

Trinity Free Legal Advice Centre



Know Your Rights Booklet 2018/2019

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Foreword

In 1977, the Pringle Report identified four factors that prevent marginalised people from availing of legal services when that might be to their benefit, namely, the cost of legal services, the fact that lawyers and their clients often lack knowledge as to areas of the law most relevant to low income groups, the fact that people from disadvantaged communities often find lawyers socially intimidating and the geographical inaccessibility of solicitors' offices. While considerable improvement has been made in relation to the fourth factor in the intervening period, the first three factors still constitute formidable obstacles to accessing legal services.

In addressing the second of these factors, there is a great need to provide accurate accounts of the law that are easily understood by the general public. TCD FLAC's 'Know Your Rights' booklet follows in FLAC's proud tradition, since its inception in 1969, of trying to demystify the law and to make members of the general public more aware of their rights. This booklet is targeted

particularly at students, covering such traditionally important areas as employment rights, tenants' rights, consumer law and Garda powers. It has also kept pace with the march of time by including sections on the relatively newer areas of the law dealing with cyberlaw, data protection and the statutory equality code and the booklet nicely complements the regular legal advice clinics organised by members of Trinity FLAC for their fellow students.

This booklet also fits well with Trinity College's policy and tradition of encouraging civic engagement among its students and, in particular, with the Law School's objective of producing law graduates with a deep concern for social justice. Especially in these difficult times, it is very heartening to see students devote their time and expertise to the service of others and the Committee and authors are greatly to be commended for producing this booklet.

Professor Gerry Whyte

6 September 2013

Landlord and Tenancy Issues

Note: if you are renting a room in the landlord's own home, the Residential Tenancies Acts do not apply. You have very little legal protection. You do not have a lease, but rather a license, which is simply a contract between you and your landlord. This may not be in written form; it is strongly advised that you try to agree 'ground rules' with your landlord and put them in writing.

For more information, visit citizensinformation.ie.

The Rent Book

To provide a rent book/receipt of payment by written statement which must contain:

- address of the rented dwelling;
- name and address of landlord/agent;
- name of tenant;
- term of the tenancy;

- amount of rent, when and how it is to be paid;
- details of other payments;
- amount and purpose of deposit paid;
- conditions under which it will be returned to tenant; and
- statement of information on rights and duties of landlords and tenants.

If the landlord refuses to supply/use a rent book, contact the Residential Tenancies Board.

The Deposit:

There is no limit on the amount the landlord can seek for deposit. At the end of the tenancy the landlord must promptly return the deposit.

Deposit may be retained or deductions made:

- i) if you have not paid the rent;

ii) to pay costs incurred to repair serious damage.

The Residential Tenancies (Amendment) Act 2015 provides for a deposit protection scheme, whereby landlords must lodge your deposit with the Residential Tenancies Board. This has not yet been commenced but is expected to come into force in 2019.

If you feel that your deposit has been unfairly withheld, make an application to the Residential Tenancies Board.

Your Right to Privacy & Exclusive Possession

The landlord can only enter with your prior permission. If repairs and inspections are needed, prior arrangement must be made.

If your landlord repeatedly enters your flat without permission, discuss the issue with them and assert your rights.

Repairs

Notify the landlord immediately in writing of any repairs needed and allow access for the work to be done.

If the landlord fails to fix a serious problem within a reasonable time you can get repairs done and your landlord must reimburse you.

The landlord is generally obliged to carry out repairs, unless the tenant caused serious damage.

Your landlord must record details of furnishings and appliances provided. To prevent disputes over damaged items:

- Record their condition (take photographs).
- Check accuracy of inventory list.

For problems posing serious health/safety risks, e.g. vermin or sewage, contact your local council or corporation.

Leases for Fixed Periods

You cannot be asked to leave during the time period of the lease, unless you have failed to pay rent or breached another term of your lease.

Noise

Clarify conditions about parties and noise with your landlord. If noise from other tenants or neighbours is causing a nuisance to you, inform your landlord. You may also make a complaint to your local authority or local District Court.

Insurance

The landlord's insurance policy is unlikely to cover your personal belongings.

Standards the Landlord Must Legally Keep

Your landlord must ensure that your flat/house complies with certain minimum standards.

- ✓ Free from dampness
- ✓ In good structural repair
- ✓ Hot and cold water
- ✓ Heating and ventilation
- ✓ Appliances in good working order
- ✓ Electrical wiring, gas

If your flat does not comply with these standards, you can report it to your local authority or the Residential Tenancies Board.

Services and the Landlord's Obligations

Details of when and how payments for services are to be made must be set out in full in your rent book e.g. direct debit, meter, bill etc. The landlord

is not entitled to disconnect the power or water supply.

Local authority service charges for water, bin collection etc. are payable by the tenant as the "occupier" of the premises. Make sure you are not billed for arrears for previous tenants or for charges due from other people living in the house.

Useful contact details

Residential Tenancies Board - www.rtb.ie

Threshold give free legal advice on tenancy issues - www.threshold.ie

Consumer Rights

Rights when purchasing goods

Under consumer law, an item you purchase must:

- be of a reasonable and acceptable standard and quality;
- be fit for the purpose it was bought for; and
- conform to the description given by the retailer or in any advertisement.

Redress

If your purchase turns out to be faulty, the retailer, not the manufacturer, is responsible to you and must sort out your complaint. You are entitled to a refund, a replacement or a repair. The retailer should fix the problem within a reasonable time:

- if your complaint is covered by the Sale of Goods and Supply of Services Act 1980 you can insist on a refund, a

replacement or a repair. You do not have to accept a credit note;

- repairs and replacements should be free of charge to you. The seller is not allowed to charge any additional costs for labour or materials or postage;
- any shop notice that claims to restrict your rights (for example a “No Refunds” sign) has no bearing on your rights when returning a faulty item;
- if you are not satisfied with the solution offered by the retailer, you can bring your complaint to the Small Claims Court for claims of €2000 or lower; or
- if an item you bought is faulty, and is now on sale at a reduced price, you are entitled to a refund of the price you paid for the item or to a replacement of the same value as long as you have proof of purchase.

You have no grounds for redress if:

- you were told about the fault before you purchased the item;
- you examined the item before you bought it and should have seen the defect;
- you bought the item knowing that it was not fit for its intended purpose;
- you broke or damaged the product;
- you made a mistake when purchasing the item; or
- you change your mind.

Rights when buying a service

When you are supplied a service in the course of a business the supplier of the service must:

- Have the necessary skill to provide the service
- Provide the service with proper care and diligence
- Use sound materials when supplying the service and if goods are supplied with the

service the goods must be of reasonable and acceptable quality

Misleading Claims

Any false or misleading claim made by a retailer or professional about the goods or services they provide is an offence. It is also an offence to sell goods which bear a false or misleading description.

Mistake

If a retailer makes a mistake in marking the price of goods, the buyer does not have the right to demand that the goods be sold to them at the marked price.

Aggressive Commercial Practices

It is an offence for a retailer to engage in aggressive commercial practices including harassment, coercion and undue influence

Useful Organisations

- Competition and Consumer Protection Commission

www.ccpc.ie

1890 432 432

- The Consumer Association of Ireland

www.thecai.ie

01 – 637 3961

- Citizens Information Board

www.citizensinformation.ie

0761 07 4000

Equality and Discrimination

When it comes to discrimination there are two key pieces of legislation, The Equal Status Acts 2000-2011 and the Employment Equality Acts 1998-2011.

Equal Status Acts 2000-2011

These Acts say that to be discriminated against means to be given less favourable treatment than other people. Discrimination is unlawful if it based on the following grounds or characteristics:

- Gender (note: the legislation offers a binary – male/female – definition of gender)
- Marital status
- Family status
- Sexual orientation
- Religion
- Age

- Disability
- Race
- Traveller ethnicity
- Victimization (whether or not you have complained about discrimination to the Equality Authority on a previous occasion)
- Receipt of Housing Assistance Payment

Under the Acts there are four types of discrimination. They are:

- **Direct discrimination** – where one person is treated less favourably than another person in the exact same situation for one of the reasons listed above,
- **Indirect discrimination** – where an individual or group of people are placed at a disadvantage as a result of conditions or rules which they might find

hard to satisfy and which cannot be reasonably justified

- **Discrimination by association** – when a person is treated less favourably simply because they are associated with or connected to another person who falls under one of the protected grounds.
- **Discrimination by imputation** – when a person is treated less favourably because it is assumed that they belong to one of the categories covered by the grounds above, whether or not that is the case.

These are very broad acts and apply in many situations, including buying or selling products, availing of or purchasing services, providing or using accommodation, and interacting with education institutions like schools and colleges.

Under the Acts **victimisation is also illegal**. Victimisation is when a person treated badly or penalised for making a claim to the Equality Authority or under the Equal Status Acts.

Making a Complaint under the Act

1. Within two months of the most recent incident of discrimination, you must fill out the Form ES 1 available at www.workplacerelations.ie. This form must be sent to the person you are complaining about. If they do not reply within one month, or you are not satisfied with their reply, you can send your complaint to the WRC within six months of the discrimination, using Form ES 3, which is also found on their website.
2. This will lead to either mediation, investigation or both.

Employment Equality Acts 1998-2011

Though these set out much the same rules for the employer/employee relationship, it is important to note a few extra provisions for this specific situation.

The Acts protect a person's right to equal pay for equal work. Equal work is also called 'like' work –

the duties may be slightly different but the work is of the same value to the employer. Equal pay claims can be brought under any of the grounds of discrimination set out above, apart from housing assistance ground, which relates only to the provision of accommodation.

Employers can be held to be vicariously liable. This means that they can be held liable for discriminatory acts by their employees unless it can be shown that they took reasonable steps to prevent it.

Employees have a right to seek information from their employers when deciding whether or not to bring a claim. Even though an employer might not be the actual person who discriminated against you or harassed you, they are responsible.

You may ask for certain information which might help you to decide whether or not to carry on with your claim. This could include details of pay scales or statistics on gender or nationality of employees. Your employer is not obliged to disclose confidential information.

If you're requesting information from your employer, you must use Forms EE2 and EE3, which are available from the Workplace Relations Commission's website.

Making a Claim

You must make your complaint of discrimination or harassment within six months of the date of the latest act of discrimination. The six-month time limit can be extended up to 12 months by the Director of the Equality Tribunal. The form used for making a complaint to the Equality Tribunal is EE 1.

Employment

Starting work and taxation

If you have never had a job before, it is important to get to grips with your tax situation as soon as possible. Most employees in Ireland pay three types of tax: PAYE, PRSI and USC. To reduce the amount of tax you have to pay, employees are given a variety of tax credits to offset against PAYE.

The tax credits you get are based on your personal circumstances, like whether you are married, have children or other dependants, etc. If you are working part-time for minimum wage or a little above that, your tax credits may well be enough to cover all your potential tax liability.

Taxes are deducted from your wages by your employer and then handed over to Revenue, the Government tax agency. If you are starting your first job, you need to fill out Form 12A (available on www.revenue.ie) so that Revenue can calculate what tax credits you are entitled to. Until you do, you will be charged 'emergency tax'

(marked by E on your payslip), the rate of which increases the longer you wait to submit Form 12A. Don't worry, you will get back whatever you were charged in emergency tax beyond that which you should have been charged once you submit Form 12A.

If you are changing jobs, you will need a P45 from your previous employer. Give this to your new employer and they will make sure that your tax credits are transferred.

If you are working more than one job, you need to make sure that you split your tax credits between them – otherwise you will be overpaying tax in one job and wasting your credits. Best to do this in advance by contacting Revenue.

Pay

The current minimum wage as of 1 January 2018 is €9.55 per hour.

If you are under the age of 18, or have been working for less than 2 years, there is a **lower**

minimum wage. More details of rates can be found on the Citizens' Information website.

All employees are entitled to a written statement of pay called a 'payslip'. It should contain details of your gross pay and any deductions made (such as taxes).

Rights at work

The full contract of employment does not have to be written down, but within two months of starting work, your employer must provide you with a document stating certain terms and conditions, including rates of pay and hours of work.

Hours of work and break periods are set out in the Organisation of Working Time Act 1997. The general rule is that you are entitled to a break of 15 minutes after 4 ½ hours of work. If you work more than 6 hours you are entitled to a break of 30 minutes, which can include the first 15-minute break. There is no entitlement to be paid during these breaks and they are not considered part of

working time. Shop employees who work more than 6 hours and whose hours of work include 11.30 am – 2.30 pm are entitled to a one-hour break during those hours.

Under the Safety, Health and Welfare at Work Act 2005 employers have a duty to ensure employees' safety, health and welfare at work. Details of what this means can be found at:

http://www.citizensinformation.ie/en/employment/employment_rights_and_conditions/health_and_safety/health_safety_work.html

Your employer should have a disciplinary procedure. Generally, this provides for a series of steps from informal warnings for minor infractions, to formal, written warnings, ultimately to dismissal for serious or repeated misbehaviour. The disciplinary procedure should be contained in your contract of employment or made available to you within 28 days of starting work.

Remember, you cannot be dismissed (or denied work in the first place, or paid less) on any of the

grounds set out in the Employment Equality Acts (see **Equality and Discrimination** above).

You are protected from 'unfair dismissal'. If you complain to the Workplace Relations Commission, the burden is on the employer to show that the dismissal was fair. A fair dismissal is one on grounds of capability, competence, qualifications, conduct, redundancy, breaking the law, or other 'substantial grounds' which your employer will be required to justify. You are similarly protected from bullying and harassment at work.

Any complaints about pay, conditions, discrimination, bullying or harassment at work or unfair dismissal should be referred to the Workplace Relations Commission. For more details, see www.workplacerelations.ie.

The Powers of the Gardaí

The Gardaí derive their powers from legislation (laws passed by the Oireachtas). They cannot stray beyond the powers granted to them, or their actions will be unlawful. They must also respect the fundamental human rights of citizens protected by the Constitution (Bunreacht na hÉireann) and by the European Convention of Human Rights (ECHR). It is the courts' job to interpret the meaning of legislation and these human rights guarantees to ensure that the actions of the Gardaí are lawful.

Public Order Offences

The Public Order Acts give the Gardaí powers to deal with offences relating to behaviour carried out in public places. A public place is where any member of the public can legally gain access.

Arrest

Under the Criminal Justice (Public Order) Act 1994, the following are considered arrestable offences, and a Garda does not need a warrant to arrest you:

- 1) Intoxication in a public place
- 2) Threatening or abusive behaviour in a public place
- 3) Distribution of threatening or insulting material
- 4) Failing to follow Garda orders to 'move on' from loitering in a public place
- 5) Failing to provide Garda with name and address when asked
- 6) Wilful obstruction of vehicles or individuals in a public place
- 7) Causing or involvement in a riot
- 8) Assault

Garda Request for Name and Address

If suspected of committing an offence under the Public Order Act, a Garda can ask the person for his/her name and address. If the person fails to comply with the Garda's request, the Garda can then arrest the person without a warrant. As stated above, failure to inform a Garda upon request of your name and address is an offence.

Garda Directions

Gardaí possess powers that allow them to request members of the public to stop behaving in a manner that would constitute an offence under the Public Order Act. For example, if a person is acting in a threatening or abusive manner in a public place, a Garda may ask the person to leave in an orderly fashion.

Alcohol

If a person is drinking alcohol openly in a public place, a Garda may take the alcohol from that person, he/she may also ask the person to leave the area and/or ask for that person's name and address. If you do not follow the directions given to you by a Garda, he/she has the power to arrest you, as failure to comply with Garda directions could constitute an offence.

Crowd Control

A Garda holding the rank of Superintendent is permitted to authorise Gardaí to create barriers in order to prevent members of the public from gaining entry into an area where large crowds are expected. Importantly, a Garda can direct a person to a different entrance but cannot prevent a person from entering unless there is a ticket requirement system in place.

How Should I Be Treated by a Garda?

Members of An Garda Síochána are required to treat people with respect at all times. Physical contact may never be used unless the Garda needs to protect himself in self-defence, protect other persons or property, or when the Garda is engaged in the act of arresting a person. Even in such circumstances, Gardaí may not abuse this power; they may not use a level of force other than what is necessary.

Garda Powers of Search

A Garda can stop you in a public place and search your person without your consent if he/she has a reasonable suspicion that you have committed an offence and are in possession of items related to that offence, without any need to arrest you, nor a warrant. For example, if a Garda suspects you are in possession of illegal drugs, stolen goods, or a weapon, he/she may search you. You must be informed why you are being

searched. The Garda must arrest you in order to confiscate anything found during the search.

A Garda will require a warrant to search your home.

What Happens When a Garda Arrests a Person?

When you are arrested, you are physically restrained and detained in Garda custody until you are taken before the District Court. You must be told why you are being arrested (unless you are suspected of a terrorist offence under the Offences Against the State Act 1939). If you are being charged, you must be provided with a charge sheet giving the details of the offence. You can only be arrested on suspicion of having committed an offence; you cannot be arrested for the purpose of gathering evidence or 'helping the Gardaí with their enquiries'. You can, however, be detained for questioning following your arrest for a period ranging from 24 hours to 7 days (depending on the type of offence) before being

charged, if the Gardaí believe your detention is necessary for their investigation.

If you go voluntarily to a Garda station to assist the Gardaí with their enquiries and are subjected to questioning or interrogation, you must be told and it must be clear to you that you are free to leave the station at any time, unless you are arrested.

Requirement for a Warrant

A Garda does not need a warrant to arrest a person if:

- that person is suspected of committing a serious offence;
- that person is thought to have committed an offence under the Road Traffic Acts;
- that person is suspected to have committed an offence under the Public Order Act;

- that person is a foreign national and refuses to produce identity documentation upon request by a Garda; or
- that person is a foreign national and is suspected of non-compliance with a deportation order issued against him/her.

Although it is not necessary to have committed an offence in order to be arrested by a Garda, members of An Garda Síochana are expected to only act if there is reasonable suspicion that an offence has been committed.

Resisting Arrest

Attempting to resist arrest is not a good idea. Not only can the person who attempts to resist be injured, he/she could injure a Garda in the process of resisting, and could therefore be charged with a serious charge of assault on a Garda. It is advisable to seek legal advice if a person feels he/she has been unfairly treated and arrested without good reason.

The Right to Protest

Everyone is guaranteed the right to assemble peacefully, and without arms. This is a right protected under the Constitution, under Article 40 of the constitution and the European Convention of Human Rights. This fundamental right may be curtailed and limited in a number of ways.

What are the limits of your right?

Your right to free assembly may be curtailed if it is deemed necessary for public safety. Under the Public Order Act, the Gardaí can restrict access to an event. The Gardaí may monitor an event and, if they see a person committing an offence, they may arrest that person without a warrant.

Public Order offences include

- intoxication in a public place;
- threatening, abusive or insulting behaviour in a public place;

- distribution or display of threatening, abusive, insulting or obscene material;
- failure to comply with a direction of a Garda;
- trespass;
- riot, violent disorder, affray; and
- assault or obstruction of a peace officer.

For the purposes of the law in Ireland, a 'public place' includes roads, public parks or recreational areas, cemeteries, churchyards, trains, buses and other public transport vehicles. In the case of most of the offences under this Act, if a Garda suspects you of being involved, you are obliged to give your name and address if asked. In fact, it is an offence if you fail to do so. You may be arrested without warrant if you fail to give your name and address. You are liable on summary conviction to a class D fine for that offence. The Gardaí may not, however, use unreasonable force when policing events.

If you assemble on private land you may have committed an act of trespass. If a gathering

becomes violent, those engaging in the gathering may be arrested and charged with a criminal offence.

Your right to free assembly may be curtailed if it is in support of an unlawful organisation, as defined by section 18 of the Offences Against the State Act 1939.

I predict a riot

An assembly may be prevented or controlled if it is designed or calculated to cause a riot or a breach of the peace. The offence of riot is seen as one of the major and most serious of the public order offences. Section 14 of the Criminal Justice (Public Order) Act 1994 defines riot as:

'Where –

- 12 or more persons who are present together at any place (public or private) use or threaten to use unlawful violence for a common purpose, and

- The conduct of these persons, taken together, is such as would cause a person of reasonable firmness present at that place to fear for his or another person's safety'

There is no requirement to notify an authority of plans to organise a parade, demonstration or march.

Photography at Riots

There is nothing which prevents a member of the Gardaí watching protest events, filming protests or taking photographs during a protest.

If a member of the Gardaí does this, however, they must comply with data protection requirements to protect your right to privacy.

If the Gardaí want to use the photographs or video as evidence to prosecute you for an offence, they must get permission from a judge or senior Garda beforehand.

Rights on a Night Out

At the Door

The owner and the owner's employees have a general right to refuse admission to anyone, so long as it does not amount to discrimination under the Equal Status Act.

They have an obligation under the Intoxicating Liquor Acts to ensure that nobody engages in violent or disorderly conduct on their premises. Anyone engaging in such conduct can be told to leave by the owner or his employees.

A pub or club owner could be guilty of a criminal offence if they allow you on the premises when:

- You are intoxicated to extent that it is reasonable to think you could pose danger to yourself/others.
- You are aged between 18 and 21 but do not show some form of valid ID (see below for more information on age policies).

However, you **cannot** be refused admission or service on any one of the following grounds (see the **Equality** section above):

- Gender
- Marital status
- Family status
- Sexual orientation
- Religion
- Age (see below)
- Disability
- Race
- Traveller ethnicity
- Victimisation

Age Policies and IDs

It should be noted that the Equal Status Act allows for people under the age of 18 to be treated differently from people over 18. In addition, the Intoxicating Liquor Acts allow pubs and clubs to operate any age policy of their choosing, so long as it is clearly displayed and they enforce it consistently.

The following forms of ID are approved by the Intoxicating Liquor Acts:

- Garda age card
- Passport
- EU member state identity card
- Driver licence

Bouncers

Under the Private Security Services Act 2004 bouncers must be issued license by Private Security Authority. They must wear a clearly visible ID badge at work, which clearly displays their license number.

Bouncers may use force where reasonable to:

1. Protect themselves/another from actual or threatened injury or assault.
2. Protect nightclub owner's property or their own from damage/destruction.

3. Prevent entry or remove from the premises, person whose permission to enter has been refused/withdrawn.
4. Prevent commission of a crime or breach of the peace.

Complaints Procedure

If you feel any of your rights have been breached, your complaints should be directed in writing to the Private Security Authority.

The complaint should be in good faith and not be vexatious or frivolous.

The complainant then has the right to have the complaint investigated and be heard during investigation.

Useful Contact Details

The Private Security Authority

Tel: 062 31588 / 32600

Visit: www.psa.gov.ie

Email: info@psa.gov.ie

flac@csc.tcd.ie

trinityflac.wordpress.com

facebook.com/trinityflac

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