lack of any requirement to engage in prior consultation before the eviction takes place. However, to date, all this legislation remains in place, and as noted above, is still being used against Traveller families.

The European Committee of Social Rights published findings on its follow-up to its decision in the collective complaint in March 2021 which stated, in relation to the eviction procedures scrutinised, that:

> "The legislation permitting evictions fails to provide for consultation with those affected and also does not ensure reasonable notice of and information on the eviction. Nor does all the legislation require the provision of alternative accommodation or provide for adequate legal remedies. Moreover, as regards legal remedies, there is no legal aid for those threatened with eviction."

The Committee requested that the State provides information on the adoption and implementation of all the measures envisaged before its next report. In addition to the European Committee of Social Rights, the European Court of Human Rights has considered the situation of Travellers and evictions. These cases establish some useful legal principles as to when evictions from an unauthorised site will be in compliance with the Convention or not.[21] For example, the case of *Winterstein v France*[22] concerned eviction proceedings through local courts against a large number of Traveller families who had been camped on the relevant land for a considerable number of years. In that matter, the Court conducted applied a proportionality test and

[21] See also *Chapman v The United Kingdom*, Grand Chamber, 18 January 2001, *Connors v The United Kingdom*, Judgment, 27 May 2004 and *Yardonova & Ors v Bulgaria*, Judgment, 17 October 2013.

[22] *Winterstein v France*, Chamber Judgment, 17 October 2013. The judgment is only available in French, but extracts from the judgment have been published in English at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-127539%22]}

found that there had been a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

In the recent European Court of Human Rights decision of *Hirtu v France*[23] in which Roma families were forcibly evicted from land they had occupied for six months, the Court found that the absence of consideration by the national authorities as to the applicants' underprivileged social status and attendant repercussions of the eviction amounted to a breach of their Article 8 (right to respect for their private and family life) and Article 13 (right to an effective remedy) rights. In particular, the Court noted the short period of time between the eviction order and its implementation, both of which occurred via an administrative procedure, as depriving the applicants of an effective opportunity to seek judicial relief. In FLAC's submission, the comments of the European Court of Human Rights in *Hirtu* in relation to the use of truncated eviction procedures which do not include the opportunity for applicants to raise proportionality arguments apply to a number of the eviction procedures used by local authorities in Ireland. Most notably, section 19C, Criminal Justice (Public Order) Act 1994; section 10 of the Housing (Miscellaneous Provisions) Act 1992; and section 69 of the Roads Act 1993. Accordingly, in FLAC's view, these provisions should only be used in accordance with the principles set out in *Hirtu*.

In March 2016, the UN Committee on the Right of the Child called on the State to:

> "Respect the right to the cultural practice of nomadism, including by repealing/amending relevant legislation to ensure that this cultural practice is not criminalised; in doing so, the State party should also ensure adequate safeguards against forced eviction and access to timely recourse and commensurate reparation for victims of such forced evictions."[24]

[23] *Hirtu and others v. France* (no. 24720/13). The judgment is only available in French, but a summary is available in English at: https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-202442%22]}

[24] United Nations Committee on the Rights of the Child*, Concluding observations on the combined third and fourth periodic reports of Ireland*, Geneva: OHCHR, para.70(d).

Evictions & the COVID-19 Pandemic

A number of concerns arise out of the State's treatment of Travellers during the COVID-19 pandemic which, at the time of writing, is ongoing. The COVID-19 pandemic necessitated extraordinary legislative intervention that severely curtailed people's liberty in an effort to limit the spread of the coronavirus. As part of the suite of legislative measures that were introduced, Part 2 of the Emergency Measures in the Public Interest (Covid-19) Act 2020 (the 2020 Act) provided for a ban on evictions for the duration of the "emergency period" as defined by the 2020 Act.

The protection against evictions in Part 2 of the 2020 Act applied to Travellers following the late inclusion in the 2020 Act of section 5(7)(c) which stated, in its relevant part, that:

> "all Travellers who are currently resident in any location should not during this crisis be evicted from that location except where movement is required to ameliorate hardship and provide protection and subject to consultation with the Travellers involved."

While section 5(7)(c) of the 2020 Act should be welcomed as an effort to provide safeguards to Travellers, it suffered from a number of interpretative ambiguities which, in FLAC's experience (as detailed in the case studies below), allowed local authorities to proceed with evictions against Travellers.[25]

The position of Travellers vis-à-vis evictions was rendered even more precarious by the deletion of section 5(7)(c) of the 2020 Act by the Residential Tenancies and Valuation Act 2020, which was commenced on 1 August 2020. This served to remove any statutory prohibition on evicting Travellers while maintaining such a prohibition in respect of formal tenancies.

Considering that the justification for prohibiting evictions of any type was, at least in part, to limit the movement of individuals and thereby limit the spread of COVID-19, it is not clear why the only statutory protection afforded to Travellers was removed while protections for other tenants were maintained.

[25] For a full analysis of the ambiguities in section 5(7)(c) of the 2020 Act see section 4 of FLAC's Submission to the Oireachtas Special Committee on COVID-19. Available at: https://www.flac.ie/assets/files/pdf/summary_of_flac_submission_to_covid19_committee.pdf

Following the deletion of section 5(7)(c) of the 2020 Act, the Department of Housing, Local Government and Heritage issued circulars 34/2020 and 5/2021. The Circulars directed that:

> "Where ever possible, local authorities should not move families on from where they are residing. If there is no alternative to moving the family, local authorities should where possible engage with the family to try to find a solution in these difficult cases."

Similar to the situation that pertained during the currency of the 2020 Act, it was FLAC's experience that in certain cases local authorities did not follow the directions of the Department of Housing, Local Government and Heritage and continued, where deemed appropriate, to invoke eviction procedures against Travellers.

As previously noted, the majority of the eviction procedures used by relevant authorities have been criticised specifically by the European Committee of Social Rights and similar provisions have been found to contravene the European Convention on Human Rights.

It is therefore FLAC's recommendation that in addition to addressing the issues with eviction procedures which arise in a non-emergency context, that the Committee recommend a review of the reasons for the withdrawal of legislative protections against evictions insofar as they applied to Travellers. While the COVID-19 pandemic is ongoing, a level of statutory protection should be reinstated.

Case Studies: Evictions

In the last five years, FLAC has dealt with the legal consequences of the use of some of this legislation. In all those cases, unless FLAC acted on behalf of the families concerned, the evictions would have gone ahead unimpeded and, unfortunately, in one case it did.

In three cases concerning the service of a section 10 Notice, the local authority agreed not to enforce same in light of representations made concerning technical compliance with the legislation and the homeless situation of the families. In another case, an interim injunction was granted by the High Court to stop the eviction, and the case was settled in favour of the clients thereafter.

In cases concerning the Planning and Development Act 2000, a Council agreed not to enforce the Notice served as the procedure followed was flawed in one case. In another, the local authority agreed not to pursue enforcement when representations were made by FLAC.

In one file, where the so-called "criminal trespass" legislation was engaged, despite extensive submissions made to the relevant local authority and An Garda Síochána the eviction went ahead without adequate time to bring proceedings in the High Court to seek injunctive relief. The family concerned were shortly thereafter re-housed by the local authority, but not without the family having to go through the trauma of the forced eviction at the hands of An Garda Síochána on foot of a complaint from the local authority.

In July 2020, FLAC was contacted by a Traveller family with 4 young children who had been on the housing list for 13 years resident on an unauthorised site for in and around 4 months. The local authority issued a notice pursuant to section 10 of the Housing (Miscellaneous Provisions) Act 1992 requiring the family to vacate the site in 48 hours or risk seizure of their caravan. Correspondence was prepared noting the prohibition on evictions then in force pursuant to section 5(7)(c) of the 2020 Act. By responding letter, the Council denied that the 2020 Act had application to the situation. However, after receiving the notice, the family moved on to another unauthorised site.

FLAC recommends that:

- The Committee call on the Minister for Housing and the Minister for Justice to review the above referenced legislation allowing for summary evictions without judicial oversight. The Government should bring forward reforming legislation in relation to evictions that ensures that, other than in the most exceptional of circumstances, a family home can never be interfered with in the absence of a merits based determination involving a proportionality assessment by a Court accompanied with a requirement to offer alternative appropriate accommodation to homeless families.

- The Committee should seek the repeal of Section 19C of the Criminal Justice (Public Order) Act 1994 (the so-called “criminal trespass” legislation).
- The Committee seek a review of the frequency of the use of the eviction procedures identified by the European Committee of Social Rights as transgressing Article 16 and the establishment of a central database to record use of the relevant provisions against Travellers.
- The Committee recommend a review of the reasons for the withdrawal of legislative protections against evictions insofar as they applied to Travellers and in the interim, in circumstances where the COVID-19 pandemic is ongoing, reinstate a level of statutory protection.

5. The "Normal Residency"/"Local Connection" Requirements and Access to Social Housing & Emergency Accommodation

Regulation 5 of the Housing Assessment Regulation 2011 provides that a household applying for social housing support shall either apply to the authority for the functional area in which the household normally resides, the authority in which the household has a local connection, or an authority that agrees at its discretion to assess the household's application. Of crucial relevance here, is the fact that local authorities have discretion to accept an application.

A recent report by the Mercy Law Resource Centre has noted that this requirement "disproportionately affects Traveller applicants who are seeking to access social housing, particularly those residing in caravans who may be criminalised under trespass legislation".[26] In *R (on the application of Ward & Ors) v London Borough of Hillingdon*[27], the UK Court of Appeal held that a ten-year local connection requirement in a council's allocation scheme indirectly discriminated against Travellers.

The Mercy Law Resource Centre report also noted that:

> "[Applicants] have been denied access to emergency homelessness accommodation because they have no connection to the housing authority. This occurs notwithstanding the fact that the legislation relating to emergency accommodation has no comparable statutory local connection or residency requirements or test."

The Minister for Housing has recently written to local authorities to clarify that the "local connection" rule does not apply to the provision of emergency accommodation.[28]

[26] Mercy Law Resource Centre (2021), *Minority Groups and Housing Services: Barriers to Access*, pp. 5-8. Available at: https://mercylaw.ie/wp-content/uploads/2021/03/ML_2020_Minority-Groups-and-Housing-Services_Report_D6.pdf

[27] R (on the application of Ward & Ors) v London Borough of Hillingdon [2019] EWCA Civ 692.

[28] See: https://extra.ie/2020/12/09/business/irish/dublin-simon-community-local-connection

Case Study: The "Normal Residency" Requirement and Access to Emergency Accommodation

In 2020, the FLAC Traveller Legal Service was contacted by an advocate working on behalf of a Traveller family (a single mother and three children) to secure emergency accommodation. The family were facing homelessness due to a court order requiring them to vacate the site where they had been living in a caravan for over two years. The court order had been sought by the local authority for reasons of, amongst others, fire safety. However, the same local authority was refusing to provide emergency accommodation to the family and insisted that they would need to return to the functional area of a separate local authority, where they had previously received social housing support, in order to access emergency accommodation. The local authority's position appeared to be premised on the idea that some form of local connection is required to access emergency accommodation under the Housing Act 1988.

FLAC wrote to the local authority and noted that neither the assessment criteria in section 2 nor the provisions regarding the homeless accommodation in section 10 of the 1988 Act make reference to the need for a local connection or specify that emergency accommodation may only be sought from a local authority which has previously provided social housing support. That correspondence called on the local authority to assess the family as homeless and to provide them with emergency accommodation, failing which judicial review proceedings would be commenced. On foot of this, the local authority dropped its requirement that the Traveller family should return to the county where they had previously received social housing support and agreed to provide them with emergency accommodation.

FLAC recommends that:

- The Committee recommend that the Minister for Housing, Local Government and Heritage issue guidance to local authorities on the proper exercise of discretion in applying Regulation 5 of the Housing Assessment Regulation 2011 in respect of Traveller applicants.

6. Garda vetting prior to allocation of housing

Section 14 of the Housing (Miscellaneous Provisions) Act 1997 allows a local authority to refuse or defer an allocation of local authority housing or halting bays where the local authority considers that a member of the household is engaged in anti-social behaviour or that the allocation is not in the interests of good estate management. Section 15 of the same Act makes provision for the exchange of information between local authorities and a number of specified bodies including An Garda Síochána in relation to anti-social behaviour in the context of the allocation of social housing.

A concern that FLAC has identified is the vague and imprecise nature of the legislation dealing with Garda vetting prior to the allocation of local authority housing and the nature of certain disclosures being made by An Garda Síochána itself. There are no specific regulations made under either section 14 or 15 to define further the information that is relevant or to indicate what constitutes "good estate management". The two case studies below are just two of a number of files where the issue of information exchange between An Garda Síochána and local authorities appears to have strayed beyond the purpose of the statutory regime. Such instances also raise concerns that information is potentially being shared between An Garda Síochána and local authorities in breach of the General Data Protection Regulation.

FLAC notes the lack of legislation prohibiting racial profiling by An Garda Síochána and other law enforcement officers. The UN Committee on the Elimination of Racial Discrimination has recommended the adoption of legislation preventing racial profiling. As will be discussed further in Part 7 below, the functions of the Gardaí are largely excluded from the prohibition of discrimination in the Equal Status legislation.

FLAC notes that the Code of Ethics for An Garda Síochána contains a number of commitments in relation to equality, respect and opposing and challenging behaviour or language that demonstrates discrimination or disrespect.[29] However, FLAC is concerned by institutional discrimination against Travellers within the scope of some Garda functions.

[29] Policing Authority (2017) Code of Ethics for the Garda Síochána (available at http://www.policingauthority.ie/website/PA/PolicingAuthorityWeb.nsf/page/Publications-en). The Commission engaged with the Policing Authority on the proposed Code of Ethics during its consultation process.

Case Studies: Garda vetting prior to allocation of housing

A case taken by FLAC in 2018 concerned a judicial review of Council's refusal to assess a family as homeless. On foot of a Freedom of Information request it emerged that An Garda Síochána was providing extensive information to the Council in relation to the family. Most of the stated information was inaccurate and largely based on hearsay, and went far outside the particular knowledge of the Garda members concerned. The filing and contents of an Affidavit by An Garda Síochána on behalf of the Council in the court proceedings in support of the Council's position indicated that they lacked objectivity in how they engaged in the dispute between the client and the Council. The Affidavit contained information in relation to parking offences and locations where the clients were picked up by traffic cameras as they were driving, which was not relevant in relation to whether the clients were homeless or not, and went outside the purpose for which the data was collected in the first place. The case ultimately settled with the family being assessed as homeless by the local authority.

Another case concerned a Traveller woman with a number of children who became homeless. The local authority agreed to allocate her a particular house. Local residents became aware of the allocation and went to An Garda Síochána stating they had concerns about the family as they had a bad reputation. The woman concerned had a common surname among Traveller families but was not part of the family with the stated "bad reputation". Local Gardaí then contacted the Council by email to express concern regarding the allocation. The offer of housing to her was withdrawn without explanation. The contact between An Garda Síochána and the local authority only emerged on foot of an FOI request, and in the course of adjudicating on a subsequent complaint. The email contained significant hearsay in relation to the family concerned and passed through many email accounts within An Garda Síochána and the local authority before causing what appeared to be a wholly unjustified denial of access to housing and considerable hardship to the woman and her children. This exchange was without any statutory basis as the information requested by the local authority pursuant to section 15 of the Housing Act 1997 indicated that the woman concerned had no history of criminality or anti-social behavior

FLAC recommends that:

- Section 15 of the Housing (Miscellaneous Provisions) Act 1997 should be amended to clarify the exact nature of the information which may be exchanged between local authorities and An Garda Síochána, having regard to the right to privacy and proportionality.
- At a minimum, the Minister for Housing should issue guidance to local authorities on the statutory vetting process for applicants for social housing setting out the statutory limits on that process and their obligations under the GDPR. Similar guidance should also be provided to members of An Garda Síochána about their role in vetting applicants for local authority housing.
- The Government should engage in periodic reporting outlining the monitoring of racial profiling in practice, including through the public sector duty under Section 42 of the Irish Human Rights and Equality Commission Act 2014 and in relation to any proposals to address deficits in the area. Consideration should be given to legislative measures that would allow individuals, or groups representing their interests, to make complaints through GSOC and the WRC in relation to discrimination including discriminatory profiling that would allow for such allegations to be investigated and remedied independently.

7. Equality Legislation

The Equal Status Acts 2000–2018 include a prohibition of discrimination against Travellers in the provision of accommodation.[30] However, this legal protection is subject to two significant limitations. Firstly, Section 14 of the Equal Status Acts exempts legal actions against legislative provisions. In practical terms, this means that any action that is required on foot of legislation which discriminates against Travellers, or has a disproportionately negative impact on Travellers, for example the Criminal Trespass legislation falls outside the scope of the Equal Status Acts and cannot be challenged under domestic equality legislation.

Similarly, the recent *Minority Groups and Housing Services: Barriers to Access* report by Mercy Law Resource Centre noted that, due to this limitation on the scope of the Equal Status Acts, "it does not appear that [the Acts provide] a remedy to applicants for social housing support who, because of their ethnic origin or membership of the Traveller community are less likely to meet the local connection test". In 2017, the UN Committee on the Elimination of all forms of Discrimination against Women expressed concern that section 14 of the Equal Status Acts 2000- 2018 precludes the use of the equality framework to challenge other discriminatory laws. Thereafter, the Committee recommended that Ireland amend section 14 of the Equal Status Acts to ensure that an effective remedy is available for discrimination that has a legislative basis.[31]

Secondly, the definition of "services" in section 2 of the Equal Status Acts is broad enough to include the services provided by public bodies. However, the scope of the Acts does not extend to the performance of the functions of public bodies generally. Therefore, it is unclear to what extent the Equal Status Acts apply to public authorities, like An Garda Síochána, performing public functions which may not come within the definition of "services" but which may nonetheless have a great impact on lives, including the lives of Travellers.[32]

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[30] The Equal Status Acts 2000-2018 prohibit discrimination in the provision of goods and services, accommodation and education on nine grounds. The Employment Equality Acts 1998-2015 prohibit discrimination on the same grounds in employment.

[31] UN Committee on the Elimination of all forms of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Ireland. Geneva: OHCHR, para.12-13.

[32] E. Barry (2015) 'Non-Discrimination and equality' in Making Rights Real: A Children's Rights Audit of Irish Law, Dublin: Children's Rights Alliance and Law Centre for Children and Young People, pp.20-21.

Traveller women are exposed to multiple and intersectional forms of discrimination on grounds of gender and ethnicity and can be subjected to various forms of violence against women and discrimination.[33] However, Irish equality legislation does not explicitly prohibit multiple or intersectional discrimination.

In 2019, the UN Committee on the Elimination of Racial Discrimination recommended that Ireland review its equality legislation with a view to: "providing for explicit prohibition of multiple or inter-sectional discrimination"; "explicitly including the functions of public authorities within the definition of the 'services' in Section 5 of the Equal Status Acts"; and, "ensuring that an effective remedy is provided for discrimination that has a legislative basis".[34] UNCERD also expressed concern at the unavailability of legal aid in equality cases before the Workplace Relations Commission and recommended that the scope of the Legal Aid Board should be extended to address this (this is discussed further in Part 8 below).

The matters addressed already in this submission speak to the influence of societal prejudice in creating, exacerbating and perpetuating issues in relation to Traveller accommodation. The implementation of the UNCERD recommendations would better empower Travellers to challenge discrimination in the provision of accommodation, but also in the provision goods and services and in employment.

In December 2020, the Minister for Children, Equality, Disability, Integration and Youth, committed to a review of Ireland's equality legislation during his tenure but, as yet, no details as to the scope or format of this review are known.

[33] Research published by the ESRI and IHREC showed that Travellers report very high rates of discrimination in seeking work, where they are ten times more likely than White Irish to experience discrimination, and extremely high rates of discrimination in private services, where they were over 22 times more likely to report discrimination, particularly in shops, pubs and restaurants.
See: Frances McGinnity, Raffaele Grotti, Oona Kenny and Helen Russell, *Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules* (Dublin: IHREC and ESRI, 2017).

[34] UN Committee on the Elimination of Racial Discrimination (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR, para. 12.

FLAC recommends that:

- The Committee propose an Amendment of Section 14 of the Equal Status Acts 2000 – 2018 to ensure that an effective remedy is available for discrimination that has a legislative basis.
- The prohibition on discrimination in the Equal Status Acts 2000 – 2018 should be broadened to explicitly include (with only necessary exemptions) the functions of public bodies, including An Garda Síochána.
- The Committee should seek further details from the Minister for Children, Equality, Disability, Integration and Youth in relation to the proposed review of Ireland's Equality legislation and seek to have the matters outlined above addressed by that review.

8. Legal Aid

The absence of civil legal aid before quasi-judicial tribunals represents a further barrier to Travellers seeking to challenge discrimination in the provision of accommodation under the Equal Status Acts 2000-2018. The Legal Aid Board is precluded by law from providing representation before the Workplace Relations Commission which hears discrimination complaints.

Further, legal aid is not available for "disputes concerning rights and interests in or over land", which means that there may be difficulties in obtaining legal aid for evictions.[35] The Legal Aid Board takes the general view that eviction proceedings constitute "a dispute concerning rights or interests over land" and are therefore excluded from the remit of the civil legal aid scheme. While there is an extremely limited exception to this rule[36], the exclusion of this area of law means Travellers encounter difficulties accessing civil legal aid for forced evictions.

Another barrier faced by Travellers seeking access to the civil legal aid scheme is that the time frames under the legislation are not long enough to allow those facing eviction to seek legal advice or representation from the Legal Aid Board. Under Section 10 of the Housing (Miscellaneous Provisions) Act 1992 as amended, if a "temporary dwelling" such as a caravan is situated on public land without permission, the owner may receive a notice giving them 24 hours to move it, otherwise the local authority may seize it and either move it or impound it. Given the long waiting times which exist in most Law Centres, it is not possible for Travellers facing imminent eviction to access a consultation with a Legal Aid Board solicitor, or indeed any solicitor, within 24 hours, even if the matter is prioritised.[37]

FLAC has drafted an amendment to the Civil Legal Aid Act, which if enacted would ensure that legal aid would be available in eviction cases. This draft amendment was

[35] Section 28(9)(a)(ii) of the Civil Legal Aid Act 1995.

[36] Legal aid may be granted where a subject matter of the dispute is the applicant's home (or what would be the applicant's home but for the dispute) and the Board considers that the applicant suffers from "an infirmity of mind or body due to old age or to other circumstances", or may have been subjected to duress, undue influence or fraud in the matter, and that a refusal to grant legal aid would cause hardship to the applicant. See Section 28(9)(c)(iii) of the Civil Legal Aid Act 1995.

[37] See Legal Aid Board Information re "Law centre waiting times and other statistical information": https://www.legalaidboard.ie/en/our-services/legal-aid-services/waiting-times/

tabled as an amendment to the Land and Conveyancing Law Reform Amendment Bill 2019 but that amendment was not accepted. The proposed amendment is included as an appendix to this submission.

A similar matter of concern is the perception that civil legal aid is not available in cases concerning housing and homelessness against the State and local authorities. The difficulty created by the lack of legal aid in cases "disputes concerning rights and interests in or over land" does not arise in this context, nor does any other statutory barrier to the availability of legal aid. However, this is not reflected in the practice of the Legal Aid Board.[38]

In 2019, the UN Committee on the Elimination of Racial Discrimination expressed its "concern about the lack of legal aid provided for appeals concerning social welfare, housing and eviction, which has a significant adverse impact on Travellers and other ethnic minority groups to claim their rights". The Committee recommended that Ireland "extend the scope of the Legal Aid Board to the areas of law that are particularly relevant to Traveller and other ethnic minority groups, including by designating the Social Welfare Appeals Office and Workplace Relations Commission". [39]

An "Action Plan" published by the Department of Justice in February 2021 commits the Department to a review of the civil legal aid scheme in the third quarter of 2021 for the purpose of bringing forward "proposals for reform".[40]

Finally, it has emerged from FLAC's experience and engagement with the Steering Group of the Traveller Legal Service, that there may be a lack of awareness of the Civil Legal Aid Scheme amongst the Traveller community. Research conducted by the Fundamental Rights Agency across the European Union has highlighted that awareness of the national legislative and procedural framework giving effect to the

[38] While its statutory remit is fairly broad, the vast majority of advice and representation relates to family law. In 2019, 74% of cases handled by the Legal Aid Board related to family law, 14% to International Protection, 4% to childcare and only 8% to "other civil matters".
See: Legal Aid Board (2019), Annual Report 2019. Available at: https://www.legalaidboard.ie/en/about-the-board/press-publications/annual-reports/legal-aid-board-annual-report-2019-pdf-version.pdf

[39] UN Committee on the Elimination of Racial Discrimination (2019) Concluding observations on the combined fifth to ninth reports of Ireland. Geneva: OHCHR, para. 43 & 44.

[40] Department of Justice (2021), Justice Plan 2021. Available at: http://www.justice.ie/en/JELR/Department_of_Justice_Action_Plan_2021.pdf/Files/Department_of_Justice_Action_Plan_2021.pdf

prohibition on discrimination appears to be low among minorities.[41] This, in turn, affects the degree to which victims pursue their rights and reduces the frequency with which the prohibition of discrimination is enforced and remedies are obtained.

FLAC recommends that:

- The scope of the Civil Legal Aid Scheme should be expanded to include provision of legal aid where legal advice and representation is required in quasi-judicial tribunals and other areas currently not covered by the Civil Legal Aid Act 1995. This includes equality cases before the Workplace Relations Commission in relation to discrimination in the provision of accommodation, in the provision goods and services and in employment.
- FLAC's draft amendment to the Civil Legal Aid Act 1995 should be enacted to ensure that legal aid is available in eviction cases.
- The Committee should seek commitments from the Minister for Justice that relevant external stakeholders such as the national Traveller organisations are meaningful consulted during any review of the Civil Legal Aid scheme, and that the issues most relevant to Travellers (referenced in the recommendations above) will be addressed by that review.
- The Legal Aid Board should be encouraged to provide information to the Traveller community in relation to the Civil Legal Aid Scheme.

[41] European Union Agency for Fundamental Rights (2012) *The Racial Equality Directive: Application and Challenges*, Luxembourg: FRA, p.25.

9. The Public Sector Duty

Section 42 of the Irish Human Rights and Equality Act 2014, introduced the Public Sector Duty, providing one of the most important national mechanisms for mainstreaming equality and human rights for Travellers. It imposes a positive obligation on a broad range of statutory and public bodies to have regard, in the performance of their functions, to the need to eliminate discrimination, promote equality of opportunity and protect the human rights of its members, staff and persons to whom it provides services. This includes Government Departments and local authorities.

FLAC welcomed the publication of the National Traveller and Roma Inclusion Strategy 2017-2021, which contains the following objectives:

> "143. All Departments and relevant agencies will ensure that all relevant public service staff members receive anti-racism and cultural awareness training.
>
> 144. The Irish Human Rights and Equality Commission, in consultation with Traveller and Roma representative organisations will develop training for Government Departments, statutory agencies and Local Authorities on implementing the Public Sector Duty as a means of systematically preempting and addressing equality and human rights issues in their daily work in relation to Travellers and Roma communities."

As already noted, Travellers face deeply embedded and structural discrimination, including as regards their access to housing. FLAC believes that the comprehensive roll out of the public sector duty would have an impact on addressing the stigma, prejudice, discrimination, racism, social exclusion and identity erosion experienced by Travellers. More specifically, future initiatives in relation to the provision of Traveller accommodation should be underpinned by the Public Sector Duty. The bodies implementing those initiatives must be required to take a proactive approach to tackling institutional discrimination against Travellers, and promote the mainstreaming of an equality perspective in all their functions. Such an approach, has the potential to ensure that Travellers are at the heart of public policy and procedure and would complement actions already required under EU law and International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).

FLAC recommends that:

- The Public Sector duty should be a core consideration in the work undertaken by all Government bodies and statutory agencies, including those involved in the provision of Traveller accommodation.
- All relevant public bodies should carry out an assessment of the human rights and equality issues relevant to their functions, including an assessment of the human rights and equality issues that impact on Travellers relevant to their functions, and the policies, plans and actions being taken or proposed to be taken to address those issues.
- The Committee should recommend Government departments, agencies and statutory bodies that come within the scope of the Public Sector Duty should report annually on their work to meet their section 42 obligations, beyond just providing cultural and awareness training to their staff.

Appendix – FLAC Draft Amendment to the Civil Legal Aid Act, which if enacted would ensure that legal aid is available in eviction cases.

Section 28 of the Civil Legal Aid Act 1995 is amended in subsection (3) by the insertion of the following subsection after subsection (3):

"(3A) Where proceedings the subject matter of the application under this section concern the making of an order for possession under sections 97 and/or 100 of the Land and Conveyancing Law Reform Act 2009 or proceedings for possession against persons in occupation of local authority dwellings pursuant to Part 2 of the Housing (Miscellaneous Provisions) Act 2014 excepting possession proceedings in respect of abandoned dwellings and is the applicant's principal private residence, paragraphs (b), (c) and (e) of subsection (2) shall not apply.",

and

(3B) by the substitution in subsection (9)(a)(ii) of 'disputes concerning rights and interests over land' with 'disputes concerning rights and interests over land which is not the principal private residence or family home of the applicant within the meaning of section 2(2) of the Family Home Protection Act 1976'."