

Opening Statement to Joint Committee on Key Issues Affecting the Traveller Community

Access to housing and accommodation, including Traveller-specific accommodation

22 July 2021

Introduction

The Free Legal Advice Centres (“**FLAC**”) welcomes the opportunity to participate in the Joint Committee on Key Issues Affecting the Traveller Community (the “**Committee**”) hearings on the subject of access to housing and accommodation, including Traveller-specific accommodation.

Since early 2020, FLAC has operated a dedicated a Traveller Legal Service (“the **TLS**”), 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. Since its launch, the TLS has received over 90 referrals or enquiries from Travellers and Traveller advocates requesting legal assistance. 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 20 cases.¹ 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.

FLAC’s evidence to the Committee is predicated on its experience providing legal assistance to the Traveller community via the TLS and its firm belief that providing for equal access to justice, an unrealised ideal in the State, must be a core element of addressing the issues being considered by the Committee today.

Access to Justice and Civil Legal Aid

¹ These figures have been updated since FLAC’s written submission was provided to the Committee.

While there is no unitary definition of what the right of access to justice entails, its importance to societies governed by the rule of law is reflected by the recognition of aspects of the right in the Irish Constitution and international human rights instruments, such as the European Convention on Human Rights and the EU Charter of Fundamental Rights.

Access to justice can be conceived of as a “gateway” right, meaning that it operates as a prerequisite to the fulfilment of other substantive rights. Without the possibility of receiving access to legal information, early advice and representation, an individual’s entitlements under the law are rendered illusory.

By way of example, it took a judgment of the High Court in *University of Limerick v Ryan* to recognise the State’s statutory obligation to make provision for Traveller specific accommodation.²

It is well documented that the State is undergoing a multi-dimensional housing crisis. An aspect of the crisis is the disproportionately high level of homelessness among Travellers. A longstanding and related aspect is the failure of the State to deliver on its commitments as envisaged by the *Housing (Traveller Accommodation) Act, 1998*, resulting in a chronic undersupply of Traveller specific accommodation.

In FLAC’s experience, many of the issues faced by Travellers in relation to housing, such as challenging evictions, accessing emergency accommodation, or being provided with Traveller specific accommodation, are justiciable. That is to say that they are issues necessitating the input and expertise of legal professionals and, if necessary, the judgment of a court to clarify and enforce entitlements and obligations. Notably, FLAC’s experience is consistent with research which has found that vulnerable groups are more likely to suffer justiciable problems.³

As it is currently constituted, the State’s scheme of civil legal aid does not explicitly extend to the provision of advice and/or representation in cases concerning housing and evictions. Nor could the scheme respond in a sufficiently timely manner to evictions, which in some circumstances see Travellers provided with no notice or a period of 24 hours in which to vacate a site on pain of potential prosecution and/or having their caravan impounded.

Furthermore, civil legal aid is unavailable to parties appearing before quasi-judicial tribunals such as the Workplace Relations Commission. The import of this is that a Traveller who has been discriminated against in the provision of housing or Traveller specific accommodation, an issue addressed by the recent equality review reports of the Irish Human Rights and

² Unreported, High Court, 21 February 1991.

³ 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*, pp. 302- 320.

Equality Commission, cannot access legal aid to litigate their claim with the benefit of legal advice and representation.

The remainder of FLAC's evidence, as is more fully set out in our written submission, addresses recommendations for reform of housing legislation as it relates to Travellers. However, it is FLAC's submission that any reform of substantive law must be accompanied by an expansion of the scheme of civil legal aid to unambiguously offer and provide advice and representation on matters related to housing, evictions and appearances before quasi-judicial tribunals.

Evictions

A local authority wishing to evict a Traveller living on the roadside or an unofficial site has at its disposal no fewer than 5 separate legislative mechanisms to do so.⁴ Each of these mechanisms carry with them a risk of prosecution, of the Traveller having their caravan (i.e. their home) towed and/or impounded and all but 1 may be invoked on short or no notice without prior or subsequent recourse to a court or other independent authority.

Under the provisions of the *Criminal Justice (Public Order) Act, 1994*, the mere presence of a Traveller on a local authority land without explicit permission constitutes an offence for which the TLS's clients have been prosecuted.

By contrast, a local authority wishing to evict someone from a dwelling which it owns, even where there is no legal basis or right for the person being there, must apply to the District Court for a possession order.⁵ The proceedings are on notice to the person against whom the order is sought and the order may only be granted by the Court if satisfied that it is proportionate and reasonable having regard to all the circumstances of the case.

In FLAC's submission there is no justification for the disparity between the protections afforded to a squatter in a local authority dwelling and the absence of such protections for Travellers living on unauthorised sites. Indeed, the European Committee of Social Rights has found that Ireland is in breach of Article 16 of the Revised Social Charter for the continued use of section 10 of the *Housing (Miscellaneous Provisions) Act, 1992* and section 19C of the *Criminal Justice (Public Order) Act, 1994* in the absence of safeguards, such as the provision of legal aid, for those against whom those provisions are invoked.

⁴ Section 19C, *Criminal Justice (Public Order) Act, 1994*; Section 10 of the *Housing (Miscellaneous Provisions) Act, 1992*; Section 69 of the *Roads Act, 1993*; Part VIII of the *Planning and Development Act, 2000*; and Section 31 of the *Local Government (Sanitary Services) Act, 1948*.

⁵ Section 13 of the *Housing (Miscellaneous Provisions) Act, 2014*.

FLAC's submission has therefore recommended, *inter alia*, the introduction of reforming legislation to ensure that, other than in the most exceptional of circumstances a family home can never be interfered within 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.

Traveller Specific Accommodation

In 2018, then Minister of State at the Department of Housing, Planning and Local Government Damien English, established an expert group to review the Housing (Traveller Accommodation) Act, 1998 and other legislation impacting on the provision and delivery of accommodation for Travellers.

The expert group's report was published in July 2019. The report concluded that the *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".

FLAC considers that the recommendations of the expert group must be implemented in full and without further delay.

In particular, FLAC considers that it is a serious flaw in the *Housing (Traveller Accommodation) Act, 1998* that councillors may adopt a programme for the provision of Traveller accommodation for a period of 5 years, which the local authority is legally bound to implement, yet vote against the delivery of components of that programme with impunity.⁶ This pattern of voting for, then against Traveller accommodation has been identified as a significant obstacle to the delivery of Traveller specific accommodation by FLAC's clients, the Steering Group of national Traveller organisations which oversee the TLS, the expert group report and independent research commissioned by the Housing Agency.⁷

In circumstances where the Committee's current module is examining the issue of access to Traveller specific accommodation, it cannot ignore the evidence pointing to the actions of Councillors in voting down plans for Traveller specific accommodation as a significant obstacle to be addressed.

⁶ Section 16 of the Housing (Traveller Accommodation) Act, 1998 provides that housing authorities must "take any reasonable steps as are necessary" for the purpose of implementing a Traveller accommodation programme.

⁷ RSM & The Housing Agency (2017), Review of the Funding for Traveller-Specific Accommodation and the Implementation of Traveller Accommodation Programmes, p.6.

Accordingly, FLAC agrees with the recommendation of the expert group for the introduction of legislative provisions suspending the reserved function of Councillors for approval of proposals for Traveller accommodation and the introduction of legislative provisions providing for an alternative and direct route for the provision of Traveller accommodation through An Bord Pleanála.

Conclusion

FLAC's evidence has addressed a number of issues raised in its written submission. These are the matters we wished to discuss in the time available to us today. However, we would encourage the Committee to review and consider the written submission in full which also refers to the issue of Garda vetting of social housing candidates; standards in Traveller specific accommodation; the application by local authorities of a local connection test for the provision of emergency accommodation and social housing; the public sector duty pursuant to section 42 of the *Irish Human Rights and Equality Commission Act, 2014*; and the need for expansion of the *Equal Status Acts 2000 – 2018*.

We are happy to address any questions the Committee may have.