FLAC Submission to the Irish Human Rights and Equality Commission Review of Section 19 of the Intoxicating Liquor Act 2003

July 2021

About FLAC

FLAC (Free Legal Advice Centres) was founded in 1969 and is one of Ireland's oldest civil society organisations. It is a voluntary, independent, legal and human rights organisation which for the last fifty years has been promoting access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights.

FLAC makes policy recommendations to a variety of bodies including international human rights bodies, drawing on its legal expertise and providing a social inclusion perspective.

FLAC works in a number of ways, it:

- Operates a telephone information and referral line where approximately 12,000 people per annum receive basic legal information.
- Runs a nationwide network of legal advice clinics in 71 locations around the country where volunteer lawyers provide basic free legal advice to approximately 12,000 people per annum.
- Is an Independent Law Centre that takes cases in the public interest, mainly in the areas of homelessness, housing, equality and social welfare.
- Operates a legal clinic for members of the Roma Community.
- Has established a dedicated legal service for Travellers.
- Operates the public interest law project PILA that operates a pro bono referral scheme that facilitates social justice organisations receiving legal assistance from private practitioners acting pro bono.
- Engages in research and advocates for policy and law reform in areas of law that most affect the marginalised and disadvantaged.

Introduction

FLAC welcomes the opportunity to make this submission to the Irish Human Rights and Equality Commission's ("**IHREC**") review of the effectiveness of section 19 of the Intoxicating Liquor Act 2003 (the "**2003 Act**") pursuant to section 30 of the Irish Human Rights and Equality Commission Act 2014 (the "**2014 Act**").

In preparing its submission, FLAC has taken account of IHREC's mandate pursuant to section 30 of the 2014 Act, IHREC's "*Consultation Document in relation to Section 19 of the Intoxicating Liquor Act 2003*" and IHREC's "*Questionnaire for Civil Society Organisations*".

FLAC's submission is further informed by its experience of operating a dedicated Traveller Legal Service ("**TLS**"). The TLS is supported by the Community Foundation of Ireland and in cooperation with a Steering Group of representatives 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.

The TLS has also partnered with the Traveller Equality and Justice Project ("**TEJP**"). The TEJP is an initiative run by University College Cork. A component of the TEJP is the provision of a dedicated Traveller legal clinic. FLAC provides legal assistance to the TEJP and is a member of its panel of legal representatives who provide representation to attendees of the TEJP clinic.

Since its launch, the TLS has received over 90 enquiries and has formally represented Travellers in 20 cases, through entering into or bringing proceedings or preparing and issuing pre-action correspondence. While the majority of the enquiries received by the TLS relate to housing law issues, a significant number relate to complaints of discrimination in the provision of goods and services.

Recent and ongoing work, which informs this submission, includes:

- 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, which aims to improve the access to justice for Roma and Traveller women. Throughout 2017 to early 2018, FLAC facilitated the

operation of legal advice clinics aimed at the Traveller and Roma communities, which provided legal advice and advocacy services. In June 2018, FLAC began operating a dedicated legal clinic for the Roma community, which is supported by the Department of Children, Equality, Disability, Integration and Youth.

- The Equal Access Project is a two year project of FLAC and INAR which is co-funded by the European Commission, Directorate-General for Justice and Consumers under the Rights Equality and Citizenship Programme. The Project, which commenced in February 2021, seeks to build the capacity of advocates to represent claimants on the Race, Ethnicity and Traveller Community Grounds on Employment Equality Acts and Equal Status Acts before the Workplace Relations Commission. It also seeks to test whether the Race Directive as implemented into Irish law is an effective remedy.

- As an independent human rights and equality organisation, FLAC makes policy recommendations to national and international bodies, including human rights bodies. In December 2019, in Geneva, FLAC made a detailed written submission and oral presentation to the UN Committee on the Elimination of Racial Discrimination for the examination of Ireland's combined fifth, sixth and seventh periodic report to that Committee.[1] In its concluding recommendations, the Committee adopted several of the recommendations made by FLAC.[2]

[1] FLAC (2019) *Submission of FLAC to the UN Committee on the Elimination of Racial Discrimination for the examination of Ireland's combined fifth, sixth and seventh periodic reports*. Available at: https://www.flac.ie/publications/flac-submission-to-icerd-1/

[2] UN Committee on the Elimination of Racism (2019) *Concluding observations on the combined fifth to ninth reports of Ireland*. Geneva: OHCHR. Available at: https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/IRL/INT_CERD_COC_IRL_40806_E.pdf

General Observations: Section 19 of the Intoxicating Liquor Act 2003

Background to the Introduction of Section 19

Any examination of section 19 of the 2003 Act must take account of the documented reasons for the removal of the jurisdiction of the Equality Tribunal to adjudicate on cases of discrimination and its transfer to the District Court.

Prior to the commencement of section 19 of the 2003 Act on 29 September 2003, all cases of discrimination in the provision of goods and services, including that which occurred on or at the point of entry to licensed premises, were determined by the Equality Tribunal.

The creation of a separate jurisdiction for licensed premises cases arose not out of the concerns of the victims of discrimination. Rather, it was principally the result of complaints from a category of respondent, and following "pressure exerted by vintners' organisations" the jurisdiction of the Equality Tribunal was removed.[3] From then on, cases alleging discrimination "on or at the point of entry to" licensed premises were required to be taken in the District Court.

Consequences of the Introduction of Section 19

The consequences of the introduction of section 19 of the 2003 Act were stark.

Academic research indicates that the carving out of a separate jurisdiction for the District Court to hear discrimination cases arising out of incidents on or at the point of entry to licensed premises resulted in a significant reduction in the number of such cases being taken.[4] In FLAC's submission this is reflective of the relative difficulty and expense in bringing a case in the District Court compared to the Equality Tribunal (or its successor the Workplace Relations Commission (the "**WRC**")) rather than a reduction in acts of discrimination. Indeed, despite the reduction in the number of cases taken, research by the Economic and Social Research Institute ("**ESRI**") in 2017

[3] Judy Walsh, Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services (Lonsdale Law Publishing, 2013), p. 11.
[4] *Ibid.*

found that Travellers remain 38 times more likely to suffer discrimination in accessing pubs than the white Irish population.[5]

The cultural segregation highlighted by the ESRI's report is something which FLAC, through the TLS, encounters in its casework. The exclusion of Travellers from pubs, restaurants and hotels, deprives them of the opportunity to celebrate life's important events, such as births, christenings, birthdays and weddings in the same manner as the wider population.

Of particular relevance to the work of the TLS is that the removal of the Equality Tribunal's jurisdiction has had a disproportionate impact on Travellers, as prior to the introduction of section 19 of the 2003 Act the majority of cases of discrimination on licensed premises were taken by Travellers.

Accordingly, the isolating of discrimination cases concerning licensed premises has resulted in an equality deficit whereby discrimination has not decreased, yet successfully challenging it, has.

International and European Union Law Considerations

Walsh notes that "one of the Stated aims of the [Equal Status Act 2000] was securing compliance with Ireland's international law obligations, particularly those under the UN Conventions on Women's Rights (CEDEW) and Racism (ICERD)".[6] Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination ("**ICERD**") requires State parties to prohibit and eliminate racial discrimination in all of its forms and to guarantee the right of everyone without distinction as to race, colour or ethnic origin, to equality before the law, in the enjoyment of the following rights: "(a) The right to equal treatment before the Tribunals and all other organs administering justice". State parties are obliged pursuant to Article 6 of ICERD to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunal and other State institutions, against all acts of racial discrimination which violate their human rights and fundamental freedoms, as well as the right to

[5] McGinnity, F., Grotti, R., Kenny, O. and Russell H. (2017) Who experiences discrimination in Ireland? Evidence from the QNHS Equality Modules. Dublin: ESRI/The Irish Human Rights and Equality Commission.
[6] Note 3, at 8-9.

seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

In its consideration of the State's compliance with ICERD, the United Nations Committee on the Elimination of Racial Discrimination ("**UNCERD**") noted its concern about the discriminatory refusal of entry to licensed premises such as bars, public houses and hotels experienced mainly by Travellers and Roma. UNCERD noted that Travellers and Roma may be hindered in their enjoyment of their rights under Articles 5 and 6 of ICERD by being required to engage with the complex court processes that pertain to the District Court. UNCERD recommended that the necessary steps are taken to ensure that discrimination in licensed premises is covered by the Equal Status Acts 2000 to 2018 (the "**Equal Status Acts**") and complaints thereon are dealt with by the Workplace Relations Commission with a view to enhancing the accessibility of minority groups to effective remedies.[7]

On the role of European Union law, Bolger, Bruton and Kimber comment:

> *Upon Ireland's accession to the then European Communities on the January 1, 1973, when Irish law became subordinate to any relevant European law, a far wider and more meaningful concept of equality became part of Irish law. Equality was, even at that early stage, recognised as a cornerstone of European law and from Ireland's earliest relationship with the now European Union... Since then European law has acted as a powerful catalyst in ensuring recognition and respect for principles of non-discrimination in Irish law.*[8]

Indeed, the express purpose of the amending legislation to the national equality code in 2004 was to implement the Racial Equality Directive and the Gender Goods and Services.[9] Therefore, in carrying out its analysis, IHREC should have regard to the principles of EU equality law for testing the adequacy of national remedies, namely the principles of equivalence and effectiveness.

The principle of equivalence requires that national procedural conditions laid down by national law cannot be less favourable than those relating to similar actions of a domestic nature. In *Levez*, the European Court of Justice thought it appropriate to

[7] UNCERD, Concluding observations on the fifth to ninth reports of Ireland (2019).
[8] Marguerite Bolger, Claire Bruton, Cliona Kimber, *Employment Equality Law* (Round Hall, 2012) at [2-02].
[9] Note 3, at 10.

consider issues such as cost, delay, the simplicity of the actions, in order to determine whether the principle of equivalence had been complied with when comparing an action before a County Court and an Industrial Tribunal.[10]

The principle of effectiveness requires that national procedural conditions cannot render virtually impossible or excessively difficult the exercise of rights conferred by Community law.

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. Article 7 obliges EU Member States to ensure 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.[11] 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 race and ethnic origin could be strengthened is to widen access to complaints mechanisms.[12]

In relation to the promotion of equality and the elimination of discrimination, the European Commission has stated that "real change often requires a critical mass of cases".[13] The European Commission's guidelines for Equality Bodies, such as IHREC, suggest that promoting the achievement of a critical mass of casework under each protected ground should be amongst such body's aims.

As is detailed more fully below, the District Court, by comparison to the WRC, requires complainants to engage with a significantly costlier and more complicated process to challenge discrimination. In FLAC's submission, this offends the principles of equivalence and effectiveness of enshrined in EU law. Further, the comparative lack of equality cases heard in the District Court militates against the possibility of a critical mass of cases developing, as per the recommendation of the European Commission.

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[10] (Case C- 326/96 Levez [1998] ECR1 -7835)
[11] Directive 2000/43/EC.
[12] European Union Agency for Fundamental Rights (2012) *The Racial Equality Directive: Application and Challenges*, Luxembourg: FRA, p.25.
[13] European Commission DG-JUST (2015) *Know Your Rights: Protection From Discrimination*. Available at: https://op.europa.eu/en/publication-detail/-/publication/5a511c88-b218-47b5-9f3e-4709d650e28b

Expertise of Equality Tribunal

A further significant consequence of substituting the District Court for the Equality Tribunal in licensed premises discrimination cases was that expertise in hearing these cases was effectively lost. Equality Officers in the Equality Tribunal received specific training in equality law. By comparison, District Court judges' remit is significantly wider than the hearing of equality cases. FLAC further understands that there is no bench book available to District Court judges in relation to equal treatment, unlike in the UK.

Relatedly, in contradistinction to the Equality Tribunal (or the WRC), District Court cases do not generally result in the production of written judgments.[14] Accordingly, cases that are heard provide nothing of precedential value.

It is also the case that District Court procedures vary according to the district in question, unlike the Equality Tribunal (or WRC), which have standardised procedures.

The 2003 Act therefore deprived complainants of access to a forum with specific training and expertise in equality law and with a developing jurisprudence in its application.

Absence of Statistical Data

The Equality Tribunal and, since its assumption of jurisdiction for Equal Status Acts cases, the WRC, both publish(ed) statistical data showing the number of Equal Status Acts complaints received in a given year. The data is further subdivided to indicate the relevant discriminatory grounds on which cases were taken. The Courts Service does not, as a matter of course, publish data in relation to proceedings under section 19 of the 2003 Act. As a consequence, it is more difficult to obtain an immediate picture of the level of discrimination in relation to licensed premises. In turn, this renders the assessment of whether a critical mass of casework is occurring more difficult, as per the European Commission's recommendation. In its consideration of the effectiveness of section 19 of the 2003 Act, FLAC recommends that IHREC considers the absence

[14] Although section 19(5) of the 2003 Act allows for a party to request a "statement of reasons" for a decision these do not appear to be published.

of freely available statistical data and the consequences thereof. FLAC notes that repealing section 19 of the 2003 Act and bringing licensed premises cases back within the purview of the WRC would go some way to addressing this issue.

Adversarial Nature of District Court Proceedings

District Court proceedings are predicated entirely on adversarial principles. The parties to proceedings under an adversarial system are principally responsible for establishing relevant facts and law.

The WRC operates on an investigative basis. This means that the adjudicator assumes some of the burden that falls on the parties in an adversarial case. As a result, a complainant in a District Court case has a greater evidential and legal burden than their equivalent in WRC proceedings. These responsibilities are expanded upon in the following sections by way of illustration of the relative difficulties associated with the District Court compared to the WRC.

Commencing Proceedings

A complaint of discrimination in the provision of goods and services, other than one which relates to licensed premises, can be brought in the WRC. Commencing proceedings in the WRC consists of notifying the respondent in writing of the complainant's intention to bring a claim, within two months of the act of discrimination. While there are specific requirements as to the content of a valid notification, no particular form is prescribed.[15] If no, or no satisfactory response, is received the complainant may submit the complaint to the WRC for investigation, within six months of the act of discrimination. The WRC provides a specific form on its website through which a claim under the Equal Status Acts can be submitted.[16]

By comparison, a complaint of discrimination in relation to licensed premises must be brought in the District Court. As opposed to the WRC, which is a centralised forum

[15] The nature of the allegation and the complainant's intention to seek redress under the Equal Status Acts must form part of the notification.
[16] While the WRC form has issues of its own, including being premised on employment law complaints, it is significantly more straightforward than submitting a District Court notice of application.

with jurisdiction over the entire State, the District Court is a court of local jurisdiction. This requires that a complainant correctly identify the appropriate district in which a claim should be commenced. District Court proceedings must be commenced by way of a specific form prescribed by the Rules of the District Court. Service of the claim must also adhere to the Rules of the District Court.

Identifying the Respondent

While it is important in any case to ensure that the respondent is correctly identified and notified, there are significant differences in the processes applicable in the WRC and the District Court for a claim to be validly constituted.

To validly commence a claim in the District Court, the licensee must be identified. In the case of a licensed premises, the licensee may be different from the ostensible entity or individual which operates the premises. For a complainant to be certain that the appropriate entity or individual has been identified, they must carry out a search of the Register of Licences for a fee. A failure to identify the appropriate licensee could result in a claim being dismissed. This step may not be obvious to most complainants.

The WRC, as a quasi-judicial tribunal, does not adhere to the same formalities. The relative informality of the procedures of quasi-judicial tribunals is recognised as a desirable feature of such fora. In the Labour Court decision in *Auto Depot Limited v Vasile Mateiu*,[17] the Labour Court rejected a submission that the erroneous inclusion of "Auto Depot Tyres Ltd" instead of "Auto Depot Limited" on the Workplace Relations Commission complaint form should have resulted in the complainant's claim being refused. At paragraph 31, the Labour Court noted:

> *The Court is further satisfied that this approach is in line with the generally accepted principle that statutory tribunals, such as this Court, should operate with the minimum degree of procedural formality consistent with the requirements of natural justice*.

[17] WTC/19/23

Gathering Evidence and Material Information

Section 21(2)(b) of the Equal Status Acts allows a complainant to question the respondent in writing so as to obtain material information and the respondent may, if they so wish, reply to any such questions. The importance of this provision to a complainant is found in section 26 of the Equal Status Acts which provides that an adjudicator may draw inferences from the response, or absence of a response, to the questions posed.

By contrast, the District Court requires parties to seek discovery (for documents and/or by way of interrogatories) to obtain relevant information or evidence held by the respondent to a claim. The discovery process is governed by the Rules of the District Court and may require the complainant to issue a motion on affidavit to obtain relevant documentation. A complainant may also have discovery sought against them in respect of which penalties apply for non-compliance, such as the inability to rely on a relevant document not produced or having their claim dismissed.

Financial Burden: Cost and Fees

There is a significant financial burden necessarily associated with bringing a case in the District Court arising out of the fees that a complainant must pay in order to file a claim. In order to commence their claim, a complainant will be required to pay stamp duty amounting to €150 to file a notice of application in a licensing matter. A fee of €35 is also charged for inspections of the Register of Licences. Further fees may be necessary in order to file affidavits and notice of motion (such as motions for discovery).

Additionally, there is a significant potential financial burden as a result of the cost risk to an unsuccessful party. As costs in the District Court “follow the event”, an unsuccessful party will, in the normal course, be ordered to pay the legal costs of the respondent, which could conceivably consist of solicitor and counsel fees.

Commencing a claim in the WRC has no associated fees. Nor does an adjudicator, other than in exceptional circumstances, have a jurisdiction to award costs.

Representation

One potential advantage of the District Court process over the WRC is that civil legal aid is notionally available to parties in the District Court. However, all applicants for civil legal aid must still satisfy the financial eligibility criteria under the Civil Legal Aid Act 1995 and accompanying regulations. The applicant must also show that they would be reasonably likely to be successful in the proceedings. It does not appear that the Legal Aid Board generally provides representation to parties in section 19 cases. In reply to a Parliamentary Question in November 2018, the then Minister for Justice and Equality, Charlie Flanagan TD stated that legal aid had not been granted for any applications under section 19(2) of the 2003 Act in the preceding three years.

Additionally, pursuant to sections 19(6) and 19(7) of the 2003 Act, IHREC can provide, under prescribed circumstances, assistance and representation to complainants. FLAC considers this an important function and notes that IHREC has exercised this function in a number of cases in recent years.

By contrast, civil legal aid is unavailable to parties appearing before quasi-judicial tribunals. The unavailability of legal aid to such parties has been the subject of criticism by FLAC and international human rights bodies.[18]

Ambiguities in the Intoxicating Liquor Act 2003

Apart from the difficulties arising out of the adversarial nature of District Court proceedings, section 19 of the 2003 Act suffers from a number of ambiguities on its face, which detract from the certainty of its application and, by extension, add to the potential complexity of a complainant seeking to invoke its provisions.

Limitation Period

The application of limitation periods is a fundamental feature of Irish law. Limitation periods promote legal certainty, an essential principle of the rule of law. However,

[18] FLAC Submission to the Independent Anti-Racism Committee's Public Consultation: Towards a National Action Plan against Racism in Ireland (2021); UNCERD (2019), Concluding observations on the fifth to ninth reports of Ireland; UN Committee on Economic, Social and Cultural Rights (2015) Concluding Observations of the Committee on Economic, Social and Cultural Rights: Ireland

section 19 of the 2003 Act does not appear to be bound by a limitation period. While this may be to the advantage of a potential complainant, it also creates uncertainty and complicates the provision of legal advice and representation.

Extent of Licensed Premises

Section 2 of the 2003 Act defines a "licensed premises" as a "premises in respect of which a licence is in force". "Premises" is undefined in the 2003 Act. It is therefore difficult for a complainant to determine, in the case of mixed-use premises such as hotels or restaurants, whether an act of discrimination occurred "on or at the point of entry to" a licensed premises. For example, if an act of discrimination occurred in the lobby of a hotel which also contained a bar, it is not immediately clear whether or not the licence in force for the bar would extend to the hotel lobby. A complainant may be able to inspect the map pertaining to a licensed premises to determine the sections of a premises to which a licence extends, however, such maps are not always available and, where they are, can only be accessed by paying a fee.

Related to the ambiguity around the extent of licensed premises is the question of what constitutes a "licensed premises". While a definition of licensed premises is provided for by section 2 of the 2003 Act, that definition potentially captures a greater number of businesses than was originally intended. For example, was it the intention of the 2003 Act that cases against off-licences (or businesses containing off-licences), which would appear to meet the definition of licensed premises, should be hived off to the District Court. Given the nature of the lobbying efforts that led to the introduction of the 2003 Act, one might argue that off-licences were not the intended beneficiaries of the change. However, the 2003 Act does not resolve this ambiguity. This creates further difficulties for complainants and their advisors in seeking to challenge discrimination.

"On or at the point of entry to"

A further ambiguity in the 2003 Act is the limitation of the District Court's jurisdiction to cases of discrimination which occur "on or at the point of entry to" licensed premises. In practice this has created interpretative difficulties in cases where discrimination

occurred over the phone or through email. While such cases would not appear to have occurred “on or at the point of entry to” a licensed premises in a physical sense, it renders the choice of appropriate forum, as between the District Court and the WRC, a more complex exercise. This is particularly so where a complainant may have had multiple interactions with a venue, some in person and some via telephone or email.

FLAC’s Experience

In its work through the JUSTROM Programme and through the TLS, FLAC has received enquiries and referrals of stateable cases of discrimination on or at the point of entry to licensed premises. Due, however, to the procedural complexity of such cases (for the reasons outlined above) and the relatively limited resources of the services provided through JUSTROM and the TLS, FLAC has been unable to justify allocating disproportionate resources to such cases.

The assistance provided by FLAC has generally consisted of provision of information in relation to, and assistance with, applying for civil legal aid. However, to FLAC’s knowledge representation was not granted in any cases. This coheres with the reply to a Parliamentary Question in November 2018, by the then Minister for Justice and Equality, Charlie Flanagan TD (referred to above).

In other cases, FLAC has provided advice and assistance on accessing relevant information to assess a potential claim. This has included assistance in contacting District Court offices to arrange to inspect licences. FLAC has noted that the absence of a centralised system, as pertains to the WRC, increases the complexity of this necessary preliminary research. Its clients and partners have at times struggled to access accurate information on the operating procedures of District Court offices, which vary from district to district. There is a dearth of accessible information available through the Courts Service website, meaning that clients must rely on calling the relevant office and hoping that assistance will be forthcoming.

Impact of Workplace Relations (Miscellaneous Provisions) Act 2021

Following the decision of the Supreme Court in *Zalewski v Adjudication Officer and Ors*, which found that certain sections of the Workplace Relations Commission Act 2015 were unconstitutional, the Government introduced amending legislation, effective 29 July 2021.[19] The Workplace Relations (Miscellaneous Provisions) Act 2021 introduces a number of changes to WRC procedure, including that hearings, except in special circumstances, shall be in public; that decisions, except in special circumstances, will not be anonymised; and that during a hearing an adjudicator may take evidence on oath or affirmation.

Due to the recent nature of these changes, their effect in practice remains to be seen. However, in FLAC's submission, the proposed changes do not alter its analysis, as set out above, nor its conclusion below, that the WRC is a more user friendly, conducive and appropriate forum for complainants in discrimination cases.

Conclusion and Recommendations

The 2003 Act successfully stemmed the flow of discrimination cases against licensed premises by erecting significant procedural, practical and legal obstacles for complainants wishing to challenge discriminatory practices. At the same time, levels of discrimination did not diminish. This confluence of outcomes has rightly been the subject of criticism by civil society organisations, legal professionals, non-governmental organisations and international human rights bodies.

In FLAC's submission, the 2003 Act protects a category of respondent to the detriment of access to justice for some of the State's most vulnerable communities who suffer unacceptable discrimination.

By contrast, the WRC offers an imperfect but preferable system to an individual who has suffered discrimination.

Consequently, FLAC recommends that:

- section 19 of the 2003 Act should be repealed;

[19] [2021] IESC 24

- Notwithstanding its firm view that section 19 of the 2003 Act should be repealed, FLAC considers that ahead of, or in combination with, its repeal, IHREC should consider preparing a code of practice for licensed premises addressing best practice in avoiding discrimination but also issues relating to the recording of bookings, the retention of records, such as CCTV and staff training, in order to address the current disadvantages faced by complainants in successfully challenging discrimination;
- IHREC should continue to invoke its functions pursuant to sections 19(6) and 19(7) of the 2003 Act;
- IHREC should take account of the international and EU law elements of the District Court's jurisdiction for licensed premises cases, particularly whether the principles of equivalence and effectiveness are satisfied; and
- IHREC should consider the absence of freely available statistical data on section 19 cases.