

## **Traveller Accommodation: Access to Justice, Human Rights and Equality**

### **Opening Statement of Sinéad Lucey (FLAC Managing Solicitor) to the Joint Committee on Key Issues affecting the Traveller Community**

**21 March 2024**

#### **Introduction**

**FLAC (Free Legal Advice Centres)** is grateful for this opportunity to appear before the Joint Committee on Key Issues affecting the Traveller Community. Our evidence, and our written submission (which has been circulated to members of the Joint Committee), focuses on access to justice, human rights and equality for Travellers in the context of housing and Traveller accommodation.

Since 2017, FLAC has provided targeted and specialised legal services for members of the Traveller community. In early 2020, FLAC (in cooperation with a Steering Group made up of representatives from each of the national Traveller organisations) established a dedicated a Traveller Legal Service (“the TLS”), supported by The Community Foundation.

In each year since 2017, access to accommodation has emerged as the single most prevalent issue amongst people seeking legal assistance from FLAC’s targeted legal services for Travellers. During its first two full calendar years in operation, the TLS dealt with over 100 housing queries.

FLAC frequently represents Traveller families in cases concerning access to social housing, Traveller-specific accommodation and emergency accommodation - as well as cases concerning the adequacy of each of those forms of accommodation and cases where Travellers living on the roadside are subject to eviction proceedings.

#### **A Rights-Based Approach to Traveller Accommodation**

FLAC believes that rights-based reform of housing and homelessness law is needed to address the current housing and homelessness crisis which disproportionately impacts Travellers. Beyond the introduction of a constitutional right to adequate housing (which FLAC supports), legislative reform is required to ensure that housing rights are comprehensive, clear and enforceable.

When we last appeared before the Joint Committee in 2021, FLAC proposed a number of reforms to housing and equality law which we view as being necessary to vindicate and give effect to the accommodation rights of Travellers. We were pleased to see several of those recommendations reflected in the Committee’s final report.

However, it is disappointing that there has been no meaningful legal changes in the areas of Traveller accommodation or equality law during the intervening period. This is despite the introduction of the *Housing For All* plan, the establishment of the Housing Commission, a Government commitment to a referendum on housing, the initiation of a comprehensive review of the equality legislation, and the development of a landmark Planning and Development Bill. Similarly, a trend that runs through FLAC's current submission to the Joint Committee is the failure to implement the recommendations of the *Traveller Accommodation Expert Review* (which was published five years ago) where those recommendations would require legislative reform.

As a result, our current recommendations to the Joint Committee focus on steps which we believe should be taken to expedite law reform in the areas of Traveller accommodation and equality law.

### **Housing & Traveller Accommodation Legislation**

We believe that the Joint Committee should engage with the Programme Board overseeing the implementation of the *Traveller Accommodation Expert Review* and the Department of Housing in relation to:

- ▶ reforms to the planning process for Traveller Accommodation, including the creation of a bespoke process for the planning approval of such developments which permanently excludes them from the Part 8 process,
- ▶ reviewing and amending eviction legislation in light of the *McDonagh* decision to ensure 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, and
- ▶ the introduction of enforceable minimum standards for all forms for Traveller accommodation.

The Joint Committee should also seek to ensure that 'local connection' tests are not applied by local authorities in considering requests for emergency accommodation and urge the Minister for Housing to issue guidance on the proper exercise of discretion in applying such tests in the social housing context.

Similarly, guidance should be issued to local authorities and An Garda Síochána on the statutory vetting process of applicants for social housing. Ideally, the Housing Acts should be amended to clarify the exact nature of the information which may be exchanged between local authorities and An Garda Síochána and the impact of previous convictions on present housing applications or allocations.

## **Equality Legislation**

There are major weaknesses in Ireland's equality legislation which limit its effectiveness in tackling discrimination and inequality in the context of social housing and Traveller accommodation. This includes the fact that the prohibition of discrimination does not clearly apply to the general functions of local authorities and An Garda Síochána, and the absence of an effective remedy for racial profiling and for discrimination that has a legislative basis (for example, the disproportionate impact of Criminal Trespass legislation on Travellers).

The Joint Committee should engage with the Department of Children, Equality, Disability, Integration and Youth to ensure that those issues are dealt with in the context of the current Review of the Equality Acts. That Department should also clarify the present status of the review and be asked to provide a specific timeline for its completion.

## **Access to Justice & Legal Aid**

Measures to promote access to justice are vital to ensure that housing and equality rights are effective and enforceable in practice.

The establishment of the Legal Aid Board's *Minceir Traveller Legal Support Service* was a positive step towards achieving access to justice for Travellers. However, that service employs only one full-time solicitor. Unfortunately, this is no way near the level of resources necessary to tackle the huge amount of unmet legal need amongst the Traveller Community. This should be a matter of concern for the Joint Committee and we believe that it should engage with the Legal Aid Board about the resourcing of its Traveller service.

## **Conclusion**

My colleague, Christopher Bowes (FLAC's Legal Officer) and I are happy to address any questions which members of the Committee may have.

Thank you for your attention.

**ENDS.**



# **Traveller Accommodation: Access to Justice, Human Rights and Equality**

Submission the Joint Committee on Key  
Issues affecting the Traveller Community  
**March 2024**

## About FLAC

**FLAC (Free Legal Advice Centres)** is an independent human rights and equality organisation, which exists to promote access to justice. Our vision is of a society where everyone can access fair and accountable mechanisms to assert and vindicate their rights, including economic, social and cultural rights.

FLAC operates a telephone information and referral line where approximately 12,000 people per annum receive basic legal information, and runs a nationwide network of legal advice clinics where volunteer lawyers provide free legal advice.

As an Independent Law Centre, FLAC takes on a number of cases in the public interest each year. As well as being important for the individual client, these cases are taken with the aim of benefiting a wider community. FLAC also operates a Traveller Legal Service, Roma Legal Clinic and LGBTQI Legal Clinic.

FLAC makes policy and law reform recommendations informed by our experience of providing legal assistance. This includes policy reports and submissions to national and international bodies in areas such as housing law, social welfare law, equality and anti-discrimination law, human rights, and access to justice.

FLAC is a member of the Chief Justice's Access to Justice Committee and the Review Group for the Department of Justice's current Review of the Civil Legal Aid Scheme.

## Table of Contents

	Page
<b>About FLAC</b>	<b><i>i</i></b>
<b>Introduction</b>	<b><i>iii</i></b>
<b>Recommendations</b>	<b><i>iv</i></b>
<b>1. Housing Rights &amp; Access to Justice</b>	<b>1</b>
<i>The Need for a Constitutional Right to Adequate Housing</i>	<b>1</b>
<i>Rights-Based Housing &amp; Traveller Accommodation Legislation</i>	<b>3</b>
<i>Travellers' Housing Rights &amp; Access to Justice</i>	<b>3</b>
<b>2. Planning and Delivery of Traveller Accommodation</b>	<b>5</b>
<b>3. Evictions</b>	<b>9</b>
<b>4. Standards of Accommodation</b>	<b>10</b>
<b>5. "Normal Residency" &amp; "Local Connection" Requirements</b>	<b>13</b>
<i>Access to Social Housing Supports</i>	<b>13</b>
<i>Access to Emergency Homeless Accommodation</i>	<b>13</b>
<b>6. Promoting Equality &amp; Combatting Discrimination</b>	<b>15</b>
<i>Equality Law</i>	<b>15</b>
<i>Discriminatory Profiling by An Garda Síochána</i>	<b>17</b>
<i>The Public Sector Equality &amp; Human Rights Duty</i>	<b>19</b>

## Introduction

FLAC welcomes the opportunity to make a submission to Joint Committee on Key Issues affecting the Traveller Community (the “Joint Committee”) to offer our perspective on policy matters relating to Traveller accommodation.

In March 2021, FLAC made a detailed submission to the previous iteration of the Joint Committee on the subject of “*Access to Housing and Accommodation, Including Traveller-Specific Accommodation*”.<sup>1</sup> We appeared before the Joint Committee to discuss that submission on 22 July 2021.<sup>2</sup> Several of our recommendations were reflected in the earlier Joint Committee’s final report.<sup>3</sup>

This submission offers updates on the matters that we raised in 2021 and makes additional recommendations informed by legal and policy developments in the intervening period.

### FLAC’s Traveller Legal Service

Since 2017, FLAC has provided targeted and specialised legal services for members of the Traveller community.<sup>4</sup> In early 2020, FLAC (in cooperation with a Steering Group made up of representatives from each of the national Traveller organisations) established a dedicated Traveller Legal Service (“the TLS”), supported by The Community Foundation. The purpose of the TLS is to highlight and address unmet legal need by providing legal representation to members of the Traveller community, and training and assistance to Traveller advocates.

In each year since 2017, access to accommodation has emerged as the single most prevalent issue amongst people seeking legal assistance from FLAC’s targeted legal services for Travellers. During its first two full calendar years in operation, the TLS dealt with over 100 housing/accommodation queries.<sup>5</sup> FLAC frequently represents Traveller people and families in cases concerning access to social housing, Traveller-specific accommodation and emergency accommodation, as well as cases concerning the adequacy of each of those forms of accommodation and cases where Travellers living on the roadside are subject to eviction proceedings.

---

<sup>1</sup> FLAC (March 2021), [Submission to the Joint Committee on Key Issues affecting the Traveller Community](#).

<sup>2</sup> FLAC (July 2021), [Opening Statement to Joint Committee on Key Issues Affecting the Traveller Community](#).

<sup>3</sup> Houses of the Oireachtas (November 2021), [Final Report of the Joint Committee on Key Issues Affecting the Traveller Community](#), Chapter 4: Accommodation.

<sup>4</sup> 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 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 on an *ad hoc* basis until the foundation of the TLS.

<sup>5</sup> See: FLAC (2022), [Annual Report 2021](#) & FLAC (2023), [Annual Report 2022](#).

FLAC draws upon our experience as an Independent Law Centre in our policy research, analysis and recommendations. This submission is informed by our casework on behalf of members of the Traveller community who encounter barriers to justice in seeking access to housing and the vindication of their fundamental rights. That work also informed other recent submissions in relation to housing<sup>6</sup>, homelessness<sup>7</sup>, legal aid<sup>8</sup> and equality<sup>9</sup> which are referenced in this document.

We look forward to engaging with the Committee in relation to this submission and we would be happy to provide any further information which may of assistance to the Committee in carrying out their work.

## Recommendations

### Housing Rights & Access to Justice

The Joint Committee should:

- Seek an update from the Department of Housing regarding the status of the Housing Commission's report on a right to housing and the referendum on housing referred to in the Programme for Government.
- Recommend a comprehensive review of existing social housing, Traveller Accommodation and homelessness legislation to ensure that it is consistent with a right to adequate housing – with a view to creating a rights-based statutory framework.
- Seek an update from the Legal Aid Board on their Minceir Traveller Legal Support Service and its resourcing, and recommend that that service is afforded additional resources to deal with the huge level of unmet legal need amongst Travellers in the areas of housing and anti-discrimination law.

### Planning and Delivery of Traveller Accommodation

The Joint Committee should:

- Engage with the Programme Board overseeing the implementation of the Traveller Accommodation Expert Review recommendations. In particular, the Committee should:
  - ▶ Seek clarity on whether the temporary exemption of local authorities from the Part 8 planning process applies to all forms of Traveller Accommodation.

---

<sup>6</sup> FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#).

<sup>7</sup> FLAC (2022), [Submission on the development of a Youth Homelessness Strategy](#).

<sup>8</sup> FLAC (2023), [Stakeholder Submission to the Civil Legal Aid Review](#).

<sup>9</sup> FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#).



- ▶ Seek an urgent update on the review of the recommendation to create an alternative and direct route for Traveller-specific accommodation to An Bord Pleanála.
- Engage with the Programme Board and the Minister for Housing around introducing long-term reforms to the planning process for Traveller Accommodation, including the creation of a bespoke process for the planning approval of such developments which permanently excludes them from the Part 8 process. These reforms should be introduced by way of legislation and, ideally, should be included in the Planning and Development Bill 2023.

## Evictions

The Joint Committee should:

- Engage with the Department of Housing to establish whether the pieces of legislation which allow for the eviction of Travellers living on the roadside have been reviewed in light of the *McDonagh* decision. If no such review has been carried out, the Committee should call on the Department to do so and to liaise with the Committee in relation to the outcome of the review.
- Recommend the introduction of legislation 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.

## Standards of Accommodation

The Joint Committee should:

- Seek updates from the Department of Housing and the Programme Board on the implementation of the Expert Review recommendations on research and guidelines concerning the management and maintenance of Traveller Accommodation.
- Seek an update from the Department of Housing on the “*survey to be undertaken with local authorities*” on management and maintenance of Traveller-specific accommodation.
- Reiterate its recommendation calling for an “*urgent audit... of living conditions in all Traveller specific [accommodation] and halting sites and immediate action... to address deficiencies in accommodation, community facilities, public infrastructure, [and] estate management*”.

- Recommend that, in the short term, the Minister for Housing, Local Government and Heritage should immediately review the Guidelines published in 1998 in relation to Traveller Accommodation, update guidance in relation to the design and delivery of Traveller Accommodation standards, and amend the Housing (Standards for Rented Houses) Regulations 2019 to include halting sites (including transient, temporary and permanent halting sites).
- In addition to its recommendation calling for the establishment of a National Traveller Accommodation Authority, specify that that authority should have an inspection, oversight and enforcement function in relation to standards in Traveller Accommodation.

### **“Normal Residency” & “Local Connection” Requirements**

The Joint Committee should:

- Urgently seek clarification from the Minister for Housing as to the status of the proposal to introduce regulations concerning the application of a ‘local connection’ test in the emergency accommodation context.
- Urgently engage with the City and County Manager Association in relation to their “Local Connection Protocol” and seek the withdrawal of that protocol.
- 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, and
  - ▶ which emphasise that access to emergency accommodation cannot be denied or limited by reference to ‘local connection’ criteria.

### **Promoting Equality & Combatting Discrimination**

The Joint Committee should recommend 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) and the impact of previous convictions on present housing applications or allocations, and
- 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 Joint Committee should engage with the Department of Children, Equality, Disability, Integration and Youth and:

- seek clarification as to the present status of the Review of the Equality Acts and a specific timeline for the completion of the Review,
- seek confirmation that the outcome of the Review will involve the introduction legislation to:
  - ▶ strengthen and clarify the Public Sector Duty.
  - ▶ broaden the prohibition on discrimination in the Equal Status Acts 2000-2018 to explicitly include the functions of public bodies, including An Garda Síochána,
  - ▶ ensure that an effective remedy is available for discrimination that has a legislative basis, and
  - ▶ provide a mechanism for complaints in relation to racial profiling by individuals, or groups representing their interests, that allows for such allegations to be investigated and remedied independently.

## 1. Housing Rights & Access to Justice

FLAC believes that rights-based reform of housing and homelessness law is needed to address the current housing and homelessness crisis which disproportionately impacts Travellers. At present, the law, including Traveller accommodation legislation, is not informed by the recognition of adequate housing as a right.

The Government's *Housing for All* plan recognises that the current operation of the housing system is failing to meet housing need.<sup>10</sup> Viewing housing as a right offers an alternative approach to resolving the housing crisis and preventing its recurrence. Such an approach requires more than measure to increase 'supply' – it requires comprehensive reform of housing law and policy in a manner which promotes human rights, equality and access to justice, and which puts in place clear obligations on the State and State Bodies such as local authorities.

### ***The Need for a Constitutional Right to Adequate Housing***

Drawing on our experience as an Independent Law Centre, FLAC has called for a referendum on a right to adequate housing.<sup>11</sup> We made a detailed submission to the Housing Commission which proposed wording for a constitutional housing amendment that specifically enshrines the right to culturally appropriate housing.<sup>12</sup>

A common thread that emerges from FLAC's casework is a fundamental failure to meet housing needs of clients, which cannot be challenged by reference to an express and enforceable right to adequate housing. A constitutional imperative on the State to ensure access to adequate housing would not only compel the State to address housing scarcity in macro terms, but also address a range of issues which FLAC has repeatedly witnessed through its casework such as failures to provide suitable or culturally appropriate accommodation. The limited avenues for challenge offered by the various statutory schemes and rights connected to adequate housing underline the need for an express constitutional right to housing - that instigates legislative reform, adequate resource allocation, equality of outcomes, and ultimately leads to democratic accountability in the regulation of housing

---

<sup>10</sup> Department of Housing, Heritage and Local Government (2021), [Housing for All - A New Housing Plan for Ireland](#).

<sup>11</sup> The Programme for Government commits to a "[referendum] on housing". See: Department of the Taoiseach, [Programme for Government: Our Shared Future](#), p.120.

<sup>12</sup> For further detail, see: FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#).

supply, including, where appropriate, enforcement through the Courts for failure to abide by the right.

Under the current legal and constitutional order, Traveller-specific accommodation needs are regularly characterised as unreasonable, including in relation to the accommodation of large families, provision of group housing to accommodate extended families and other forms of culturally appropriate accommodation.<sup>13</sup>

An example can be seen in the judgment in *Crumlish v Donegal County Council* where the applicant (who was represented by FLAC) challenged her suspension from the housing list after refusing two offers of accommodation characterised by the local authority as reasonable despite not aligning with her stated housing needs and preferences.<sup>14</sup> The implication of characterising these offers as reasonable is that the applicant's insistence on housing meeting her needs as a Traveller was unreasonable. This is despite those needs being related to the distinctive traditions and culture of Travellers, like nomadism and living with extended family groups. Framing specific housing needs in this manner reflects the trend to view the provision of housing as a matter of resource-allocation rather than an exploration and vindication of rights; a consequence of which is that people are left in accommodation that cannot be regarded as adequate in that it is culturally inappropriate.

One academic author has noted that "... the refusal of the courts to take account of Traveller culture allows housing authorities to provide large scale sites that ghettoise Travellers and that arouse particularly strong opposition from settled people."<sup>15</sup> Traveller housing exclusion has also in part been perpetuated by the continued provision of culturally inadequate accommodation by local authorities with the effect of forcing the assimilation of Travellers into standard forms of social housing.<sup>16</sup> This directly impinges on their cultural rights and ability to pursue a Traveller way of life.<sup>17</sup>

---

<sup>13</sup> The language of Court of Appeal in *Clare County Council v. Bernard McDonagh & Helen McDonagh* [2020] IECA 307, which referred to the "*bespoke housing demand of the appellants*", illustrates the misunderstanding of the cultural significance of Traveller-specific accommodation.

<sup>14</sup> [2020] IEHC 233.

<sup>15</sup> Gerry Whyte, *Social Inclusion and the Legal System: Public Interest Law in Ireland* (2<sup>nd</sup> edn, Institute of Public Administration 2015) p.377.

<sup>16</sup> Ronnie Fay, [Equality Review of Traveller Accommodation by IHREC](#) (Pavee Point, 14 July 2021)

<sup>17</sup> This issue of Travellers feeling compelled to accept accommodation unsuited to their needs was at the centre of the decision of the High Court in *O'Reilly v Limerick County Council* [2006] IEHC 174, where the Court found that the Applicant Traveller families were not disentitled to the reliefs sought in the case by reference to the fact they had been provided with settled accommodation by the local authority which they thereafter vacated to resume living on the roadside. The Court stated "*on the evidence it is not infrequent that persons in*

### ***Rights-Based Housing & Traveller Accommodation Legislation***

Legislative reform is required to ensure that the housing rights of all individuals and groups – including access to emergency accommodation - are comprehensive, clear and enforceable. FLAC's submission to the Housing Commission made a number of proposals for rights-based reform to housing and homelessness legislation<sup>18</sup>, including a recommendation to introduce enforceable minimum standards for Traveller accommodation (which is discussed in further detail in section 4 below).

A constitutional right to adequate housing is not required to introduce the legal reforms proposed by FLAC. In fact, the introduction of such measures could be an important precursor to a constitutional amendment by:

- putting in place a rights-based framework for the vindication of the new right and the performance of the State's constitutional obligations, and
- illustrating the tangible and practical benefits of a rights-based approach to housing.

The legislative reforms discussed in the subsequent sections of this submission can each be viewed as measures necessary to give full effect to the housing rights of Travellers.

### ***Travellers' Housing Rights & Access to Justice***

Measures to promote access to justice are vital to ensure that housing rights provided for in law are effective and enforceable in practice<sup>19</sup>. These measures include:

---

*the category of the applicants are unable to sustain living in settled accommodation especially accommodation which the evidence shows was not in fact well suited for their needs and not specifically designed or identified with their requirements in mind."* [at para.79]

<sup>18</sup> FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#), p.31.

The Simon Communities of Ireland have also called for legislation to strengthen local authorities' obligations to "house people experiencing homelessness; to give those who are homeless meaningful access to appropriate housing and to outline the standards and services, which embody housing rights". See: Simon Communities of Ireland (2003), [Submission to the All Party Oireachtas Committee on the Constitution](#), p.23.

<sup>19</sup> The vindication of the right of access to justice is not only important in resolving legal issues around access to housing and homelessness, but also in preventing those issues arising. Groups and individuals who experience disadvantage and discrimination are disproportionately represented in the homeless population, and are also more likely to suffer justiciable problems (meaning problems for which there is a potential legal remedy within a civil and/or criminal justice framework) which render them more vulnerable to homelessness. See: Alexy Buck, Nigel Balmer and Pascoe Pleasence, 'Social Exclusion and Civil Law: Experience of Civil Justice

- The 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 cases heard by the Workplace Relations Commission, Residential Tenancies Board and Social Welfare Appeals Office.
- The provision of legal aid in eviction cases.
- Bodies such as IHREC, the Citizens Information Board, the Legal Aid Board, and relevant NGOs should be resourced and enabled (and, where relevant, mandated) to provide information and to conduct targeted education and outreach campaigns concerning housing rights, entitlements and services.
- The provision of dedicated legal services for marginalised groups, (such as FLAC's Traveller Legal Service) including through long-term funding for such services.
- Revision of rules of standing to enable representative actions in housing matters concerning systemic issues.

Specific measures are also needed to promote transparency and accountability in decision-making by local authorities on eligibility for access to social housing (including Traveller Accommodation) and emergency accommodation. There is limited accountability for local authorities and the State in the field of housing. Judicial review is often the only means to challenge decisions of local authorities in relation to housing, including access to emergency accommodation. This is not an effective remedy in many cases given that it is not a merits-based review and it is not accessible in terms of procedure or costs.<sup>20</sup> There would be

---

problems among Vulnerable Groups' [2005] 39 Journal of Social Policy and Administration, 302- 320. Canadian Forum on Civil Justice, '[Everyday Legal Problems and the Cost of Justice in Canada](#)' (2016).

Homelessness is often a by-product of so-called 'clustered injustice' – the cumulative and related problems (including legal problems) which arise from poverty or social exclusion such as discrimination or issues around accessing social welfare payments. See: Luke Clements, *Clustered Injustice and the Level Green*, Legal Action Group (2020).

The promotion of the right of access to justice means that such problems can be prevented or resolved – and the risk of further problems (or 'knock on effects') emerging, including homelessness, is reduced. This has been reflected in FLAC's experiences of the Traveller Legal Service and Roma Legal Clinic.

See further: FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#), pp.35-6.

<sup>20</sup> This is well illustrated by cases such as *Middleton v Carlow County Council* [2017] IEHC 528 in which the Council was found to have acted lawfully in ending their provision of emergency accommodation as it was not "*fundamentally at variance with reason and common sense*" (para 48). This is an extremely low obligation on local authorities, especially in the context of decisions with vast implications for the lives and rights of individuals and families.

Further, access to judicial review is actively under threat due to the proposed reforms by the Department of Justice to, *inter alia*, increase the threshold for leave applications and requirements for *locus standi*. See: Department of Justice, 'Civil Justice Efficiencies and Reform Measures' (2022) [33].

significant benefits to the introduction of a specialised and accessible (and, as far as possible, non-adversarial) statutory tribunal for housing and homelessness matters.<sup>21</sup>

The establishment of the Legal Aid Board's Minceir Traveller Legal Support Service was a positive step towards achieving access to justice for Travellers. However, that service employs only one full-time solicitor. Unfortunately, this is no way near the level of resources which are necessary to tackle the huge amount of unmet legal need amongst the Traveller Community. The experience of FLAC's Traveller Legal Service has repeatedly demonstrated the barriers to justice which Travellers face in seeking to vindicate their housing rights and the demand for legal assistance in the area of housing and Traveller accommodation. We also know that there is an epidemic of discrimination against Travellers seeking to access licenced premises and we have highlighted that "this form of discrimination is so common that it effectively gives rise to cultural segregation of Travellers".<sup>22</sup>

### **Recommendations**

The Joint Committee should:

- Seek an update from the Department of Housing regarding the status of the Housing Commission's report on a right to housing and the referendum on housing referred to in the Programme for Government.
- Recommend a comprehensive review of existing social housing, Traveller Accommodation and homelessness legislation to ensure that it is consistent with a right to adequate housing – with a view to creating a rights-based statutory framework.
- Seek an update from the Legal Aid Board on their Minceir Traveller Legal Support Service and its resourcing, and recommend that that service is afforded additional resources to deal with the huge level of unmet legal need amongst Travellers in the areas of housing and anti-discrimination law.

## **2. Planning and Delivery of Traveller Accommodation**

---

<sup>21</sup> Such a tribunal should have expertise in the area of social housing and powers to make orders for specialised remedies. See further: FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#), pp.37-8.

<sup>22</sup> FLAC (9 November 2023), [Press Release: WRC finds Family refused access to hotel for Confirmation celebration were subject to discrimination on the Traveller Community ground](#).



The Housing (Traveller Accommodation) Act 1998 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. The 1998 Act creates an obligation on local authorities to make an assessment of the accommodation needs of members of the Traveller community who qualify for social housing supports.

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.<sup>23</sup> The legislation twinned better accommodation provision with the elimination of unofficial encampments. More than twenty years since the enactment of the legislation, it is clear that there are major issues with both strands of this approach.

The 1998 Act is fundamentally undermined by the fact that elected representatives may adopt a Traveller Accommodation Programme (which the local authority is legally bound to implement<sup>24</sup>), but then block the delivery of the objectives of the Programme through the planning process (by refusing 'Part 8' planning consent). 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.<sup>25</sup> Local authorities may ignore their legal obligations and largely do so with impunity.

The Traveller Accommodation Expert Review<sup>26</sup> called for an “*overhaul*” of the 1998 Act; 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*”. The Review recommended the immediate introduction of:

---

<sup>23</sup> Section 10 of the Housing (Miscellaneous Provisions) Act 1992.

<sup>24</sup> 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.*”

<sup>25</sup> For instance, FLAC acted in a case concerning the decision of the elected members of a local authority to vote against a proposal to develop a halting site already included in its own Traveller Accommodation Programme. See: FLAC (23 November 2021), [Press Release: Waterford Council Decision not to proceed with halting site quashed today in case taken by the FLAC Traveller Legal Service](#).

<sup>26</sup> Department of Housing, Planning and Local Government (2019), [Traveller Accommodation Expert Review](#).

- “legislative provisions to suspend the reserved function of elected members for approval of Part 8 proposals for Traveller-specific accommodation, and also to suspend the reserved function relating to the agreement to dispose of land for the purposes of developing Traveller accommodation and provide these as executive functions”, and
- “legislative provisions to provide an alternative and direct route for Traveller-specific accommodation to An Bord Pleanála” (a recommendation which was echoed by the previous iteration of the Joint Committee on Key Issues affecting the Traveller Community<sup>27</sup>).

In the medium to long-term, the Review called for an update to “*Traveller accommodation and planning legislation to improve general alignment of the different mechanisms for planning for the provision of Traveller accommodation. Most importantly, the timeframe for the production, adoption and implementation of Traveller Accommodation Programmes should align with each local authority’s Development Plan timing and cycles*”.<sup>28</sup>

In December 2023, the Programme Board established to oversee the implementation of the Expert Review Recommendation published its most recent updates.<sup>29</sup> That document states that:

“A temporary exemption has been provided for local authorities from the ‘Part 8’ approval process to construct housing developments on local authority and designated State owned lands zoned to include residential use, and subject to compliance with the requirements of the recently inserted section 179A of the Planning and Development Act 2000.”<sup>30</sup>

This is clearly only a short-term workaround and does not address the systemic and structural issues in the planning legislation and the planning system. The temporary exemption only

---

<sup>27</sup> In their final report the Committee stated: “*The issue of the failure of many local authorities to get approval for Part 8 planning proposals must be addressed by the transfer of the decision making directly to An Bord Pleanála where local authorities are failing to implement their TAP due to refusal to pass Part 8 planning proposals or due to possible refusal having a chilling effect of the development of plans to provide adequate housing for the Travellers.*” See: Houses of the Oireachtas (November 2021), [Final Report of the Joint Committee on Key Issues Affecting the Traveller Community](#), Chapter 4: Accommodation.

<sup>28</sup> p.ix.

<sup>29</sup> Department of Housing, Local Government and Heritage (December 2023), [Traveller Accommodation Expert Review: Programme Board Update](#).

<sup>30</sup> p.12.

applies until the end of 2024<sup>31</sup>. Further, while the definition of “*housing development*” in the exemption includes “*the construction or erection of a house or houses*”, it does not clearly encompass all forms of Traveller Accommodation such as halting sites.<sup>32</sup>

The update document shows that no progress has been made in the implementation of the Expert Review’s recommendations for law reform. The “*direct route for Traveller-specific accommodation to An Bord Pleanála*” is supposedly under review “*in light of the discontinuation of Strategic Housing Development processes*”. This rationale is difficult to accept. We do not understand what, if any, implications the discontinuation of the ‘fast-track’ ‘SHD’ process for the approval of large commercial property developments could have for the viability of the alternate system for the approval of Traveller Accommodation developments by local authorities (as recommended by the Expert Review). The absence of local democratic oversight of housing developments under the SHD system would not arise in the context of Traveller Accommodation in circumstances where elected members of local authorities approve Traveller Accommodation Programmes in the first instance.

Even more strangely, the update document claims that the Department has “*completed*” the Review Group’s recommendation to “[u]pdate Traveller accommodation and planning legislation to improve general alignment of the different mechanisms for planning for the provision of Traveller accommodation” on the basis that:

“The DHLGH has communicated further with local authorities on undertaking and completing the TAPs review, including having regard to the local authority plans for integration of the TAPs with the development plan cycles.”<sup>33</sup>

The recommendation of the Expert Review clearly called for *legislative* reform (which would ensure the durability and enforceability of the improvements to the planning process proposed) but this has not occurred.

The landmark Planning and Development Bill 2023 (which contains over 540 separate provision set out over more than 700 pages) does not contain any provisions to give effect to the recommendations of the Expert Review discussed above.<sup>34</sup>

## **Recommendations**

---

<sup>31</sup> Section 179A(1)(g) of the Planning and Development Act 2000 (as amended).

<sup>32</sup> Section 179A(5)(a) of the Planning and Development Act 2000 (as amended).

<sup>33</sup> p.14.

<sup>34</sup> [Planning and Development Bill 2023](#).

The Joint Committee should:

- Engage with the Programme Board overseeing the implementation of the Traveller Accommodation Expert Review recommendations. In particular, the Committee should:
  - ▶ Seek clarity on whether the temporary exemption of local authorities from the Part 8 planning process applies to all forms of Traveller Accommodation.
  - ▶ Seek an urgent update on the review of the recommendation to create an alternative and direct route for Traveller-specific accommodation to An Bord Pleanála.
- Engage with the Programme Board and the Minister for Housing around introducing long-term reforms to the planning process for Traveller Accommodation, including the creation of a bespoke process for the planning approval of such developments which permanently excludes them from the Part 8 process. These reforms should be introduced by way of legislation and, ideally, should be included in the Planning and Development Bill 2023.

### 3. Evictions

In engaging with the previous iteration of the Joint Committee, FLAC highlighted that a local authority wishing to evict a Traveller living on the roadside or an unofficial site has at its disposal no fewer than five separate legislative mechanisms<sup>35</sup> to do so. Each of these mechanisms carry with them a risk of prosecution and of the person or family concerned having their caravan (i.e. their home) towed and/or impounded. All but one (Part VIII of the Planning and Development Act 2000) may be invoked on short or no notice without prior or subsequent recourse to a court or other independent authority.

FLAC recommended that the Government bring forward reforming legislation 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.<sup>36</sup>

The implementation of that recommendation is all the more urgent in light of the landmark judgment of the Supreme Court in *Clare County Council v McDonagh*<sup>37</sup>. In the Supreme Court, Mr Justice Hogan considered the protection afforded to the home under the Constitution and Article 8 of the European Convention on Human Rights. While he accepted that the Traveller families concerned were trespassers on the Council's land and that the placement of their caravans on that land was in breach of planning law, he did not consider that this justified a Court granting an injunction requiring the removal of the caravans before the proportionality of making such an order was considered in full.

In FLAC's view<sup>38</sup>, this decision should prompt the Government to reconsider the other legislative mechanisms used to evict Travellers which have no requirement for the proportionality of an eviction order to be considered by a Court and which contain inadequate, or no, procedural safeguards.

---

<sup>35</sup> Section 19C of the Criminal Justice (Public Order) Act 1994, Section 10 of the Housing (Miscellaneous Provisions) Act 1992, Part VIII of the Planning and Development Act 2000, section 69 of the Roads Act 1993, and section 31 of the Local Government (Sanitary Services) Act 1948.

<sup>36</sup> The Committee subsequently recommended that "[t]respass legislation, in particular where it relates to publicly owned land, should be repealed until the network of transient sites is in place". See: Houses of the Oireachtas (November 2021), [Final Report of the Joint Committee on Key Issues Affecting the Traveller Community](#), Chapter 4: Accommodation.

<sup>37</sup> [2022] IESC 2.

<sup>38</sup> See further: FLAC (31 January 2022), [Press Release: FLAC welcomes landmark Supreme Court decision concerning the summary eviction of Travellers and seeks urgent legislative reform](#).



## **Recommendations**

The Joint Committee should:

- Engage with the Department of Housing to establish whether the pieces of legislation which allow for the eviction of Travellers living on the roadside have been reviewed in light of the *McDonagh* decision. If no such review has been carried out, the Committee should call on the Department to do so and to liaise with the Committee in relation to the outcome of the review.
- Recommend the introduction of legislation 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.

## **4. Standards of Accommodation**

Adequacy of accommodation is a core component of the right to housing<sup>39</sup> and a rights-based housing system must include legally enforceable minimum standards<sup>40</sup>. Such legislation is required to ensure that the housing rights of all individuals and groups are comprehensive, clear and enforceable. While *Housing For All* commits to “*examine the potential for independent regulation of the social housing sector*”, FLAC has previously expressed concerns at the fact that it does not contain any commitments in relation to the introduction of minimum legislative standards for emergency accommodation, Traveller accommodation and the system replacing Direct Provision.<sup>41</sup>

As we highlighted in our previous engagement with the Joint Committee, 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

---

<sup>39</sup> FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#), section 3.2.

<sup>40</sup> FLAC (2022), [Submission to the Housing Commission Consultation on a Referendum on Housing](#), section 4.1.

<sup>41</sup> FLAC (2022), [Submission on the development of a Youth Homelessness Strategy](#), p.1.

of the Housing (Traveller Accommodation) Act 1998, these guidelines have never been updated and have never been placed on a statutory footing.

While those guidelines are no doubt useful in informing local authorities of the minimum requirements for sites in order to qualify for capital funding, they are of no benefit in ensuring that minimum standards on halting sites (including in relation to health and safety) are met on an ongoing basis. By contrast, there are detailed regulations in place in relation to rented accommodation, and such regulations extend, with relevant modification, to social housing provided by local authorities.<sup>42</sup>

The inadequacy of conditions on a significant proportion of halting sites was a basis on which the European Committee of Social Rights found Ireland in breach of Article 16 of the Revised European Social Charter (the right of the family to social, legal and economic protection).<sup>43</sup> In a follow-up decision, published in March 2021, the European Committee of Social Rights noted that Ireland remained in contravention of Article 16.

The previous iteration of the Joint Committee made the following recommendation in its final report:

“An urgent audit should take place of living conditions in all Traveller specific [accommodation] and halting sites and immediate action taken to address deficiencies in accommodation, community facilities, public infrastructure, estate management etc. to be paid for out of an enhanced allocation for Traveller specific housing in the estimate of the Department of Housing, Local Government and Heritage. These actions should include short term emergency measures to improve matters and long-term provision of high standard accommodation for all Travellers.”<sup>44</sup>

Prior to that, the Expert Review<sup>45</sup> recommended:

- *“Research on good practice in the planning, design, management and maintenance of halting sites should be commissioned which takes account of changes in caravan*

---

<sup>42</sup> 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.

<sup>43</sup> *ERRC v Ireland* Complaint 100/2013. [Decision on the Merits](#) published 16 May 2016.

<sup>44</sup> Houses of the Oireachtas (November 2021), [Final Report of the Joint Committee on Key Issues Affecting the Traveller Community, p.71.](#)

<sup>45</sup> Department of Housing, Local Government and Heritage (December 2023), [Traveller Accommodation Expert Review](#), p.x.



*design and size, and Travellers' needs and household size. On the basis of this research and also consultation with Travellers and social landlords, up-to-date guidelines on the planning, design, management and maintenance of Traveller-specific accommodation should be issued."*

- *"The role of caretakers for Traveller-specific accommodation and the number of these staff currently employed by local authorities should be reviewed, with a view to expanding this role to encompass more comprehensive 'estate management' type responsibilities and increasing staffing levels in order to improve management and maintenance standards."*

In its latest update<sup>46</sup>, the Programme Board described the implementation of those recommendations as follows:

- *"[The] DHLGH will consider guidance on management and maintenance of Traveller-specific accommodation having regard to a survey to be undertaken with local authorities."*
- *"The DHLGH will have regard to this proposed expansion [of the caretaker role] in its consideration of the guidelines on management and maintenance of Traveller-specific accommodation."*

FLAC agrees with the recommendations of the Joint Committee and the Expert Review, but we would also emphasise that legislative reform is needed to ensure long-term and lasting improvements in the standards of Traveller Accommodation.

### **Recommendations**

The Joint Committee should:

- Seek updates from the Department of Housing and the Programme Board on the implementation of the Expert Review recommendations on research and guidelines concerning the management and maintenance of Traveller Accommodation.
- Seek an update from the Department of Housing on the *"survey to be undertaken with local authorities"* on management and maintenance of Traveller-specific accommodation.
- Reiterate its recommendation calling for an *"urgent audit... of living conditions in all Traveller specific [accommodation] and halting sites and immediate action... to*

<sup>46</sup> Department of Housing, Local Government and Heritage (December 2023), [Traveller Accommodation Expert Review: Programme Board Update](#), pp.17-18.

*address deficiencies in accommodation, community facilities, public infrastructure, [and] estate management”.*

- Recommend that, in the short term, the Minister for Housing, Local Government and Heritage should immediately review the Guidelines published in 1998 in relation to Traveller Accommodation, update guidance in relation to the design and delivery of Traveller Accommodation standards, and amend the Housing (Standards for Rented Houses) Regulations 2019 to include halting sites (including transient, temporary and permanent halting sites).
- In addition to its recommendation calling for the establishment of a National Traveller Accommodation Authority, specify that that authority should have an inspection, oversight and enforcement function in relation to standards in Traveller Accommodation.

## 5. “Normal Residency” & “Local Connection” Requirements

### ***Access to Social Housing Supports***

Regulation 5 of the Social Housing Assessment Regulations 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. Mercy Law Resource Centre have noted that Travellers face “*particular barriers under the social housing assessment where the housing authority does not exercise its discretion properly*”. They have also highlighted that the normal residence requirement “*disproportionately affects Traveller applicants who are seeking to access social housing, particularly those residing in caravans who may be criminalised under trespass legislation*” and that the local connection requirement “*constructs a barrier*” between Travellers and access to social housing supports.<sup>47</sup> In *R (on the application of Ward & Ors) v London Borough of Hillingdon*<sup>48</sup>, the UK Court of Appeal held that a ten-year local connection requirement in a council’s allocation scheme indirectly discriminated against Travellers.

<sup>47</sup> Mercy Law Resource Centre (2021), [Minority Groups and Housing Services: Barriers to Access](#), pp.9-10.

<sup>48</sup> [2019] EWCA Civ 692.

FLAC raised these concerns with the Joint Committee previously and it subsequently recommended that the “*‘local requirement’ for social housing supports should be removed*”.<sup>49</sup>

### ***Access to Emergency Homeless Accommodation***

A matter of increasing concern is the use of local connection tests to deny or limit access to emergency homeless accommodation. As Mercy Law Resource Centre note, “[*this*] occurs notwithstanding the fact that the legislation relating to emergency accommodation has no... statutory local connection or residency requirements or test”.<sup>50</sup> FLAC have highlighted that section 2 of the Housing Act 1998 is the sole statutory basis for determining whether someone is homeless. If a person has no accommodation available which they could reasonably occupy and cannot provide for accommodation from their own resources, they are legally homeless.<sup>51</sup> However, we frequently encounter cases where local authorities rely on non-statutory measures, such as the ‘local connection’ test, to refuse to assess people as homeless.<sup>52</sup>

The Minister for Housing previously criticised the use of local connection tests to refuse access to emergency accommodation.<sup>53</sup> However, in July 2023, the County and City Managers Association (which is made up of the Chief Executives of all local authorities) issued a “*Local Connection Protocol for Homeless Presentations outside county of origin*”. That document purports to put in place a procedure (without any legal basis) whereby individuals and households may only access emergency accommodation outside of their “*county of origin*” for up to five days.

A ‘Consultation Note’ circulated by the Department of Housing in late 2023 stated that, on foot of a review of the legislation concerning homelessness and emergency accommodation that was carried out in conjunction with the County and City Managers Association, the Minister proposed to introduce regulations to provide “*clarity*” on the circumstances where a local authority may: “*apply local connection criteria in the provision of emergency accommodation in order to regularise the management of homeless presentations by households who may have an entitlement to social housing support, but whose entitlement is in another local authority functional area*”.

<sup>49</sup> Houses of the Oireachtas (November 2021), [Final Report of the Joint Committee on Key Issues Affecting the Traveller Community, p.72.](#)

<sup>50</sup> Mercy Law Resource Centre (2021), [Minority Groups and Housing Services: Barriers to Access](#), p.12.

<sup>51</sup> Section 2 of the Housing Act 1998.

<sup>52</sup> The FLAC Casebook (20 December 2021), [Continued use of “local connection” tests a concern for FLAC.](#)

<sup>53</sup> The Irish Times (28 January 2021), [Dáil told people still being refused emergency accommodation in Dublin.](#)

It is implicit in the Consultation Note that the Department now accepts that local authorities may apply local connection tests in the context of applications for emergency accommodation. There is no legal basis for this about-face and FLAC highlighted this in a submission to the Department in response to the Consultation Note. We also highlighted that there does not appear to be any legal basis under the Housing Acts for the Minister to introduce regulations which effectively add additional criteria for access to emergency accommodation.

### ***Recommendations***

The Joint Committee should:

- Urgently seek clarification from the Minister for Housing as to the status of the proposal to introduce regulations concerning the application of a ‘local connection’ test in the emergency accommodation context.
- Urgently engage with the City and County Manager Association in relation to their “Local Connection Protocol” and seek the withdrawal of that protocol.
- 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, and
  - ▶ which emphasise that access to emergency accommodation cannot be denied or limited by reference to ‘local connection’ criteria.

## **6. Promoting Equality & Combatting Discrimination**

### ***Equality Law***

The Equal Status Acts 2000–2018 include a prohibition of discrimination against Travellers in the provision of accommodation.<sup>54</sup> 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

---

<sup>54</sup> The Equal Status Acts 2000-2018 prohibit discrimination in the provision of goods and services, accommodation and education on nine grounds.

and cannot be challenged under domestic equality legislation.<sup>55</sup> Mercy Law Resource Centre have 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”*.<sup>56</sup>

Secondly, the definition of “services” in the Equal Status Acts does not explicitly 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.<sup>57</sup> It has been established that the “controlling functions” of An Garda Síochána, including the investigation and prosecution of crimes, do not come within the scope of the legislation.<sup>58</sup>

These exemptions to the scope of the ESA often leave persons who are a member of a “protected group” under the Equality Acts unable to challenge discrimination by public bodies and in relation to access to essential State services. Walsh notes that the *“reach [of the ESA] into areas like... housing is uncertain”*.<sup>59</sup>

In 2019, the UN Committee on the Elimination of Racial Discrimination (UNCERD) recommended that Ireland review its equality legislation with a view to *“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”*.<sup>60</sup>

---

<sup>55</sup> 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.

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].

<sup>56</sup> Mercy Law Resource Centre (2021), [Minority Groups and Housing Services: Barriers to Access](#), p.11.

<sup>57</sup> Eilís 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.

<sup>58</sup> Judy Walsh, *Equal Status Acts 2000-2011: Discrimination in the Provision of Goods and Services* (Lonsdale Law Publishing, 2013) p.42.

<sup>59</sup> *ibid*, p.50.

<sup>60</sup> UN Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#). Geneva: OHCHR.

These issues were highlighted by FLAC in our detailed submission to the Department of Children, Equality, Disability, Integration and Youth which is currently undertaking a review of Ireland's equality legislation.<sup>61</sup> FLAC was an active member of the Irish Human Rights and Equality Commission's Future of the Equality Legislation Advisory Committee (FELAC) which was established in light of the review. On the basis of that Committee's work, IHREC made a submission to the Department of Children, Equality, Disability, Integration and Youth which included detailed recommendations for resolving the issues with the Equal Status Acts discussed above.<sup>62</sup>

Further, the weaknesses in our constitutional equality guarantee (Article 40.1) have limited the effectiveness of national equality law.<sup>63</sup> A constitutional amendment may be necessary to, for example, remove barriers to the introduction of strong legislative provisions concerning reasonable accommodation for people with disabilities. In June 2021, the Citizens' Assembly on Gender Equality<sup>64</sup> published its report – which included three recommendations for constitutional reform in relation to equality, the family and care<sup>65</sup>. The Joint Oireachtas Committee on Gender Equality and an Inter-Departmental Committee were subsequently established to consider the recommendations of the Assembly. FLAC made submissions to both entities which included our recommended wording for a new constitutional equality guarantee.<sup>66</sup> However, the Government did not proceed with an equality referendum.

### ***Discriminatory Profiling by An Garda Síochána***

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

---

<sup>61</sup> FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#).

<sup>62</sup> IHREC (July 2023), [Submission on the Review of the Equality Acts](#).

<sup>63</sup> FLAC (November 2022), [Submission to the Joint Committee on Gender Equality: Constitutional Change & Gender Equality](#), section 1.3.

<sup>64</sup> The Assembly was established in July 2019 to “consider gender equality and make recommendations to the Oireachtas to advance gender equality...”. See: [Terms of Reference](#) for the Citizens' Assembly on Gender Equality.

<sup>65</sup> The Citizens' Assembly (June 2021), [Report of the Citizens' Assembly on Gender Equality](#), p.12.

<sup>66</sup> FLAC (May 2023), [Submission to the Inter-Departmental Committee: Referendums on Family, Care and Equality, p.x](#).

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*”.

In our previous submission to the Joint Committee, FLAC highlighted instances where the exchange of information between An Garda Síochána and local authorities appears to have strayed beyond the purpose of the statutory regime. This includes an instance where a homeless Traveller woman and her young children were described by An Garda Síochána as belonging to a family with a “bad reputation”. The woman concerned had a surname which is common among Traveller families but was not part of the family with the stated “bad reputation”. An offer of housing to her family was withdrawn without any explanation after local Gardaí contacted the Council by email to express concern regarding the allocation.<sup>67</sup> 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 (GDPR). More generally, FLAC’s experience of the Traveller Legal Service and Roma Legal Clinic has revealed that many Roma and Travellers perceive that their communities are disproportionately targeted by An Garda Síochána.

Irish law contains no explicit prohibition against racial profiling by An Garda Síochána and other law enforcement officers. IHREC has noted that:

“There are negative attitudes amongst Garda members towards minority ethnic groups.... Discrimination does not explicitly constitute a breach of discipline within the Garda Síochána (Discipline) Regulations 2007. Concerns have been raised about the ability of the Garda Síochána Ombudsman Commission to effectively address and investigate complaints of racial profiling by Garda members.”<sup>68</sup>

---

<sup>67</sup> FLAC (March 2021), [Submission to the Joint Committee on Key Issues affecting the Traveller Community](#), p.20.

<sup>68</sup> IHREC (2021), [Developing a National Action Plan Against Racism – IHREC Submission to the Anti-Racism Committee](#), p.67.



GSOC may only investigate individual complaints rather than systemic issues. As a result, there is no specific complaint mechanism available to those who consider that they have been subject to racial profiling.

Further, as discussed above, the functions of the Gardaí are largely excluded from the prohibition of discrimination in the Equal Status Acts. In 2021 the European Commission published research on *“possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin”* which included an overview of *“national law protecting against discrimination by police forces in the Member States”*. It stated that, in Ireland *“in the absence of explicit provisions prohibiting discrimination in policing and other public functions, some reported discrimination, including racial profiling effectively remain unchallenged at the national level”*. The research specifically cited FLAC’s previous submission to the Joint Committee as evidence of *“reported discrimination by the Irish police against members of the Traveller community”*.<sup>69</sup>

In 2019, UNCERD stated that they are *“concerned about the reportedly high incidence of racial profiling by the Gardaí (the police) targeted at people of African descent, Travellers and Roma and the disproportionately high representation of these ethnic minority groups in the prison system. It is also concerned about the absence of legislation proscribing racial profiling, the absence of independent complaint mechanisms dealing with racial profiling and the lack of statistics on racial profiling”*.<sup>70</sup> The Committee recommended that Ireland should *“put in place an independent complaints mechanism to handle racial profiling”*.<sup>71</sup>

In 2021, United Nations Human Rights Council published a report on foot a review of Ireland’s Human Rights record through the Universal Periodic Review mechanism (UPR). Ireland received recommendations from four countries calling for the introduction of legislation to prohibit racial profiling and the introduction of an independent complaints mechanism for the investigation of racial profiling.<sup>72</sup> In rejecting those recommendations, the State referred to An

---

<sup>69</sup> European Commission Directorate-General for Justice and Consumers (2021), [Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin](#), p.51.

<sup>70</sup> UN Committee on the Elimination of Racial Discrimination (2019) [Concluding observations on the combined fifth to ninth reports of Ireland](#). Geneva: OHCHR, p.3.

<sup>71</sup> *ibid.*

<sup>72</sup> United Nations Human Rights Council (14 December 2021), [Report of the Working Group on the Universal Periodic Review: Ireland](#).



Garda Síochána's non-discrimination policies and the availability of an individual complaints mechanism via GSOC.<sup>73</sup>

FLAC's submission to the review of the equality legislation stated that the Equal Status Acts *"should be amended to provide a mechanism for complaints in relation to racial profiling by individuals, or groups representing their interests, that would allow for such allegations to be investigated and remedied independently"*.<sup>74</sup>

### ***The Public Sector Equality & Human Rights 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. In fulfilling their duties under section 42, public bodies must consider the human rights and equality impact of their policies, delivery of services, budgets, procedures and practices.

As we stated in our previous submission to the Joint Committee, FLAC believes that the Public Sector Duty should have an impact on addressing the stigma, prejudice, discrimination, racism, social exclusion and identity erosion experienced by Travellers, as well as the deeply embedded and structural discrimination they face in seeking to access housing. 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 to 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).

The Public Sector Duty has now been in effect for over seven years. However, there is limited evidence to date of the duty having delivered on its potential to create a shift in culture within

---

<sup>73</sup> United Nations Human Rights Council (2 January 2022), [Addendum to the Report of the Working Group on the Universal Periodic Review: Ireland - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review.](#)

<sup>74</sup> FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#), p.92.

public bodies and the delivery of public services. For many public bodies, the process of implementation and engagement with the Public Sector Duty remains at the very early stages and the implications of the duty for the work of those bodies are largely unexplored.

FLAC's submission to the review of the equality legislation made a number of law reform recommendations for clarifying and strengthening the Public Sector Duty including by amending it to allow for the introduction of 'specific duties' on State Bodies and Government Departments.<sup>75</sup>

### **Recommendations**

The Joint Committee should recommend 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) and the impact of previous convictions on present housing applications or allocations, and
- 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 Joint Committee should engage with the Department of Children, Equality, Disability, Integration and Youth and:

- seek clarification as to the present status of the Review of the Equality Acts and a specific timeline for the completion of the Review,
- seek confirmation that the outcome of the Review will involve the introduction legislation to:
  - ▶ strengthen and clarify the Public Sector Duty.
  - ▶ broaden the prohibition on discrimination in the Equal Status Acts 2000-2018 to explicitly include the functions of public bodies, including An Garda Síochána,

---

<sup>75</sup> FLAC (2021), [Submission to the Consultation on the Review of the Equality Acts](#), chapter 9.

- ▶ ensure that an effective remedy is available for discrimination that has a legislative basis, and
- ▶ provide a mechanism for complaints in relation to racial profiling by individuals, or groups representing their interests, that allows for such allegations to be investigated and remedied independently.