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Working Group to Report to Government
on Improvements to the Protection Process,
including Direct Provision and Supports
to Asylum Seekers

Final Report
June 2015

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ABBREVIATIONS

AMIF	Asylum, Migration and Integration Fund
AVR	Assisted voluntary return
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CRC	UN Convention on the Rights of the Child
DO	Deportation order
DP	Direct Provision
EASO	European Asylum Support Office
EEA	European Economic Area
ENP	Exceptional needs payment
ECHR	European Convention on Human Rights
GNIB	Garda National Immigration Bureau
HSE	Health Service Executive
INIS	Irish Naturalisation and Immigration Service
IOM	International Organization for Migration
IPAT	International Protection Appeals Tribunal
JR	Judicial review
LAB	Legal Aid Board
LTR	Leave to remain
ORAC	Office of the Refugee Applications Commissioner
PTR	Permission to remain
PTSD	Post-traumatic stress disorder
RAT	Refugee Appeals Tribunal
RIA	Reception and Integration Agency
SP	Subsidiary protection
SWA	Supplementary Welfare Allowance
TEC	Treaty establishing the European Community
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

GLOSSARY

Asylum seeker	A person who has made an application for refugee and/or subsidiary protection status. For the purposes of this report the term “protection applicant” is used unless the context requires otherwise.
Communal kitchen	A kitchen that may be used by residents for cooking their meals using supplies provided by the centre management.
Direct Provision (DP)	Direct Provision is the means by which the State seeks to meet its obligations to provide for the material needs of people seeking protection in the State (see para. 1.30).
Family quarters	An accommodation unit that comprises a living room and bedroom(s) for the sole use of a family. Bathroom facilities may be en-suite or may be a bathroom designated for the family's use outside of the unit.
Garda National Immigration Bureau (GNIB)	The Garda National Immigration Bureau carries out deportations, border control and investigations relating to illegal immigration and human trafficking.
Irish Naturalisation and Immigration Service (INIS)	The functional unit within the Department of Justice and Equality responsible for administering the administrative functions of the Minister for Justice and Equality in relation to asylum, immigration (including visas) and citizenship matters.
International protection	In the global context, the actions by the international community on the basis of international law, aimed at protecting the fundamental rights of a specific category of persons outside their countries of origin, who lack the national protection of their own countries. In the EU context, protection that encompasses refugee status and subsidiary protection status (European Migration Network; Asylum and Migration Glossary 3.0 October 2014).
Leave to remain process (LTR)	The consideration by the Minister for Justice and Equality of whether or not to issue a deportation order in respect of a person who has been deemed not eligible for protection. If the decision is that a deportation order should not issue, leave to remain in the State is granted under Ministerial discretion following consideration of representations submitted, including in relation to the matters set out in section 3 of the Immigration Act 1999.
Legal Aid Board (LAB)	An independent statutory body providing legal services in civil matters. It has a specialised office to provide confidential and independent legal services to persons applying for protection in Ireland. Legal aid and advice is also provided in appropriate cases on immigration and deportation matters.
Office of the Refugee Applications Commissioner (ORAC)	The first instance decision-making body in the Irish protection process.

GLOSSARY

Person at the deportation order stage	A person who has completed the protection and leave to remain stages and in respect of whom a deportation order has issued.
Person at the leave to remain stage (LTR)	A person who has completed the protection process and whose eligibility for leave to remain has yet to be considered. Such persons may or may not have made specific representations seeking leave to remain in the State (See also: leave to remain process)
Person in the judicial review process	A person who is engaged in judicial review proceedings before the Courts. Such a person will simultaneously be at one of the stages in the system.
Protection applicant	A person with an application for refugee status and/or subsidiary protection which has not been determined to finality.
Protection process	The determination of eligibility for refugee status and/or subsidiary protection status and the appeal of negative decisions on eligibility.
Refugee Appeals Tribunal (RAT)	The second instance decision-making body in the Irish protection process.
Reception and Integration Agency (RIA)	The functional unit within the Department of Justice and Equality with responsibility for arranging accommodation for protection applicants (in accordance with the Government policies of Direct Provision and dispersal) and working with statutory and non-statutory bodies to coordinate the delivery of other services including health, social welfare and education to applicants.
Refugee	A person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country; or who, not having a nationality and being outside the country of his or her former habitual residence, is unable or, owing to such fear, is unwilling to return to it (section 2 of the Refugee Act 1996).
Resident	A person who resides in a Direct Provision accommodation centre.
Section 3	A shorthand means of referring to the consideration by the Minister for Justice and Equality of whether or not to issue a deportation order in respect of a person who has been deemed not eligible for protection. If the decision is that a deportation order should not issue, leave to remain in the State is granted under Ministerial discretion following consideration of representations submitted, including in relation to the matters set out in section 3 of the Immigration Act 1999.

GLOSSARY

Self-catering centre	An accommodation centre that is essentially an apartment block with residents doing their own shopping and cooking. As accommodation only is supplied, the Direct Provision weekly allowance rate is increased in line with that of the appropriate personal/family rate of Supplementary Welfare Allowance (SWA), less a standard deduction of €32/€40 per week in respect of the person's contribution towards accommodation costs. These centres are exceptions within Direct Provision and are used as step-down facilities or to accommodate persons deemed by RIA to be particularly unsuited to communal living.
Self-contained unit	A unit within an accommodation centre that comprises a living room, bedroom(s), bathroom, and cooking facilities (albeit that they may not be capable of use at present).
Separated child	A person under 18 years of age who is outside his/her country of origin or habitual residence and is separated from both parents or their previous legal/customary primary caregiver (see also: unaccompanied minor).
Single application procedure	Also single procedure. A procedure leading, on the basis of a single application for refugee status, subsidiary protection status or leave to remain, to a decision.
Subsidiary protection	<p>The protection given to a person:</p> <p>(a) who is not a national of a EU Member State,</p> <p>(b) who does not qualify as a refugee,</p> <p>(c) in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, would face a real risk of suffering serious harm and who is unable or, owing to such risk, unwilling to avail himself or herself of the protection of that country. "Serious harm" means: (a) death penalty or execution; (b) torture or inhuman or degrading treatment or punishment of an applicant in his or her country of origin; or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict (Regulation 1(2) of S.I. 426 of 2013 European Union (Subsidiary Protection) Regulations 2013).</p>
Supplementary Welfare Allowance	A means-tested scheme administered by the Department of Social Protection that is considered the "safety net" within the social welfare system in that it provides assistance to eligible persons whose means are insufficient to meet their needs and those of their dependants.
The system	Comprises the protection process, the leave to remain process, the deportation order stage and the judicial review process in the State.

GLOSSARY	
Tusla	Refers to the Child and Family Agency.
Unaccompanied minor	A person under 18 years who is outside his/her country of origin or habitual residence and who is separated from both parents and other relatives and who is not being cared for by an adult who, by law or custom, is responsible for doing so. See also: separated child. For the purposes of this report “separated child” is used unless the context requires otherwise.

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FOREWORD

In the Statement of Government Priorities 2014–2016 a commitment was given “to treat asylum seekers with the humanity and respect that they deserve”. To this end an independent Working Group was established to report to Government on the existing protection process and to recommend improvements to Direct Provision and to other supports for asylum seekers.

On behalf of my colleagues on the Working Group I would like to thank Minister Fitzgerald and Minister of State Ó Ríordáin for giving us the opportunity to conduct what is the first comprehensive review of the protection system since the introduction of Direct Provision 15 years ago. I was personally honoured to be invited to chair the Group’s deliberations.

The Working Group’s terms of reference focus essentially on how the existing protection system might be improved in ways that show greater respect for the dignity of persons in the system and that improve the quality of their lives. In making recommendations the Working Group was to be mindful of the budgetary situation and the existing border controls and immigration procedures.

The Working Group decided at an early stage to structure its work around three themes: (1) living conditions in Direct Provision accommodation centres; (2) supports for those in the system (e.g. financial, educational, health); and (3) existing arrangements for the processing of protection applications with particular regard to the length of the process. Issues arising under these themes are considered in detail in the body of the report.

The people who are the focus of this report came to Ireland seeking protection from the State. If successful in their claims the State is obliged to grant them residency and afford them many of the social and economic benefits available to nationals. While their applications are being determined many of them reside in accommodation centres around the country under Direct Provision. The inability of the State’s determination procedures to deliver final decisions in a timely manner has resulted in many applicants continuing to live in Direct Provision centres for periods far longer than originally intended and experiencing the problems that inevitably arise in such circumstances. It was evident to the Working Group from the outset that the “length of time” issue was the single most important issue to be addressed.

As of 16 February 2015, there were 7,937 people in the system, of whom 55% were in the system for five years or more. Of the total number, 3,607 persons were residing in Direct Provision accommodation centres around the country, with 41% of this group in the system for five years or more. Following a detailed and systematic study the Working Group considers that, as a matter of principle, no persons should be in the system for five years or more. It is recommending a range of solutions to give effect to this principle.

Importantly, the Working Group is also recommending solutions to eliminate delays in the future. Key solutions include the early enactment of the promised International Protection Bill, which provides for a single application procedure. This single procedure is intended to replace the existing multi-layered and sequential procedure and to deliver quality decisions within 12 months. For the new procedure to be successful, our detailed examination demonstrates that additional resources are essential. In the absence of these resources it will not matter how speedily applications are processed, because new applications will outnumber current processing capacities and the result will be the development of another substantial

backlog. Our examination also shows that investing in decision-making not only will reduce processing times but also will make financial sense, because the cost of decision-making is a fraction of the cost of accommodating a person in Direct Provision.

Being granted status, however, is of limited value to the individuals concerned unless they can make the transition from Direct Provision to mainstream living in the general community. Not included in the numbers cited above are the 679 people who have been granted status but who continued to live in Direct Provision accommodation centres on 16 February 2015. The shortage of affordable accommodation affecting the general population, particularly in the cities, is a substantial barrier to those who have positive decisions getting on with their lives. To address this, and other challenges faced by those who have been granted status, and those who may be granted status in the near future, the report recommends the establishment of a taskforce as a matter of high priority to focus on rolling out a consistent integration plan for this group.

The report makes significant recommendations across all three of the themes referred to above. In the case of living conditions in Direct Provision centres, recommendations include ensuring, in so far as practicable, that parents have the opportunity to cook for their family – an activity that is fundamental to normal family life everywhere – and that families have their own private living space. In the case of supports, recommendations include an increase to the Direct Provision weekly allowance, unchanged since it was introduced in 2000, and access to the labour market subject to certain conditions (as is the norm across the European Union). These are some of the many recommendations in the report, all of which have been made after careful deliberation having regard to the full terms of reference.

The report has been some seven months in the making. It involved a great deal of effort and thanks are due to many people. We are grateful to the many residents in Direct Provision who participated in the consultation process undertaken by the Working Group. Thanks are also due to other persons who made submissions and with whom we met.

The Members of the Working Group themselves displayed commendable commitment, attending weekly meetings assiduously despite their heavy professional responsibilities. The varied expertise among the membership was essential to the task. I should mention, in particular, the exceptional contribution of Sophie Magennis, Head of Office, UNHCR and Eugene Quinn, Director, Jesuit Refugee Service Ireland. Apart from being active members of the Working Group they acted as chair and rapporteur respectively of the sub-group considering improvements to the determination process. Additionally, Mr Quinn led on what was the hugely complex task of identifying and quantifying the financial and human resource implications of the recommendations.

I would also like to pay special thanks to the Secretariat who worked extraordinarily hard for the full duration of the process. I include here Sineád McGuinness, Lorna Tuohy, and Brian Merriman who joined the team for a period and who also made a valuable contribution. I reserve my fullest compliments for Anne Barry, who worked tirelessly throughout the process, recording, drafting and liaising with all the interested parties. Her organisational skills and her drafting ability were matched by her diplomatic skills and good humour throughout the process.

Dr Bryan McMahon
Chairperson

EXECUTIVE SUMMARY

INTRODUCTION

1. The Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers was established by the Minister for Justice and Equality, Ms Frances Fitzgerald TD and the Minister of State with special responsibility for New Communities, Culture and Equality, Mr Aodhán Ó Ríordáin TD in October 2014 pursuant to a commitment in the Statement of Government Priorities 2014–2016.
2. The terms of reference assigned to the Working Group were as follows:

Having regard to the rights accorded to refugees under the 1951 Geneva Convention Relating to the Status of Refugees, and bearing in mind the Government's commitment to legislate to reduce the waiting period for protection applicants through the introduction of a single application procedure, to recommend to the Government what improvements should be made to the State's existing Direct Provision and protection process and to the various supports provided for protection applicants; and specifically to indicate what actions could be taken in the short and longer term which are directed towards:

 - (i) improving existing arrangements in the processing of protection applications;
 - (ii) showing greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available;

ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels and that the existing border controls and immigration procedures are not compromised.
3. Of particular note is that the terms of reference are directed towards the identification of improvements to the existing system rather than the identification of alternatives. Also of particular note is the Government's commitment to legislate for a single application procedure to reduce the length of time that applicants must wait for a final determination of their claim.
4. The Working Group agreed to approach the task of identifying improvements to the determination process and reception conditions for protection applicants on a thematic basis and established three sub-groups to identify recommendations for consideration by the Plenary as follows:

Receptions conditions

- **Theme 1** To suggest improvements to Direct Provision (i.e. living conditions while in designated centres) aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

- **Theme 2** To suggest improvements to the supports (e.g. financial, educational, health) for protection applicants aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

Determination process

- **Theme 3** To suggest improvements to existing arrangements for the processing of protection applications with particular regard to the length of the process.
5. The deliberations of the Working Group were informed by the views of those in the system as shared through the consultation process undertaken by the Working Group, and Members' first-hand reports of the living conditions in Direct Provision accommodation centres. The deliberations were also informed by commentary by national and international bodies, the experience and expertise of the Members and their contributions to the Working Group, written submissions received from interested parties and the views of persons with whom the Working Group met.
 6. The Working Group met on eight occasions between 10 November 2014 and 14 May 2015 while the various sub-groups met on 38 occasions between 10 November 2014 and 12 May 2015.

CHAPTER 1 – OVERVIEW OF THE PROTECTION SYSTEM AND APPLICATION TRENDS

7. This chapter provides a brief overview of the international, European and Irish legal and administrative frameworks governing international protection and synthesises the main strands of commentary on the Irish protection system. Applications trends are also discussed.
8. People who have been forced to flee their country due to persecution or other serious harm and cannot safely return there are entitled to international protection, which obliges the host state to grant them residence and afford them many of the social and economic benefits available to nationals.
9. There are two types of protection status: refugee status and subsidiary protection status. Refugee status derives from the 1951 Convention relating to the Status of Refugees, to which Ireland is a party. Refugee status is given to persons who demonstrate a fear of persecution in their home country due to certain aspects, imputed or otherwise of their identity, such as their religion or their political opinion. Subsidiary protection status derives from European law, viz. the Common European Asylum System (CEAS) and is given to persons who do not qualify as refugees, but who, nevertheless, cannot return home because they risk facing serious harm, such as torture or inhuman or degrading treatment or punishment, or generalised violence in a war.
10. For the purposes of this report the term “protection applicant” is used to refer to persons seeking refugee status and/or subsidiary protection status. Those who do not

qualify for protection status have the possibility of being granted leave to remain in the State on other grounds including humanitarian considerations. Failing this permission, a deportation order is issued and the person becomes susceptible to deportation. Throughout the determination process the possibility of access to the Courts exists.

11. Of note in relation to the CEAS is that in accordance with the provision of Protocol No. 21 annexed to the Treaty on the Functioning of the European Union, “on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice”, Ireland is not bound to participate in EU instruments in this area but may opt-in to any it wishes (subject to approval of both Houses of the Oireachtas). Ireland has exercised its option in relation to some but not all of the CEAS instruments. The implications of this are discussed in chapter 3.
12. While it is being determined whether protection applicants are eligible for international protection, they are entitled to basic housing and subsistence. Direct Provision is the means by which the State seeks to meet its obligations in this regard. Direct Provision is a largely cashless system, with the State assuming responsibility for providing accommodation on a full board basis for protection applicants until such time as they are granted some form of status and move into the community, leave the State voluntarily or are removed. It is predicated on the fact that protection applicants are not entitled to work and at the same time are excluded from most social welfare entitlements. Instead, protection applicants receive assistance-in-kind: their basic subsistence needs are met by way of bed and board in accommodation centres dispersed around the country. The centres are open centres in the sense that the residents are not detained. Close to half of all protection applicants reside in Direct Provision.
13. Residents of the accommodation centres receive a nominal weekly allowance for personal items. Protection applicants are also entitled to a medical card and children have access to pre-school, primary and secondary education and ancillary supports such as school transport on the same basis as Irish citizens.
14. When Direct Provision was introduced in 2000 it was envisaged that protection applicants would live in Direct Provision accommodation centres on a short-term basis of not more than six months while their applications were being processed. This, however, is not how things have turned out, with many protection applicants remaining within the centres for lengthy periods.
15. National and international commentary on the Irish protection system has been focused on the conditions in Direct Provision. It is, however, universally acknowledged that the biggest single issue facing protection applicants is the length of time that they have to wait for a final decision on their claim. This is a result of structural faults in the protection determination process. These faults arise from the State’s two-stage sequential procedure where qualification for refugee status is assessed first, and qualification for subsidiary protection is assessed only when a negative refugee decision has been issued. The introduction of a single application procedure (the norm in all other EU Member States) is long-standing Government policy. The intention of the Government is to legislate for a single procedure by way of the International Protection Bill, the General Scheme of which was published on 25 March 2015.

16. In 2014 protection applications rose for the first time since 2002. The increase was 53%, to a total of 1,448. It is estimated that Ireland will receive approximately 3,000 applications by the end of 2015. The recent upward trend in Ireland is in line with international trends and may continue.

CHAPTER 2 – VIEWS OF PERSONS IN THE PROTECTION SYSTEM

17. Chapter 2 aims to provide a brief overview of the consultation process undertaken by the Working Group and the main themes that emerged.
18. The Working Group took the view that it was essential to hear directly from those most affected by the system and to see first-hand the living conditions in accommodation centres. With this in mind the Working Group engaged in an extensive consultation process over the course of December 2014 and January and February 2015 to ensure that its deliberations were informed by those in the system.
19. The consultation process involved:
 - A call for written submissions from adults and children in Direct Provision accommodation centres – submissions were received from 13 groups of residents, and individually from 58 adults and 31 children,
 - Ten regional consultation sessions with 381 participants and visits to 15 accommodation centres,
 - Consultations with particular groups of persons in the system – victims of torture, victims of trafficking and members of the LGBT community – 35 participants,
 - A representative from each of the regional consultation sessions was invited to make an oral submission to the full Working Group – nine accepted the invitation.
20. The output from the consultation process is referred to throughout the report in order to illustrate the wide-ranging concerns that have been identified. A comprehensive report of the consultation process is contained in Appendix 3.
21. A constant underlying theme is one of intense frustration or despair arising from the lengthy determination process and resulting lengthy residence in centres originally designed for short stays of six months. The length of time issue is at the heart of many of the concerns around Direct Provision and the supports available, and the fears of participants that they may not be capable of independent living when they get a final decision on their claim.

CHAPTER 3 – SUGGESTED IMPROVEMENTS TO EXISTING DETERMINATION PROCESS

22. This chapter focuses on the operation of the system, defined for the purposes of the report as comprising the protection process, the leave to remain stage, the deportation order stage and the judicial review process. It examines the effects and the causes of the length of time issue that has been identified as the key problem with the system by a range of sources, not least the residents of Direct Provision accommodation centres. It identifies a range of solutions. It also examines and makes recommendations for improvements to the quality of the determination procedures. The quality of the procedures is integral to ensuring that persons in need of protection are identified at the earliest opportunity.

Length of time

23. The outcome of the detailed examination conducted by the Working Group of those in the system reveals that of the estimated 7,937 people in the system on 16 February 2015, 55% have been in the system for over five years. Of the 7,937 people in the system:
- 49% are in the protection process. Almost a third of them have been in the protection process for more than five years;
 - 42% are at the leave to remain stage. Three quarters of them have been in the system for more than five years;
 - 9% are at the deportation order stage. 88% of them have been in the system for more than five years;
 - approximately 1,000 people are involved in judicial review proceedings relating to the various stages in the system, of whom 66% have been in the system for more than five years;
 - 21% are children,
 - 45% live in Direct Provision accommodation centres – 41% of whom have been in the system for more than five years. The remaining 55% live outside Direct Provision or have left the State.
24. The Working Group concluded that solutions to the length of time issue were required for those in the system a long time and also for the future to avoid a reoccurrence of the problem.
25. For those in the system a long time, the Working Group's proposed solutions are founded on the principle that no person should be in the system for five years or more. The solutions recommended to give effect to this principle need to address the specific stage within the system that a person is at. For instance, a person eligible for protection requires a positive protection decision which can only be delivered through the protection process, while persons with deportation orders cannot be granted status unless a decision is first taken to revoke the deportation order and so on.

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26. In the case of all persons awaiting a decision at the protection process and leave to remain stages who have been in the system for five years or more, the solution proposed is that they should be granted protection status or leave to remain (subject to certain conditions) as soon as possible and within a maximum of six months from the implementation start date (para. 3.128).
 27. In the case of all persons who have a deportation order and who have been in the system for five years or more the solution proposed, as an exceptional measure, is that they should have their deportation order revoked (subject to certain conditions) as soon as possible and within a maximum period of six months from the implementation start date. Leave to remain should be granted, again as soon as possible and within a maximum of six months, subject to certain conditions (paras. 3.134–3.135).
 28. The Working Group recommends that the implementation start date for these proposed solutions should be set by the authorities as soon as possible. It further recommends that at the close of the six month period the authorities commit to a review of the operation of the solution for those in the system for five years or more and prioritise remaining long stay cases.
 29. These proposed solutions involve a fast-tracking of cases within the existing statutory framework but with some modifications and guidance to expedite processing, including in relation to live legal proceedings. The approach will ensure that the integrity of the protection process is maintained. The Working Group was conscious of the importance of maximising the number of people who would benefit while at the same time ensuring that border controls and immigration procedures were not compromised. For this reason the proposed solutions are pitched at those in the system for five years or more. Their implementation would result in 3,350 people potentially benefiting.
 30. To avoid a reoccurrence of the length of time issue, the Working Group makes a number of recommendations for the future. It recommends the enactment of the International Protection Bill and the implementation of the single application procedure as a matter of urgency (para. 3.163).
 31. When the single procedure is implemented, and assuming that adequate resources are allocated to its operation and the quality measures recommended in this report are implemented, final quality decisions on eligibility for protection or, in the alternative, leave to remain should issue to applicants within a 12 month timeframe. Based on the Working Group's analysis it is reasonable to assume a combined protection and leave to remain recognition rate of around 40% in future years, with approximately 60% of future applicants deemed not to be in need of protection or leave to remain. Solutions are required for this latter group to ensure that they can return home in safety and with dignity. The Working Group makes a series of recommendations to improve the options and solutions available for return home – Assisted Voluntary Return and, where that option is not availed of, deportation (paras. 3.312 and 3.330).
 32. Notwithstanding these proposed solutions to avoid a reoccurrence of the length of time issue and all its ill effects for the individuals concerned and for the process, the Working Group considers that a limit on the length of time that a person may spend in the system is desirable. With this in mind it recommends that, following the

introduction of the single procedure, the principle that no person should be in the system for more than five years should continue to be applied (para. 3.166).

Quality of the determination procedures

33. The Working Group examines the determination procedures in place and identifies some concerns and potential solutions. It makes a range of recommendations in relation to improving the legal framework, including how the best interests of the child principle should be reflected in the forthcoming International Protection Bill (paras. 3.178, 3.192, 3.199, 3.203, 3.210, 3.213, 3.216). In relation to quality measures it notes a range of good practice in the determining bodies including in the areas of training and recruitment and urges their continuation. It identifies a range of recommendations across such areas as providing access to legal advice at an early stage (para. 3.255), implementing mechanisms to identify applicants with vulnerabilities at an early stage (para. 3.299), use of interpreters (3.275), strengthening governance arrangements (para. 3.360) and improving communications with applicants at all stages in the system (para. 3.379).
34. The material financial and human resource implications of these recommendations are identified and quantified in chapter 6.

CHAPTER 4 – SUGGESTED IMPROVEMENTS TO LIVING CONDITIONS IN DIRECT PROVISION ACCOMMODATION CENTRES

35. This chapter, together with chapter 5, concerns the reception conditions for those who are seeking the protection of the State. The chapter identifies issues of concern in relation to the conditions in which residents in Direct Provision accommodation centres live, and makes a series of recommendations for practical improvements aimed at showing greater respect for their dignity and improving their quality of life. The implications of the High Court judgment in “CA and TA” delivered on 14 November 2014 (and under appeal) are also considered.
36. The accommodation stock comprises a reception centre in Dublin and 33 centres around the country. The centres are for the most part mixed centres accommodating families and single people. Only three of the centres were purpose built. The majority are buildings that were designed originally for different purposes generally aimed at short-term living, including hotels, boarding schools and holiday homes. The bulk of the bed capacity within the centres is within units that are essentially bedrooms. The majority of families are accommodated in such units with no separate living space. The majority of unrelated adults are accommodated in multi-occupancy rooms. Most residents do not have access to cooking facilities.
37. The length of stay in Direct Provision has been identified by residents and others as the key concern – it causes or exacerbates all other concerns around life in an accommodation centre, including:

- the uncertainty overshadowing their lives,
 - the lack of personal autonomy over the most basic aspects of their lives and daily living – cooking, going to the shops, cleaning,
 - the lack of privacy and the challenges of sharing with strangers,
 - the boredom and isolation,
 - the inability to support themselves or their family and contribute to society in a meaningful way,
 - the impact on children of being born and/or living their formative years in an institutional setting,
 - the impact on parents' capacity to parent to their full potential and on normal family life,
 - the loss of skills and the creation of dependency, and
 - the negative impacts on physical, emotional and mental health.
38. The Working Group considered the question of whether a cap should be placed on the length of stay in Direct Provision. With the length of stay being a direct consequence of the length of time that a person spends in the system awaiting a final resolution of their claim, it concluded that the solution to the length of stay issue lies in the implementation of the recommendations in chapter 3 aimed at reducing long stays in the system now and into the future. While resolving the cause of lengthy stays in Direct Provision will bring tangible benefits to those in the system at present and future applicants, the Working Group's examination has identified a range of concerns around the living conditions relating to the physical conditions, management and operational matters, and safeguards and standards, and makes recommendations to address them.

Physical conditions

39. The Members who visited centres invariably described the accommodation units, in particular those that are in essence bedrooms, as cramped and very cluttered with inadequate storage, and unsuited to the multiple purposes that they are required to serve. The Working Group makes a range of recommendations aimed at ensuring that residents have increased physical space and appropriately furnished rooms (para. 4.58).
40. To address the concern that the physical conditions are an impediment to normal family life and child development, the Working Group recommends that all families should have access to cooking facilities (whether in a self-contained unit or through use of a communal kitchen) and their own private living space in so far as practicable. It is recognised that it may take some time to reconfigure existing centres or bring new centres on line that meet this requirement. With this in mind, the end of 2016 is identified as the date by which these recommendations should be fully implemented. Other recommendations are made in relation to play and recreation facilities for children and young people (para. 4.75).

41. To address the concerns around living conditions for single persons, 80% of whom are in shared bedrooms, the Working Group recommends that they should have the possibility of applying for a single room after nine months and be offered one after 15 months. They should also have the option of cooking for themselves (para. 4.87).
42. Recommendations are also made under this heading in relation to the food provision in centres to ensure that it is nutritious etc. (para. 4.102), the location of centres to address social exclusion and other issues associated with the remote location of some centres (para. 4.111), and security arrangements to ensure that they are proportionate to the risks identified (para. 4.122).

Operational and management issues

43. The complaints procedure available to residents in relation to the services provided to them was found to be unlawful by the High Court in “CA and TA”. The Working Group considered the Reception and Integration Agency’s (RIA’s) proposed response to that finding and makes a number of recommendations aimed at enhancing confidence in RIA’s internal complaints procedure. It also recommends the extension of the remit of the Ombudsman and the Ombudsman for Children to include complaints relating to services provided to residents and transfer decisions following a breach of the House Rules (para. 4.135).
44. The mechanisms available to RIA to deal with residents who present a threat to the safety of other residents and staff and the orderly running of the centre are considered, i.e. the involuntary transfer of the resident to another centre or their exclusion from Direct Provision. Recommendations aimed at enhancing the transparency of decisions on involuntary transfers are made (4.146). The pivotal importance of the centre manager in ensuring a positive atmosphere within the centre that is conducive to respect for the dignity of all concerned is identified. Recommendations are made with the aim of identifying the skill set required of a centre manager and ensuring that the provisions in the contract entered into with accommodation providers are enhanced to reflect these requirements (para. 4.155).

Safeguards and standards

45. The Working Group was told of the heightened risks to child welfare and child protection due to the nature of Direct Provision and of the steps taken by RIA and centre management to address it. The Working Group did not have an opportunity to consider in detail the recent Health Information and Quality Authority (HIQA) inspection report (published on 25 May 2015) in relation to the protection and welfare services provided to children in Direct Provision, but welcomes its findings and the actions proposed by Tusla – the Child and Family Agency and RIA to address those findings. The Working Group makes a number of specific recommendations aimed at addressing concerns around the impact of Direct Provision on child welfare and protection and also recommends that the learnings from the HIQA report should inform the implementation of these recommendations (para. 4.199).

46. The Working Group considered the impact of living in Direct Provision on vulnerable persons including victims of torture, victims of trafficking and others. In order to ensure that those with vulnerabilities are identified and that they are appropriately assisted, it is recommended that the existing HSE health screening service for protection applicants be reviewed and strengthened so as to facilitate a multi-disciplinary needs assessment at an early stage (4.210).
47. A variation in the quality of the physical conditions across the accommodation stock and in the quality of the services provided is clearly evident. The implication of these variations is that the adverse effects of living in Direct Provision for a lengthy period – impacts on privacy; physical, emotional and mental well-being; normal family life; and child development – are amplified for those required to live in centres at the lower end of the spectrum. The Working Group recommends the establishment of a standard-setting committee to reflect Government policy across all areas of service in Direct Provision. In addition, an inspectorate, independent of RIA, should be established to carry out inspections against the newly approved standards (para. 4.226).
48. The material financial and human resource implications of these recommendations are identified and quantified in chapter 6.

CHAPTER 5 – SUGGESTED IMPROVEMENTS TO SUPPORTS FOR PERSONS IN THE SYSTEM

49. This chapter continues the examination of the reception conditions for those who are seeking the protection of the State. It examines the supports available to those in the system and makes a series of recommendations for practical improvements aimed at showing greater respect for their dignity and improving the quality of their lives. Key areas of concern, as identified by those who participated in the consultation process and others, include: the financial supports available to supplement what is provided by Direct Provision, the prohibition on access to the labour market, barriers to education for adults, and the supports available to those granted status to assist them in moving into the community and getting on with their lives.

Financial supports

50. In relation to the financial supports available to supplement what is provided by Direct Provision, the Working Group considered the weekly allowance payable to those in Direct Provision – €19.10 per adult and €9.60 per child for personal items – which has remained static since it was first introduced in 2000. The Working Group heard that residents spend the allowance on essential items that are not covered by Direct Provision or other supports and that it is wholly inadequate to cover those essential items: prescription charges and other health care costs, clothing including for school-going children, supplementary food, etc.
51. The Working Group concluded that it would be appropriate in the case of adults to recommend an increase that would restore the ratio between the weekly allowance

and the Supplementary Welfare Allowance (SWA) as pertained in 2000. This would increase the adult rate to €38.74. In the case of children, the Working Group was influenced by the fact that the payment of Child Benefit was discontinued in 2004 and concluded that the weekly allowance payable in respect of children should be aligned with the increase for a qualified child currently payable under the SWA in respect of children, i.e. €29.80 (para. 5.30).

Access to the labour market

52. The Working Group was very conscious of the sensitivities around this issue in view of the long-standing Government policy and statutory provision relating to the prohibition on protection applicants seeking or entering employment and the rationale for that policy as explained by officials. The Working Group recognised the significance attached by persons in the system to a right to work and was acutely aware of the expectation that a strong recommendation would be forthcoming in this area. After length of time waiting a final decision, a right to work was the issue of most concern raised by Direct Provision residents in submissions during the consultation process. Many of the human costs associated with the ban on access to employment are similar to the negative impacts of living long term in Direct Provision. These include: boredom, isolation and social exclusion; obsolescence of skills and creation of dependency; and negative impacts on physical, emotional and mental health. The right to work has also been a priority focus of commentators, academics and NGOs, given that Ireland's position is out of line with the policy of the majority of EU Member States on this matter, including the United Kingdom.
53. Having regard to the foregoing, the Working Group recommends that provision for access to the labour market for protection applicants who are awaiting a first instance decision for nine months or more, and who have cooperated with the protection process (under the relevant statutory provisions), should be included in the forthcoming International Protection Bill and should be commenced when the single procedure is operating efficiently. This recommendation reflects the minimum standard across other Member States and takes account of the fact that, under the current statutory arrangements, first instance decisions in respect of refugee status and subsidiary protection do not (in the normal course) issue within nine months at present (para. 5.49).

Access to education

54. The ease with which protection applicants can access education varies considerably depending on the stage they are at in the education cycle. Children are entitled to access pre-school and primary and second-level education in a manner similar to Irish nationals. The major issues of concern identified related to school leavers and other adults.
55. In relation to school leavers, the Working Group recommends the extension of student supports for third-level and Post Leaving Certificate courses to persons who are protection applicants or are at the leave to remain stage, have been in the Irish school system for five years or more, and satisfy the relevant academic and other eligibility

criteria. The Working Group welcomes the public commitment by the Minister for Education and Skills in this regard (para. 5.70).

56. In relation to other adults the Working Group identified financial and other barriers to their accessing further and higher education. The Working Group makes a series of recommendations aimed at lowering those barriers, including a recommendation that the educational institutions consider an initiative to apply the EU/EEA rate of fees payable to persons in the protection process or at the leave to remain stage for five years or more (para. 5.82).

Supports for those granted status

57. Former protection applicants face a range of problems when they are granted status (refugee status, subsidiary protection status or leave to remain) and are free to establish themselves in mainstream living and integrate into society. Those who have been living in Direct Provision generally experience greater difficulties than those who have been living in the community during the course of the determination process. The Working Group heard that in recent times the challenges faced by residents have become particularly acute due to the shortage of accommodation across the State, but particularly in Dublin and other cities. As of 16 February 2015 there were 679 persons with status residing in Direct Provision. In many cases the persons concerned had been granted status several months previously. Once persons are granted status, issues around accessing suitable accommodation, accessing mainstream services and supports, and finding employment greatly affect their capacity to rebuild their lives and integrate through mainstream social inclusion.
58. The Working Group considers that the residents of Direct Provision who may require transitional supports fall into two distinct groups: (i) those processed under the existing procedure who will have spent a lengthy period in Direct Provision (the legacy group) and (ii) future applicants whose applications will be determined under the single procedure. The legacy group includes those residents with status living in Direct Provision, and residents who may benefit from the proposed solutions for those who have been in the system for five years or more. Future applicants who are processed under the single procedure are expected to have a final determination within 12 months. While the two groups face similar challenges, their needs and the barriers to their making a successful transition to mainstream living will differ in significant respects.
59. Due to the breadth of the issues involved, the Working Group did not have sufficient time to address the topic in depth and recommends as a matter of high priority that the Minister of State for New Communities, Culture and Equality convene a taskforce of relevant stakeholders to focus on the issues and devise an appropriate integration plan for the legacy group and also to address the transitional needs of future applicants who will be processed under the proposed single procedure (para. 5.169).

Other supports

- 60. The Working Group considered the health care supports available to those in the system. It welcomes the HSE initiative to exempt residents of Direct Provision accommodation centres from the prescription charges and recommends that it be implemented as soon as possible (para. 5.100).
- 61. Other areas that are examined and are the subject of recommendations aimed at showing greater respect for the dignity of those in the system and enhancing their quality of life include supports for members of the LGBT community (5.113), supports for separated children (para. 5.134), improved linkages between accommodation centres and local communities (para. 5.152), and finally diversity and equality training for public servants (5.186).
- 62. The material financial and human resource implications of these recommendations are identified and quantified in chapter 6.

CHAPTER 6 – FINANCIAL AND HUMAN RESOURCE IMPLICATIONS OF RECOMMENDATIONS

- 63. The terms of reference direct the Working Group to “recommend to the Government what improvements should be made to the State’s existing Direct Provision and protection process ... ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels ...”.
- 64. In light of this requirement the Working Group has identified and quantified the material financial and human resource implications of its recommendations for the protection system as defined for the purposes of this report.
- 65. The financial modelling exercise undertaken by the Working Group demonstrates that the projected savings yielded from the implementation of the proposed solution for those in the system five years or more and the introduction of the single procedure – €194.5m over five years – are sufficient to fund recommendations which give rise to additional costs of €135.4m over the same period. These additional €135.4m costs are broken down between improvements to the protection process of €14.0m, improvements in living conditions in Direct Provision accommodation centres of €69.1m and improvements in supports to applicants of €52.4m. The human resource requirements to deliver the proposed solutions for those in the system five years or more and the efficient operation of the single procedure in its first year are also identified.
- 66. The financial model shows significant savings with the anticipated introduction of the single procedure in January 2016 on the assumption that the decision-making bodies are adequately resourced and the proposed solution for those in the system for five years or more has been effectively delivered. In the absence of adequate resources it will not matter how speedily applications will be processed under the single procedure

because with new applications far outstripping current processing capacity at first instance, the result will be the development of a substantial backlog of applications.

67. The financial modelling exercise demonstrates conclusively that investing in decision-making not only yields returns in reducing time spent in the system, but also makes financial sense. Each year that a person remains in the system gives rise to accommodation costs of €10,950 on average per applicant. The cost of decision-making is a fraction of this cost.
68. Overall, the costing exercise demonstrates that efficiencies arising from resolving the situation of those in the system for five years or more and eliminating delays in the determination process will outweigh the costs of implementing the Working Group's recommendations to improve living conditions in Direct Provision and to enhance supports for protection applicants.
69. The Working Group recognises that some of its recommendations will have financial implications for the State beyond the protection system, which will give rise to additional expenditure.

Introduction

ESTABLISHMENT

1. The Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers was established by the Minister for Justice and Equality, Ms Frances Fitzgerald, TD and the Minister of State with special responsibility for New Communities, Culture and Equality, Mr Aodhán Ó Ríordáin TD in October 2014 pursuant to the following commitment in the Statement of Government Priorities 2014–2016:

“While ensuring continued rigorous control of our borders and immigration procedures, we will treat asylum seekers with the humanity and respect they deserve. We are committed to addressing the current system of Direct Provision for asylum seekers to make it more respectful to the applicant and less costly to the taxpayer. We will legislate to reduce the length of time the applicant spends in the system through the establishment of a single applications procedure, to be introduced by way of a Protection Bill. Work on an Immigration and Residence Bill will also continue. The government will also establish an independent Working Group to report to Government on improvements with the protection process, including Direct Provision and supports for asylum seekers.”

TERMS OF REFERENCE

2. On foot of that commitment, in September 2014, the Minister and Minister of State hosted a round table consultation on the protection process with representatives of the NGO sector. Drawing on the outcome of that consultation, the Working Group was assigned the following terms of reference:

Having regard to the rights accorded to refugees under the 1951 Geneva Convention Relating to the Status of Refugees, and bearing in mind the Government’s commitment to legislate to reduce the waiting period for protection applicants through the introduction of a single application procedure, to recommend to the Government what improvements should be made to the State’s existing Direct Provision and protection process and to the various supports provided for protection applicants; and specifically to indicate what actions could be taken in the short and longer term which are directed towards:

- (i) improving existing arrangements in the processing of protection applications;
- (ii) showing greater respect for the dignity of persons in the system and improving their quality of life by enhancing the support and services currently available;

ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels and that the existing border controls and immigration procedures are not compromised.

MEMBERSHIP

3. Dr Bryan McMahon (formerly of the High Court) was appointed as chairperson of the Working Group. The other Members of the Working Group were:
 - Aidan O'Connor, Department of Environment, Community and Local Government;
 - Barry Magee, Chairperson, Refugee Appeals Tribunal;
 - Brian Power/Caitriona O'Brien, Department of Education and Skills;
 - Caroline Daly, Office of the Attorney General;
 - Dr Ciara Smyth, Lecturer in Law, NUIG;
 - Dan Murphy, Former General Secretary of PSEU and ex-President ICTU;
 - David Costello, Commissioner, Office of the Refugee Applications Commissioner;
 - Eugene Quinn, Director, Jesuit Refugee Service Ireland;
 - Fiona Finn, CEO, NASC – Irish Immigrant Support Centre;
 - Greg Straton, Director, SPIRASI;
 - Jackie Harrington/Mary O'Sullivan, Department of Social Protection;
 - Madeleine Halpin, Tusla – Child and Family Agency;
 - Michael Kelly/Noel Dowling, Department of Justice and Equality;
 - Michele Clarke, Department of Children and Youth Affairs;
 - Patrick Lynch, Health Service Executive;
 - Reuben Hambakachere, Core Group of Asylum Seekers and Refugees;
 - Ronan Gallagher, Department of Public Expenditure and Reform;
 - Sophie Magennis, Head of Office, UNHCR;
 - Stephen Ng'ang'a, Coordinator, Core Group of Asylum Seekers and Refugees;
 - Sue Conlan, Irish Refugee Council;
 - Tanya Ward, CEO, Children's Rights Alliance;
 - Tim Dalton, Retired Secretary General of the Department of Justice and Equality.
4. Sue Conlan tendered her resignation from the Working Group on behalf of the Irish Refugee Council on 26 March 2015. Reuben Hambakachere of the Core Group of Asylum Seekers and Refugees tendered his resignation from the Working Group in a personal capacity on 21 April 2015 and was replaced by Stephen Ng'ang'a, the Core Group's nominee to the Theme 3 Sub-group.
5. Anne Barry, Department of Justice and Equality acted as Secretary to the Working Group. Ms Barry was assisted by Sinead McGuinness, Lorna Tuohy and Brian Merriman also of the Department of Justice and Equality.

WORK PROGRAMME AND WORK METHODS

6. The Chair convened the First Meeting of the Working Group on 10 November 2014

with the Minister and Minister of State in attendance.

7. The scope of the terms of reference was considered. It was noted that the terms of reference were broadly framed, covering processing arrangements and reception conditions including Direct Provision and supports, and tasked the Working Group with identifying practical measures that could be implemented in the short and longer term that would enhance the dignity of persons and improve the quality of their lives while their applications for protection were under investigation. The requirement to take cognisance of the budgetary situation and border controls and immigration procedures was noted.
8. It was acknowledged that the terms of reference were limited to identifying improvements to existing arrangements rather than alternatives. It was further acknowledged that Members representing organisations advocating an end to Direct Provision, and who may have been disappointed by this limitation, had accepted their appointment on the basis of the terms of reference.
9. The Minister in her remarks noted that many of the concerns that are raised in relation to Direct Provision, by protection applicants and commentators alike, are linked to, or exacerbated by, the length of time that applicants spend waiting for a final decision on their claim. The centrality of “length of time” to the challenges that applicants face is reflected in the Agreed Work Programme referred to at para. 11 below and in the recommendations of the Working Group.
10. The Minister also referred to the Government’s commitment to bring forward the International Protection Bill which will provide for a single procedure (the norm in other EU Member States) that would allow the totality of a protection claim to be considered at an early stage and a final determination to be made in a timely manner; it would replace the current unwieldy system of sequential applications and appeals. The Minister noted that the legislation would benefit future applicants but asked the Working Group to make recommendations in relation to how it might be of benefit to existing applicants. Unfortunately, given the timing of the publication of the General Scheme of the International Protection Bill, the Working Group did not have the opportunity to consider this matter in detail.
11. The Working Group agreed a work programme and working methods and set up three thematic sub-groups to identify recommendations for consideration by the Plenary:

Receptions conditions

- **Theme 1** To suggest improvements to Direct Provision (i.e. living conditions while in designated centres) aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.
- **Theme 2** To suggest improvement to the supports (e.g. financial, educational, health) for protection applicants aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

Determination process

- **Theme 3** To suggest improvements to existing arrangements for the processing of

protection applications with particular regard to the length of the process.

12. The Agreed Work Programme is set out at **Appendix 1**.
13. Sophie Magennis, Head of Office, UNHCR was appointed as chairperson of the Theme 3 Sub-group and was assisted by Eugene Quinn, Director, Jesuit Refugee Service Ireland who was appointed as rapporteur. The Chair of the Working Group, Dr Bryan McMahon, acted as chairperson of the Theme 1 and Theme 2 Sub-groups. For a list of the Members of the Sub-groups and their alternates see **Appendix 2**.
14. At its First Meeting the Working Group identified the importance of hearing directly from persons in the system, and also of visiting Direct Provision accommodation centres to see the living conditions first-hand. An extensive consultation process involving written submissions, consultation sessions and visits to centres was undertaken by the Working Group over the course of December 2014 and January and February 2015. Chapter 2 provides more information on the process undertaken and a summary of the main themes that emerged. A comprehensive report on the outcome of the process is set out at **Appendix 3**.
15. The Working Group wishes to express its sincere appreciation to those who shared their perspectives, whether in writing or in person through their participation in the consultation sessions, and who allowed Members into their homes. The Working Group is conscious that sharing what are, in many cases, deeply personal experiences can take its toll. There is no doubt, however, that hearing the direct testimony of those most concerned with the outcome of the deliberations of the Working Group generated an added sense of urgency to the task at hand.
16. At the Second Meeting of the Working Group on 19 November 2014 it was agreed that consideration of the implications of the “CA and TA” High Court judgment delivered on 14 November 2014¹ fell within the terms of reference and it was referred to the Theme 1 Sub-group.
17. The Working Group also agreed that a focus would be maintained on children throughout all substantive discussions at Plenary and Sub-group level and a number of meetings of interested officials, NGOs and others were additionally held to support this aim.
18. Because the terms of reference require the Working Group to identify a suite of recommendations that ensures that “the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels”, a Costings Sub-group was established under the Chairmanship of Eugene Quinn to identify and quantify the financial and human resource implications in so far as practicable of proposed recommendations before they were finally agreed. The outcome of what was a very challenging and complex task is at chapter 6.
19. The terms of reference did not specify any particular time frame for the completion of the Working Group’s task but the expressed desire of the Ministers to receive a report by Easter 2015 was noted and, together with the expectations of protection

¹ CA & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

applicants, influenced the intensity with which the Working Group approached its task.

20. The Working Group met on eight occasions between 10 November 2014 and 14 May 2015 while the various Sub-groups met on 38 occasions in all between 25 November 2014 and 12 May 2015.
21. The Working Group was conscious that the tight time frame would not allow all issues within its terms of reference to be examined in depth and has taken the view that in certain cases, various issues drawn to its attention or considered by it warrant further study. These issues are identified later in this report.
22. The deliberations of the Working Group were informed by the views of those in the system as shared through the consultation process undertaken by the Working Group, and Members' first-hand reports of the living conditions in Direct Provision accommodation centres. The deliberations were also informed by commentary by national and international bodies, the experience and expertise of the Members and their contributions to the Working Group, written submissions received from interested parties and the views of invited experts and stakeholders. In addition, a delegation of the Working Group met with representatives of the judiciary, and representatives of the Office of the Ombudsman and the Office of the Ombudsman for Children.
23. The Working Group wishes to express its thanks to the invited experts and others with whom it met for their invaluable input.
24. The list of submissions received from interested parties is at **Appendix 4**. The list of those with whom the Working Group met is at **Appendix 5**.

Chapter 1 – Overview of the Protection System and Application Trends

A. INTRODUCTION

- 1.1 This chapter provides a brief overview of the international, European and Irish legal and administrative frameworks governing international protection and synthesises the main strands of existing commentary on the Irish protection system. Some information on national and international application trends is also provided.
- 1.2 It is useful to begin with a brief explanation of the concept of international protection, distinguishing it from the related, but distinct, area of immigration. Generally speaking, migrants are people who chose to leave their own country to work, study, retire, join family members or simply seek a better life in another country. Whether the host state admits a migrant and on what conditions are largely matters of state discretion. Other persons, however, are not voluntary migrants but have been forced to flee their country due to persecution or other serious harm and cannot safely return there. Such persons are entitled to international protection which obliges the host state to grant them residence and afford them many of the social and economic benefits available to nationals. While it is being determined whether a protection applicant is eligible for international protection, they are entitled to basic housing and subsistence.
- 1.3 There are two types of protection status. (i) Refugee status derives from international law and is given to persons who demonstrate a fear of persecution in their home country due to certain aspects, imputed or otherwise, of their identity, such as their religion or their political opinion. (ii) Subsidiary protection status derives from European law and is given to persons who do not qualify as refugees, but who, nevertheless, cannot return home because they risk facing serious harm, such as torture or inhuman or degrading treatment or punishment, or generalised violence in a war. Persons seeking refugee status and/or subsidiary protection and who are awaiting a decision are called asylum seekers. For the purposes of this report the term “protection applicant” is used to refer to persons seeking refugee and/ or subsidiary protection status.
- 1.4 Those who do not succeed in their protection claim may have the possibility of being granted leave to remain in the host country concerned on the basis of other grounds including humanitarian considerations. Refusal at this point of permission to stay may lead to the initiation of deportation procedures.

B. INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

- 1.5 The 1951 Convention relating to the Status of Refugees is the cornerstone of refugee protection. The Convention defines a refugee as someone who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his/her country of nationality or habitual residence and is unable or unwilling to return to it.² Furthermore, the Convention establishes that refugees have certain rights, the most important of which is the right of non-refoulement: the right not to be sent back to a country where the refugee's life or freedom would be threatened on grounds of race, religion, nationality, social group or political opinion.³ Other rights include the right to work, to housing and to education. The 1951 Convention does not prescribe the process of determining whether someone is a refugee, a process known as refugee status determination. Standards on determination procedures have been developed by the Convention's supervisory body, the United Nations High Commissioner for Refugees (UNHCR), in the form of guidelines, handbooks, notes and the conclusions of its Executive Committee.⁴ Ireland is a party to the 1951 Convention and certain of its provisions have been given effect in domestic law by virtue of the Refugee Act 1996, which is dealt with later in this chapter.

RELEVANT INTERNATIONAL AND REGIONAL HUMAN RIGHTS LAW

- 1.6 International human rights law has developed its own, separate, non-refoulement guarantee. This prohibits sending someone, directly or indirectly, to a country where he/she faces a real risk of torture or inhuman or degrading treatment or punishment. Torture is the intentional infliction of severe pain or suffering on an individual, whereas inhuman or degrading treatment is a lesser form of ill-treatment and may include being subjected to generalised violence. Although there is an overlap with the concept of non-refoulement in refugee law, in the sense that torture or inhuman or degrading treatment or punishment can be considered a form of persecution, the human rights guarantee does not require a link to race, religion, nationality, social group or political opinion. For this reason, the human rights guarantee complements the refugee law guarantee. However, the human rights guarantee simply means that the person cannot be sent back

2 Article 1A(2).

3 Article 33.

4 Available on: <http://www.refworld.org/>

home; unlike refugee law it does not confer a status with associated rights. Ireland is a State Party to a number of human rights instruments which prohibit refoulement in the sense outlined above, the most relevant of which is the European Convention on Human Rights (ECHR).⁵ The ECHR is given effect to in Irish law by the European Convention on Human Rights Act 2003.

- 1.7 Finally, it should be noted that in addition to the non-refoulement guarantee, the ECHR and the other international human rights instruments contain other rights of potential relevance to the protection context. Other relevant rights include the right to private and family life, which has implications for reception conditions;⁶ the right to an effective remedy, which affords certain procedural guarantees to persons who have an arguable claim that they will be subject to refoulement;⁷ and the prohibition of collective expulsion of aliens, which strengthens the procedural guarantees just mentioned.⁸ Furthermore, the UN Convention on the Rights of the Child (CRC), to which Ireland is a State Party, establishes standards regarding the treatment of all children,⁹ including children who seek international protection either alone or with their families.¹⁰

EU COMMON EUROPEAN ASYLUM SYSTEM

- 1.8 Although all EU Member States are parties to the 1951 Convention (and, indeed, the human rights instruments mentioned above), historically, each has its own approach to the interpretation of the Convention's provisions and its own system of refugee status determination. However, this situation was perceived as leading to the phenomenon of "asylum-shopping" whereby asylum seekers could move from one EU State to another in search of less stringent regimes; and "refugees in orbit", whereby Member States could pass asylum seekers back and forth between them on the pretext that none of them was responsible. Consequently, since the late 1980s, international protection has crept up the policy agenda of the EU and, with the entry into force of the Treaty of Amsterdam in 1999, the EU acquired the competence to harmonise Member States' laws in this area.¹¹ The result is the Common European Asylum System (CEAS), a package of secondary EU legislative measures designed to harmonise protection across the EU in a series of phases.

5 Article 3 of the ECHR prohibits torture or inhuman or degrading treatment or punishment and this has been interpreted by the European Court of Human Rights as prohibiting refoulement: *Soering v UK*, Appl. No. 14038/88, Judgment of 7 July 1989. The other instruments are the UN Convention Against Torture, which expressly prohibits refoulement in Article 3; and the UN International Covenant on Civil and Political Rights, which prohibits torture and inhuman or degrading treatment or punishment in Article 7, a prohibition that has been interpreted by the Covenant's monitoring body, the Human Rights Committee, as encompassing a non-refoulement guarantee: *Kindler v Canada*, Communication No. 470/1991, Views of 18 November 1993.

6 Article 8 ECHR and Article 17 International Covenant on Civil and Political Rights.

7 Article 13 ECHR and Article 2 International Covenant on Civil and Political Rights.

8 Protocol 4, Article 4, ECHR and Article 13 International Covenant on Civil and Political Rights.

9 Article 2.

10 Article 22.

11 Article 63 Treaty establishing the European Community (TEC), replaced, since the entry into force of the Lisbon Treaty, by Article 79 of the Treaty on the Functioning of the European Union (TFEU).

- 1.9 The first phase of the CEAS led to the adoption of five instruments between 2001 and 2005 – a regulation and four minimum standards directives. Before sketching the content of these instruments it is worth commenting on their legal effect. A regulation is directly effective in Member States' domestic legal systems, while a directive must be brought into effect by way of domestic implementing laws, regulations and administrative procedures. Owing to the principle of the supremacy of EU law, all domestic implementing legislation must conform to the standards established in the CEAS instruments (and to the EU Charter of Fundamental Rights, about which more later). When a national court is called on to interpret domestic implementing legislation, the Court may, where a question of the interpretation or validity of an EU law arises, avail of the preliminary reference procedure to apply to the Court of Justice of the EU (CJEU)¹² for a preliminary ruling prior to giving its judgment in the case. Where any such question is raised in a case pending before a court or tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal must bring the matter before the CJEU.
- 1.10 The four key instruments¹³ of Phase One CEAS are: the Dublin Regulation;¹⁴ the Reception Conditions Directive;¹⁵ the Qualification Directive;¹⁶ and the Asylum Procedures Directive.¹⁷
- 1.11 The Dublin Regulation (known as “Dublin III” because it was preceded by an intergovernmental convention concluded in Dublin) allocates responsibility to one, and only one, EU Member State for the processing of a given asylum application, on the basis of a hierarchy of criteria. The regulation is based on the premise that all EU Member States are safe for asylum seekers. Supported by a large fingerprint database known as EURODAC,¹⁸ an applicant who is detected moving irregularly between EU Member States is sent to the “responsible” Member State to have his/her case processed.
- 1.12 The Reception Conditions Directive harmonises to a basic standard how Member States host asylum seekers and their accompanying family members for the duration of the asylum process. It establishes rights relating to family unity, schooling and education of minors, access to the labour market, health care, and basic “material reception conditions” which comprise housing, food and clothing and a daily expenses allowance. It also provides guarantees for certain categories of vulnerable applicants, such as separated children and victims of torture and violence.

12 Article 267 TFEU (ex Article 234 TEC).

13 The fifth instrument – the Temporary Protection Directive, which deals with temporary protection in the event of a mass influx, has never been activated and hence is not relevant to the issues in this report.

14 Council Regulation No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national.

15 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

16 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

17 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status.

18 Council Regulation No. 2725/2000 of 11 December 2000 concerning the establishment of “Eurodac” for the comparison of fingerprints for the effective application of the Dublin Convention.

- 1.13 The Qualification Directive, in addition to clarifying certain elements of the 1951 Convention definition of a refugee and elaborating on the rights to which refugees are entitled, establishes the concept of subsidiary protection. Subsidiary protection is protection against certain types of serious harm that may not meet the strict requirements of the refugee definition, but nevertheless make it unsafe for the applicant to be sent back home. Such harm includes torture and inhuman or degrading treatment or punishment, which is the subject of a non-refoulement guarantee in human rights law, as outlined above. For the first time, persons at risk of such harm are to be granted a distinct status with associated rights.
- 1.14 The Asylum Procedures Directive establishes basic rules governing the procedure for refugee status determination, including an admissibility procedure, a substantive and accelerated first instance procedure, an appeals procedure and a withdrawals procedure. It lays down “basic principles and guarantees” for asylum applicants such as the right to access the procedure, to an interview, to an interpreter where necessary, and to legal aid. Although the directive is primarily directed towards refugee applicants, it obliges Member States which operate a single procedure for determining refugee status and subsidiary protection status to apply the directive to both groups.
- 1.15 In the second phase of the CEAS, which concluded in 2013, all of these instruments were “recast” with a view to deepening the level of EU harmonisation in the field of protection by moving from minimum standards to common standards and were supplemented by a number of new measures. Accordingly, the standards of the Phase Two instruments are considerably higher than in the Phase One instruments. For example, the CEAS is premised on a single procedure and there is greater attention to the rights of applicants under the EU Charter of Fundamental Rights (dealt with below) and, in particular, vulnerable persons. The current (Phase Two) instruments comprise the Recast EURODAC Regulation,¹⁹ Dublin III Regulation,²⁰ the Recast Reception Conditions Directive,²¹ the Recast Qualification Directive,²² the Recast Asylum Procedures Directive²³ and are supplemented by the Regulation establishing the European Asylum Support Office (EASO)²⁴ and the Regulation providing for the establishment of the Asylum, Migration and Integration Fund (AMIF).²⁵
- 1.16 However, a complexity must be noted in respect of the Irish engagement with the

19 Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013.

20 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast).

21 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

22 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

23 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

24 Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

25 Regulation (EU) No. 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund.

CEAS. In accordance with the provisions of Protocol No. 21 annexed to the Treaty on the Functioning of the European Union, “on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice” Ireland is not bound to participate in EU instruments in this area but may opt-in to any it wishes to (subject to approval of both Houses of the Oireachtas).²⁶ While Ireland has opted-in to all the Phase One instruments with the exception of the Reception Conditions Directive, it has declined to opt-in to the core Phase Two instruments with the exception of the recast EURODAC Regulation and the Dublin III Regulation as the following table illustrates. It has opted-in to the supplementary instruments – the EASO Regulation and the AMIF Regulation.

Table 1.1: Irish opt-in to CEAS instruments

CEAS Instrument	Phase One: Irish opt-in	Phase Two: Irish opt-in
EURODAC Regulation	Yes	Yes
Dublin Regulation	Yes	Yes
Temporary Protection Directive	Yes	N/A
Reception Conditions Directive	No	No
Asylum Procedures Directive	Yes	No
Qualification Directive	Yes	No
EASO Regulation	N/A	Yes
AMIF Regulation	N/A	Yes

1.17 It should be noted that to the extent that the higher standards in the Phase Two instruments reflect the requirements of the EU Charter of Fundamental Rights, Ireland is bound by these in any event when it implements the relevant Phase One instruments, as explained below.

CHARTER OF FUNDAMENTAL RIGHTS OF THE EU

1.18 The EU Charter of Fundamental Rights became legally binding in 2009, and in the constitutional structure of the EU has the same legal standing as the Treaties.²⁷ This means that all EU secondary legislation, such as the CEAS instruments, must conform to the rights in the Charter.²⁸ Furthermore, all national measures that implement EU law, such as those set out below, must do so in a way that conforms to the rights in the Charter.²⁹ The Charter contains a cross-section of civil and political and socio-economic rights, some of which are of particular importance in the asylum context, such as the right to asylum in accordance with the Treaties; the prohibition of collective expulsions; the right of non-refoulement; the right to an effective remedy; and certain rights of the child.

²⁶ Denmark also has an exceptional arrangement in place.

²⁷ Article 6(1), TEU.

²⁸ See Article 51(1) of the Charter.

²⁹ Ibid.

C. IRISH LEGAL FRAMEWORK

REFUGEE STATUS DETERMINATION

- 1.19 The 1951 Convention Relating to the Status of Refugees is given effect in Irish law, and the relevant CEAS instruments to which Ireland opts-in are transposed into Irish law, principally by means of the Refugee Act 1996³⁰ supplemented by a number of statutory instruments.³¹
- 1.20 The Act adopted the definition of a refugee and the prohibition of refoulement set out in the 1951 Convention. It establishes a Refugee Applications Commissioner, who is independent in the performance of his/her functions, and who has a staff appointed by the Minister for Justice and Equality. The Office of the Refugee Applications Commissioner (ORAC) is the first instance decision-making body. It is tasked with investigating applications for refugee status and with making recommendations on same to the Minister for Justice and Equality.³² The application to ORAC for refugee status begins with an initial interview known as a section 8 interview whereby some personal information and the general grounds of an application are gathered. There follows a written application process and the submission of a questionnaire³³ in support of the application and a substantive interview. During this process the applicant may register with the Legal Aid Board in order to access legal advice;³⁴ and may avail of Direct Provision, the State's system of accommodation and subsistence for protection applicants.
- 1.21 If an application at ORAC results in a recommendation for refugee status, the Minister for Justice and Equality is obliged to accept the recommendation and grant refugee status. If the application is refused by ORAC the applicant can appeal to the Refugee Appeals Tribunal (RAT), the body established by the 1996 Act to adjudicate appeals of negative first instance decisions. The RAT is composed of chairperson appointed following the holding of a competition and selection by the Public Appointment Service (previously the Civil Service Commission) and ordinary members of the Tribunal who are appointed by the Minister for Justice and Equality. The RAT carries out its function usually on the basis of an oral hearing but in some cases on the basis

30 The Refugee Act 1996 has been amended on numerous occasions. An unofficial consolidated version is available on the website of the Refugee Appeals Tribunal at http://www.refappeal.ie/website/rat/ratweb.nsf/page/refugee_status_determination-relevant_acts-en.

31 In particular S.I. 518 of 2006 (as amended); S.I. No. 51 of 2011 and S.I. No. 52 of 2011.

32 As noted, Ireland participates in the Dublin III Regulation, which determines the EU Member State responsible for examining an application for refugee or subsidiary protection status within the EU. ORAC has responsibility for operating the Dublin III procedure and its decisions on Dublin III can be appealed to the RAT. For reasons of time frame and scope this report focuses on the processing of cases where Ireland is the responsible Member State.

33 Prioritised applicants must return their questionnaires to ORAC within 6 working days, non-prioritised applicants within 7 working days.

34 In the absence of a more comprehensive Early Legal Advice Scheme, the service at this stage of the procedure tends to be limited to the provision of legal information and other supports. This is discussed in detail in chapter 3.

of written representations only.³⁵ Like the ORAC, the RAT makes recommendations on refugee status to the Minister for Justice and Equality and the Minister, in turn, is obliged to accept a positive recommendation³⁶ but is not obliged to accept a negative recommendation.

DETERMINATION OF SUBSIDIARY PROTECTION CLAIMS

- 1.22 Unlike all other EU Member States, Ireland does not operate a single protection procedure, whereby all applications are assessed for refugee status and subsidiary protection status at the same time. Rather, Ireland operates a two-stage sequential procedure, whereby qualification for refugee status is assessed first, and qualification for subsidiary protection is assessed only when a definitive negative refugee decision has been rendered. Prior to November 2013, applications for subsidiary protection pursuant to the Qualification Directive were dealt with by the Irish Naturalisation and Immigration Service (INIS) of the Department of Justice and Equality at the leave to remain stage, on the basis of the asylum file and any additional written submissions.³⁷ However, in the M.M. case the CJEU held that:
- “when a Member State has chosen to establish two separate procedures, one following upon the other, for examining asylum applications and applications for subsidiary protection, it is important that the applicant’s right to be heard, in view of its fundamental nature, be fully guaranteed in each of those two procedures.”*³⁸
- 1.23 As a result, in November 2013 a new procedure was introduced whereby applications for subsidiary protection, existing and new, are examined and determined by ORAC with the possibility of appeal to the RAT in the event of a negative recommendation.³⁹ In effect, this means that applicants are sent back to the beginning of a procedure that is substantially the same as the one they already went through in respect of their refugee claim.
- 1.24 A further preliminary reference was made to the CJEU in the H.N. case, in which it was held that a two-stage sequential procedure, such as that adopted in Ireland, will meet the principle of effectiveness and the right to good administration only if it “does not give rise to a situation in which the application for subsidiary protection is considered only after an unreasonable length of time.”⁴⁰ This ruling has given urgency to the long-standing Government intention to introduce a single protection procedure. A scheme setting out an outline of legislation to reform the law relating to

35 See section 13 of the Refugee Act 1996 for the circumstances which give rise to an appeal on the basis of written representations only.

36 Subject to the limited exception set out in s.17(4) of the Refugee Act: where the person “has been recognised as a refugee under the Geneva Convention by a state other than the State and who has been granted asylum in that state and whose reason for leaving or not returning to that state and for seeking a declaration in the State does not relate to a fear of persecution in that state.”

37 S.I. No. 518/2006.

38 Case C-277/11, Judgment of 22 November 2012.

39 S.I. No. 426 of 2013.

40 Case C-604/12, Judgment of 8 May 2014.

immigration, protection and residence including provision for a single procedure was first published in 2007. The Immigration, Residence and Protection Bill was then published in 2008 and republished in 2010 but has not proceeded beyond the Bill stage. The current intention of the Government is to legislate for a single procedure by way of a slimmed-down piece of legislation primarily focused on protection with additional provisions on discretionary powers to grant permission to remain to persons who do not qualify for protection. The General Scheme of the International Protection Bill was published on 25 March 2015 following Government approval.

- 1.25 As noted above, responsibility for determining eligibility for subsidiary protection was transferred from INIS to ORAC in November 2013. A backlog of 3,657 cases⁴¹ accompanied the transfer. Some features of the pre-November 2013 procedure are relevant to the deliberations of the Working Group. Applicants had the choice of applying for subsidiary protection only at the same time as they could apply for leave to remain; they were not granted any temporary permission to be in the State while that application was under consideration. Under this procedure, persons had a choice to either then avail of assisted voluntary return (AVR) or to apply for subsidiary protection and leave to remain. Case processing under the pre-November 2013 procedure was subject to substantial delays. The recognition rate was low, with less than 3% of cases decided in any year being granted subsidiary protection. This resulted in almost the entire caseload moving on to the leave to remain process. Many persons in the protection process, leave to remain process, or at the deportation order stage today are persons who experienced substantial delays under the former subsidiary protection procedure.

LEAVE TO REMAIN PROCESS

- 1.26 At the end of the protection process, if an applicant receives a negative refugee decision and a negative subsidiary protection decision, the Minister for Justice and Equality notifies the person of his/her intention to deport him/her and invites the person to make written representations under section 3 of the Immigration Act 1999 as to why he/she should not be deported. The Minister is required to have regard to these representations (if any) as well as to a number of factors including any “humanitarian considerations” prior to deciding whether to issue a deportation order or grant him/her permission to remain in the State. This permission is known as “leave to remain” (LTR) and is essentially an immigration (as opposed to a protection) matter. Failing this permission, a deportation order is issued and the person becomes susceptible to deportation. Leave to remain cases are processed by the Repatriation Unit of INIS. Representations can be made in writing only. There is no provision for appeal in relation to the exercise of Ministerial discretion under section 3 of the Immigration Act 1999.

41 This backlog figure was revised to 3,722 by 16 February 2015.

DEPORTATION ORDER STAGE

- 1.27 A person (i) determined not eligible for protection under the protection process, (ii) to whom the prohibition of refoulement set out in section 5 of the Refugee Act 1996 does not apply, and (iii) who has not been granted leave to remain will be issued with a deportation order under the terms of section 3 of the Immigration Act 1999. The deportation order requires the person to leave the State and to remain outside of the State. They are normally afforded 21 days in which to do so before forced removal is considered. A person issued with a deportation order can apply to have the order revoked under the terms of section 3(11) of the Immigration Act 1999. Once issued with a deportation order, a person can no longer avail of AVR and is effectively at the end of the system.

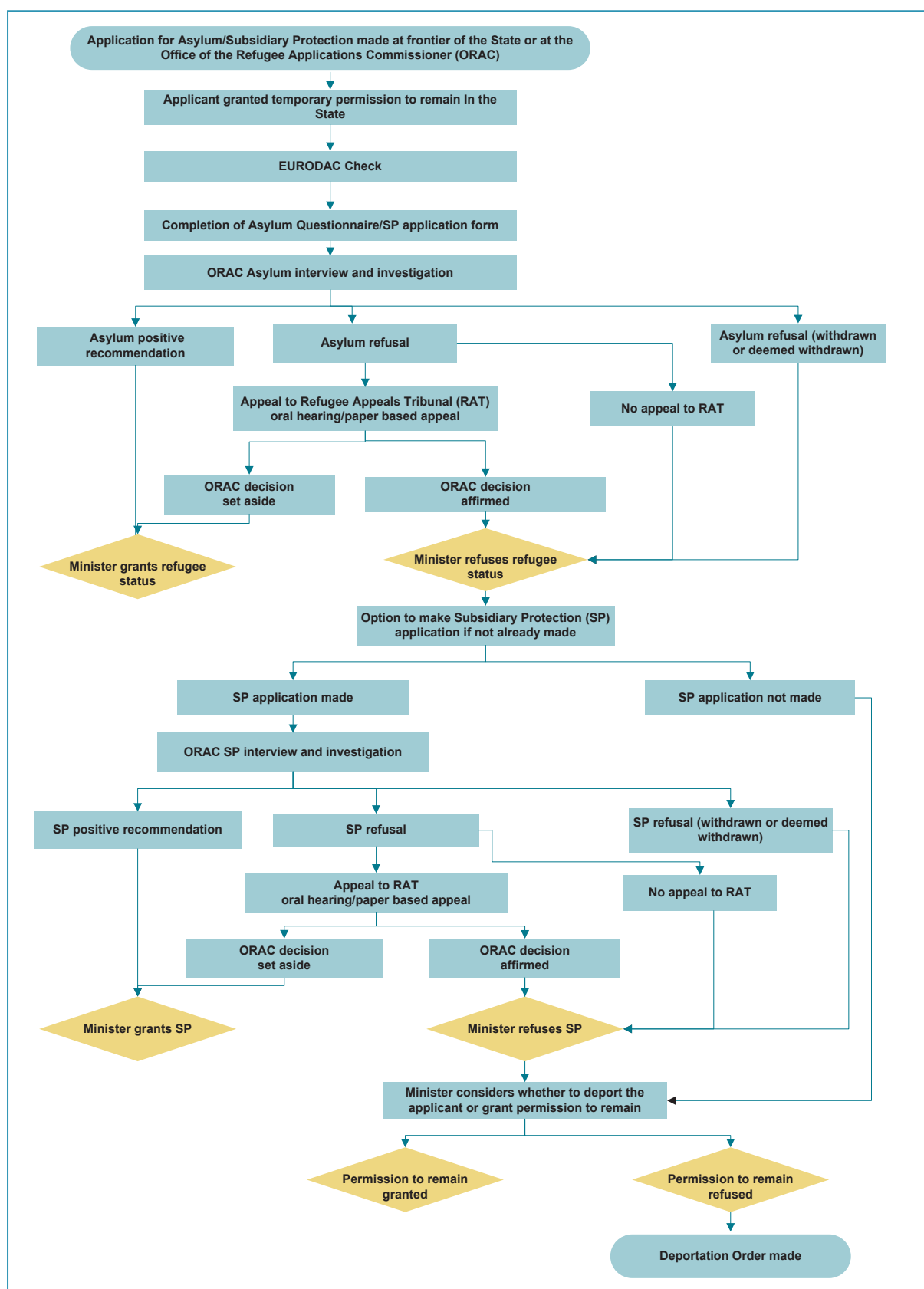
DIFFERENCES BETWEEN STATUS GRANTED

- 1.28 There are a number of differences in the nature of the status granted between refugee status, subsidiary protection status and leave to remain. In relation to refugee status the rights and entitlements accruing are set out in international law, European law and domestic law; in the case of subsidiary protection only the latter two are relevant. In the case of leave to remain the basis upon which the status is granted is discretionary (however, that discretion must be exercised lawfully, for example in accordance with the ECHR) and the State may impose any conditions it deems appropriate in this regard. Some of the important rights that may differ depending on the status granted are: the length of time the permission is granted for, access to a travel document in lieu of a national passport, rights to family reunification and the number of years after which an application for citizenship may be made.

JUDICIAL REVIEW

- 1.29 Judicial review is the process by which a person can apply to the High Court to challenge a decision made by a public body where that person can show sufficient interest in the matter to which the application for judicial review relates. It concerns the lawfulness of the decision-making process; that is, how the decision was made and the fairness of it. The process involves two stages: the leave stage whereby the Court grants or denies permission to the applicant to apply for a judicial review; and, if leave is granted, the substantive stage, whereby the Court adjudicates on the merits of the application. Judicial review is not an appeal of the initial decision, but simply a review of the lawfulness of the decision including whether correct procedures have been followed. The High Court can affirm or set aside the impugned decision, and in the latter case the applicant is remitted to the decision-making body for a fresh decision. In the protection context, applicants can challenge a negative recommendation of ORAC or the RAT relating to refugee status or subsidiary protection status, and a negative decision of the Minister for Justice and Equality relating to refugee status, subsidiary protection status, and leave to remain/the issuance of a deportation order.

Diagram 1.1: Stages of the existing protection system - the protection, LTR and deportation order processes



D. ARRANGEMENTS FOR THE RECEPTION OF PROTECTION APPLICANTS

DIRECT PROVISION, DISPERSAL AND SUPPORTS

- 1.30 Direct Provision is the means by which the State seeks to meet its obligations to provide for the material needs of people seeking protection in the State. It is a largely cashless system, with the State assuming responsibility for providing accommodation on a full board basis for protection applicants until such time as they are granted some form of status and move into the community,⁴² leave the State voluntarily or are removed.⁴³ It is predicated on the fact that protection applicants are not entitled to work and at the same time are excluded from most social welfare entitlements.⁴⁴ Instead, protection applicants receive assistance-in-kind: their basic subsistence needs are met by way of bed, board (three set meals a day plus snacks) and a Direct Provision weekly allowance of €19.10 per adult and €9.60 per child for personal requisites.⁴⁵ Protection applicants are also entitled to a medical card and children have access to pre-school, primary and secondary education and ancillary supports such as school transport on the same basis as Irish citizens.⁴⁶
- 1.31 The accommodation occupied by protection applicants in Direct Provision is their “home” for the duration of their stay, as acknowledged by Mac Eochaidh J in “CA and TA”.⁴⁷ The accommodation centres which host applicants are open centres in the sense that residents are not in detention.
- 1.32 All protection applicants are offered Direct Provision accommodation following the making of their application at ORAC but there is no legal requirement to accept it. It

42 Refugee status, subsidiary protection status or leave to remain in the State through the Immigration Act 1999.

43 Some persons who have not entered the protection process are also provided for via Direct Provision, e.g. persons deemed by An Garda Síochána to be potential or suspected victims of trafficking.

44 The exclusion of protection applicants from the labour market is provided for in section 9(4)(b) of the Refugee Act 1996 and Regulation 4(7) of S.I. No. 426/2013 - European Union (Subsidiary Protection) Regulations 2013. The exclusion of protection applicants from most social welfare entitlements is provided for in the Social Welfare and Pensions (No. 2) Act 2009, which prevents protection applicants from fulfilling the habitual residence requirement that is a prerequisite to receiving certain social welfare payments. The habitual residence condition took effect from 1 May 2004 and affects all applicants or beneficiaries regardless of nationality.

45 The habitual residency condition does not apply to the Department of Social Protection’s Exceptional Needs Payments (ENPs) administered under the Supplementary Welfare Allowance Scheme or the Back to School Clothing and Footwear Allowance. Accordingly, protection applicants can apply to the Department of Social Protection for such payments..

46 Persons who are “ordinarily resident” in the State and who fulfil a means-test are entitled to a medical card under the Health Act 1970. The right of children of school-going age to education is derived from the Education (Welfare) Act 2000 in conjunction with the Equal Status Acts.

47 Mac Eochaidh J in CA & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532 stated that in his view “the space occupied by the applicants [...] is their home and this is expressly acknowledged by RIA who announce in written material given to residents on their arrival that ‘this is your home’.” The written material referred to is RIA (2009), ‘Direct Provision Reception and Accommodation Centres House Rules & Procedures’, p. 4, available on the website of the Reception and Integration Agency at www.RIA.gov.ie

is not means tested. A person who does not avail of Direct Provision is ineligible for the weekly allowance. A protection applicant who avails of Direct Provision may leave it at any time and a person who does not accept the initial offer may change his/her mind subsequently. Irrespective of whether a person avails of Direct Provision they are not entitled to access most mainstream social welfare supports and are prohibited from taking up employment or establishing a business.⁴⁸ Just over half of all protection applicants reside in Direct Provision.⁴⁹ Little is known about the living circumstances of those who do not. It is assumed that they live with family, friends or in private accommodation at their own expense. Some may have left the State.

BACKGROUND TO INTRODUCTION OF DIRECT PROVISION AND DISPERSAL

- 1.33 Direct Provision was established by the Government in 2000 against a backdrop of dramatically increasing protection application numbers. In 1995 there were 424 applications, compared to 4,426 in 1998 and 7,724 in 1999. This rose to 10,938 in 2000 and would peak at 11,634 in 2002.⁵⁰
- 1.34 Historically, persons seeking protection were supported through the Social Welfare Code with housing provided by Local Authorities through existing services for the homeless. In late 1999, however, the shortage of accommodation in the Dublin area became so acute, with reports of families of protection applicants sleeping in parks, that the Government decided to introduce a scheme of Direct Provision – as distinct from a totally cash-based system – to meet the principal needs of protection applicants. In tandem with this decision the Government announced a policy of dispersal of protection applicants throughout the country with the aim of avoiding a disproportionate burden on State services accessible to protection applicants, including community welfare, health and education, in any one part of the country.
- 1.35 It is of note that the review undertaken by the Working Group is the first comprehensive review initiated by the authorities since the introduction of Direct Provision 15 years ago.

48 See supra note 44.

49 See chapter 3 for further detail.

50 Provided by ORAC.

POSITION OF OTHER EU MEMBER STATES

1.36 The majority of EU Member States accommodate protection applicants in collective accommodation facilities; some for the duration of the determination process and others for initial processing, after which time they may be accommodated in private facilities.⁵¹ Some Member States place protection applicants in detention, a practice that is not used in Ireland. The length of time spent by applicants in collective facilities in Ireland is, however, likely to be longer than in other Member States due to the absence of a single procedure to determine protection applications. In addition, persons who have completed the protection process continue to be accommodated in collective facilities in Ireland. This is not the case in many other Member States. Many Member States operate dispersal policies.⁵²

RECEPTION AND INTEGRATION AGENCY

1.37 Direct Provision is coordinated by the Reception and Integration Agency (RIA), a unit within the Department of Justice and Equality.⁵³ RIA has responsibility for arranging accommodation and working with statutory and non-statutory bodies to coordinate the delivery of other services including health, social welfare and education for protection applicants. In order to meet its responsibility to provide accommodation, RIA generally contracts-in accommodation and related services from commercial entities. This is discussed in more detail in chapter 4.

INTENDED DURATION OF STAY IN DIRECT PROVISION

1.38 When Direct Provision was introduced it was envisaged that protection applicants would live in Direct Provision accommodation centres on a short-term basis of not more than six months while their applications were being processed.⁵⁴ This, however, is not how things have turned out, with many protection applicants remaining within the centres for lengthy periods. This is discussed in detail later in this report.

51 European Migration Network (2014), 'The Organisation of Reception Facilities for Asylum Seekers in Different Member States', p. 13. The United Kingdom, the most relevant comparator due to the existence of a common travel area with Ireland, uses collective centres for a short period during the initial processing of the application.

52 Ibid.

53 RIA no longer has an integration function – it was assigned in July 2007 to the Integration Unit of the Office of the Minister of State for Integration.

54 Press release issued by the Minister for Justice, Equality and Law Reform, John O'Donoghue TD, reported in The Irish Times, 28 March 2000.

E. COMMENTARY ON THE PROTECTION SYSTEM

APPROACH ADOPTED

- 1.39 This section seeks to offer an overview of contemporary commentary made by national and international bodies, and academia in relation to the Irish protection system, with a particular focus on the determination process; Direct Provision; and supports available to persons within the system. Although much of the literature spans the entire duration of the existence of Direct Provision itself, an attempt has been made to focus, as far as practicable, on the most recent pieces of research or commentary. Exceptions are made to address any gaps or where a piece of research remains pertinent to the present-day analysis. Generally speaking, commentary on the Irish protection system has predominantly been critical, but it is acknowledged that an official rebuttal or explanation is rarely provided in relation to published research, and the official perspective and the viewpoint of advocates for protection applicants differ with respect to the validity of some commentary.
- 1.40 The overview below is not intended to be a detailed problem analysis, nor does it purport to be exhaustive. Rather, it presents the most consistently established commentary and that which originates from the most reputable and uncontroversial sources. This commentary is not a substitute for but rather a complement to the direct testimony of individuals, families and children who have lived in and experienced the Irish protection system and Direct Provision first-hand.

DETERMINATION PROCESS

- 1.41 The prevalence of long delays in the status determination process is widely acknowledged by all stakeholders and has been a consistent focus of commentary. While opinion diverges as to the nature and extent of the causes, the primary cause of the excessive length of stay in Direct Provision is attributed to systemic factors.⁵⁵

DECISION-MAKING PROCESS

- 1.42 International commentators have repeatedly pointed to the absence of a single procedure – under which a person seeking protection could make one application, which would be assessed on whether it met the requirements for granting refugee status or some other form of protection – as a problematic feature of the system. As recently as 2014, the UN Human Rights Committee stated that:

“The Committee is concerned at the lack of a single application procedure for the consideration of all grounds for international protection, leading to delays in the

55 Irish Human Rights and Equality Commission (2014), “Policy Statement on the System of Direct Provision in Ireland”.

*processing of asylum claims and prolonged accommodation of asylum seekers in Direct Provision centres ...*⁵⁶

- 1.43 Similarly, UNHCR⁵⁷ and the European Commission against Racism and Intolerance have consistently welcomed⁵⁸ or recommended⁵⁹ the proposed introduction of a single determination procedure for persons in need of a protection status.
- 1.44 In addition, Council of Europe Commissioner Thomas Hammarberg has previously expressed “concern about the overall length of asylum procedures under the current dual system which is unique among the 27 EU Member States”.
- 1.45 While similar concerns have been expressed by national bodies, some commentators have also argued that the status determination procedure in Ireland “was itself working in a way”⁶⁰ which made it more likely that protection applications would be refused rather than accepted. In relation to this point, numerous observers⁶¹ have also commented on the need for early legal advice to be embedded in the system as a means of increasing the confidence of all parties in the decision-making process and improving the quality of decisions.

JUDICIAL REVIEW

- 1.46 Prior to very recent developments, analysts broadly agreed that judicial review in asylum and immigration matters was characterised by inordinate delay. The systemic problems included “significant delays in the hearing of cases, multiple applications and pressures on limited court resources”.⁶² The net result was that many applicants were waiting before the Courts in excess of four years for judicial review proceedings to reach a conclusion.
- 1.47 A number of problems related to the judicial review and protection systems were plainly outlined in the judgement of Clarke J when, speaking for a five-judge Supreme Court in the case of *Okunade v Minister for Justice, Equality and Law Reform & the Attorney General*, he stated:⁶³

“... it seems to me that the amount of court resources that have to be allocated is significantly increased by reason of the anomalies in that statutory structure ...”

56 UN Human Rights Committee (2014), “Concluding Observations on the Fourth Periodic Report of Ireland”, CCPR/C/IRL/CO/4, at para. 19.

57 UNHCR Submission for the Universal Periodic Review of Ireland, March 2011: http://www.unhcr.ie/images/uploads/news/unhcr_upr_2011.pdf.

58 Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Ireland (third monitoring cycle): Adopted on 15 December 2006, CRI (2007) 24.

59 Council of Europe: European Commission Against Racism and Intolerance (ECRI), ECRI Report on Ireland (fourth monitoring cycle): Adopted on 5 December 2012, 19 February 2013, CRI (2013).

60 Sue Conlan, Sharon Waters and Kajsa Berg (2012), ‘Difficult to Believe – The assessment of asylum claims in Ireland’, Irish Refugee Council at 40.

61 Bridget Anderson and Sue Conlan (2014), “Providing Protection – Access to early legal advice for asylum seekers” and Elizabeth O’Rourke (2009), “Frontloading: The case for legal resources at the early stages of the asylum process”, Working Notes No. 62.

62 Sunniva McDonagh SC, Sinéad Costello BL and Imelda Kelly BL (2012), “Challenging Times in Asylum and Immigration Judicial Review: Is The System Stretched to Breaking Point?”, 17(5) BR 127, at 128.

63 *Okunade v Minister for Justice Equality and Law Reform & the Attorney General* [2012] IESC 49.

- 1.48 Clarke J identifies specific concerns in respect of the way leave on notice has operated. Overall, the judgment highlights the consequence of delays in the determination process (including judicial review):

“If persons have a legitimate case to remain in Ireland, on whatever basis, then the sooner a positive decision is made the better for all concerned. If persons do not have a legitimate case to remain in Ireland then it is very much in the interests of the State that a final decision to that effect is made as quickly as possible and acted on within a timeframe that does not give rise to persons in the system putting down roots.”

- 1.49 It has also been noted that the systemic problems associated with judicial review can result in “significant human costs”⁶⁴ – not least because of the “lack of certainty”⁶⁵ in the legal status of applicants – and in “financial costs to the exchequer... litigation costs; court resources and public service costs”.⁶⁶

ENFORCEMENT OF DEPORTATION ORDERS

- 1.50 While some commentators argue that the “current system acts to channel irregular migrants towards deportation”,⁶⁷ delays associated with the processing of deportation orders in Ireland have resulted in analysts expressing doubt as to the likelihood of enforcement in many cases,⁶⁸ which may ultimately lead to further prolonged periods of residence in Direct Provision for many persons.
- 1.51 Importantly, it has been noted that persons who are in deportation procedures but are not removed are a “Europe-wide phenomenon”;⁶⁹ deportation is generally a relatively rare occurrence internationally;⁷⁰ more protection applicants are granted refugee status than are forced to leave industrialised countries.⁷¹

DIRECT PROVISION AND SUPPORTS

- 1.52 As a result of the delays associated with the determination process, Direct Provision, which was originally envisaged as a means of providing accommodation for individuals on a short-term basis of not more than six months,⁷² has become a long-term situation, with residents spending more than four years on average in accommodation centres.⁷³

64 See supra note 62 at 129.

65 Ibid.

66 See supra note 62 at 130.

67 Emma Quinn and Gillian Kingston (2012), “Practical Measures for Reducing Irregular Migration: Ireland”, Dublin: European Migration Network, at 65.

68 See supra note 55 at 9.

69 European Union Agency for Fundamental Rights (2011), “Fundamental Rights of Migrants in an Irregular Situation in the European Union”, at 27.

70 Ibid. at 29.

71 Matthew Gibney and Randall Hansen (2003), “Deportation and the Liberal State: The Forcible Return of Asylum Seekers and Unlawful Migrants in Canada, Germany and the United Kingdom”, New Issues in Research, Working Paper No. 77, UNHCR, at 4.

72 Press release issued by the Minister for Justice, Equality and Law Reform, John O’Donoghue TD, reported in The Irish Times, 28 March 2000.

73 Reception and Integration Agency (2013), “Annual Report 2013”.

- 1.53 In 2010 the Department of Justice and Equality conducted a Value for Money review of Direct Provision. It concluded:

“From comparison with a number of options including social welfare and self-catering, the chosen policy of direct provision was found to be the best choice for a number of reasons. It is less costly, it is less likely to act as an incentive to new asylum seekers (asylum shopping) and it allows the State to manage the challenge of asylum seekers in a way that reduces pressure on local services.”⁷⁴

- 1.54 Nevertheless, all stakeholders agree that Direct Provision is not a suitable form of accommodation for long-term residence.⁷⁵ Furthermore, many commentators have repeatedly highlighted that: “residing long-term in Direct Provision involves significant human costs, in terms of impact on physical and mental health, family relationships and ability to participate in society”.⁷⁶

MENTAL HEALTH

- 1.55 At the outset, it should be recognised that this is a complicated subject and that the “issue of whether poor mental health of some asylum seekers is a function of pre-migration stress, of the stress of the migration itself, of post migration issues, of living in Direct Provision, or a combination of these factors, is a complex matter and as such great caution should be exercised before drawing conclusions”.⁷⁷
- 1.56 Some stakeholders, however, argue that living in Direct Provision adversely affects mental health⁷⁸ and that a prolonged stay may have negative effects on overall wellbeing.⁷⁹ When coupled with a lack of access to pathways to integration such as employment, it has been suggested that such lengthy stays can also result in an “additional detrimental effect on mental health”.⁸⁰
- 1.57 Studies have noted that protection applicants use General Practitioner services more often and experience higher levels of self-reported symptoms of depression than persons granted refugee status⁸¹ and suffer higher rates of anxiety and depressive disorders than other sections of society.⁸²
- 1.58 This propensity to suffer from depression can result from the uncertain nature of their status in the country but also from the living conditions associated with Direct

74 Reception and Integration Agency (2010), “Value for Money & Policy Review – Asylum Seeker Accommodation Programme”, at 65.

75 Corona Joyce and Emma Quinn (2014), “The Organisation of Reception Facilities for Asylum Seekers in Ireland”, European Migration Network, at 33.

76 Eugene Quinn (2013), “Lives on Hold: Living Long-Term in Direct Provision Accommodation”, Working Notes, No. 71.

77 Written answer to Parliamentary Question by Robert Dowds TD (PQ 30684/13), Tuesday 25 June 2013, Dáil Éireann Debate Vol. 808 No. 1 Unrevised.

78 Toar, M., O’Brien, K. and Fahey, T. (2009), “Comparison of Self-Reported Health & Healthcare Utilisation between Asylum Seekers and Refugees: An observational study”, BMC Public Health 9: 214.

79 Health Service Executive (2008), “National Intercultural Health Strategy 2007–2012”, at 42.

80 Ibid at 86.

81 See supra note 78.

82 Dr Izu Nwachukwu, Dr David Browne and Dr John Tobin (2009), “The Mental Health Service Requirements for Asylum Seekers and Refugees in Ireland”, Working Group of the Faculty of Adult Psychiatry Executive Committee.

Provision.⁸³ Finally, it has been noted that no dedicated national strategy to meet the unique mental health needs of protection applicants has existed in the recent past.⁸⁴

FAMILY LIFE AND CHILDREN

- 1.59 Some commentators argue that Direct Provision accommodation does not provide a normal family environment for raising children and that a prolonged period living in this institutional setting can inhibit a child's healthy growth and development.⁸⁵ Children and parents often have to share accommodation and common facilities are shared with a significant number of strangers. Concerns have been expressed "over the safety and overcrowding of the physical environment ... and access to play space";⁸⁶ the lack of appropriate recreational space for children;⁸⁷ and the consequential "inability of parents to properly care for and protect their children".⁸⁸
- 1.60 In addition, it has been noted that "significant child protection concerns exist"⁸⁹ and that Direct Provision "alienates children and is an unnatural family environment which is not conducive to their positive development".⁹⁰
- 1.61 As a result of most families (indeed the majority of residents) being accommodated in centres where food is provided on a full-board basis, family interactions around food are dictated by the strict mealtimes and limited food choice.⁹¹
- 1.62 The provision of food has been criticised as inedible, of poor quality, monotonous, bland, and culturally inappropriate⁹² and as a result, it is argued that the dietary needs of children are not met and that the current food system, which does not facilitate parents preparing family meals, has a negative impact on families and children.⁹³
- "Often, children will grow up without the memory of their parents cooking a family meal."*⁹⁴
- 1.63 Finally, some commentators highlight that income levels can play a role in the level of social exclusion experienced by children living in Direct Provision. Although this is not

83 FLAC (2009), "One Size Doesn't Fit All – A legal analysis of the direct provision and dispersal system in Ireland, 10 years on", at 110.

84 See supra note 82.

85 Liam Thornton (2014), 'Direct Provision and the Rights of the Child in Ireland', Irish Journal of Family Law 1(3): 68-76; Ciara Smyth (2014), 'Children, Direct Provision and the European Convention on Human Rights' in Susanne Egan, Liam Thornton and July Walsh (eds.), Ireland and the European Convention on Human Rights, 60 Years and Beyond, London: Bloomsbury.

86 Samantha K. Arnold (2012), "State Sanctioned Child Poverty and Exclusion – The case of children in state accommodation for asylum seekers", Irish Refugee Council, at 7.

87 See supra note 83, at 92–100.

88 Shannon, G. (2012), "Fifth Report of the Special Rapporteur on Child Protection". Available at: <http://www.dcy.gov.ie/documents/publications/5RapporteurRepChildProtection.pdf>.

89 Geoffrey Shannon (2014), "Seventh Report of the Special Rapporteur for Children", at 56.

90 Ibid.

91 Keelin Barry (2014), "What's Food Got to Do With It? Food Experiences of Asylum Seekers in Direct Provision", at 39.

92 Ibid. at 7.

93 Ibid.

94 See supra note 76.

measurable entirely by relation to income, children can “experience child poverty and social exclusion when they do not have the means necessary to participate in activities or have appropriate living conditions as accepted by the society in which they live”.⁹⁵

BOREDOM, SOCIAL EXCLUSION AND OBSOLESCENCE OF SKILLS

- 1.64 Access to and participation in an education system are prerequisites to achieving the health benefits that education provides.⁹⁶ Similarly, being employed is extremely beneficial for an individual’s health.⁹⁷ The prohibition against taking up any form of employment and the limited access to the education system for adults can therefore be considered among the more severe elements of the system, which can deny individuals the opportunity to support themselves or their families in any meaningful way now or in the future.
- 1.65 Some commentators argue that the absence of any prospect of either employing pre-existing qualifications or skills or developing new ones can result in extreme boredom and isolation for adults living long term in Direct Provision. Effective integration can also be inhibited through the denial of a network of colleagues and the accompanying lack of resources necessary for participation in the community.
- 1.66 Such circumstances can negatively impact on a protection applicant’s self-esteem and motivation and engender feelings of helplessness.⁹⁸ This marginalisation and social exclusion⁹⁹ experienced by some residents has been noted as a factor preventing them from establishing ties with local communities and can eventually result in detachment from Irish society.¹⁰⁰
- 1.67 Isolation may also be acutely experienced by single persons as a result of the potential barrier to the enjoyment of privacy and companionship that is caused by the limited number of single-occupancy rooms available in Direct Provision. While the nature of the accommodation available is largely determined by the original use of the premises,¹⁰¹ the adequacy of shared space has been questioned,¹⁰² and can be a particular challenge for persons living long term in Direct Provision.

CREATION OF DEPENDENCY

- 1.68 The physical, emotional and mental condition that long-term residents of Direct Provision – who may have suffered demotivation and atrophy of their qualifications and skills – will be in when they leave the system must be of concern to all stakeholders. A possible impact identified by some commentators is that prolonged periods of stay within Direct Provision may indirectly result in the creation of a dependent cohort of people who require State support long after their departure from the system. Any

95 See supra note 86 at 23.

96 Claire Higgins, Teresa Lavin and Owen Metcalfe (2008), “Health Impacts of Education: A review”, The Institute of Public Health in Ireland.

97 Cathal Doyle, Paul Kavanagh, Owen Metcalfe and Teresa Lavin (2005), “Health Impacts of Employment: A review”, The Institute of Public Health in Ireland.

98 See supra note 82 at 116–118.

99 Bryan Fanning (2002), “Racism and Social Change in the Republic of Ireland”, Manchester: University Press.

100 Ruth McDonnell (2009), “Social Exclusion and the Plight of Asylum Seekers Living in Ireland”, Limerick Student Journal of Sociology at 101.

101 See supra note 75 at 34.

102 See supra note 83 at 89–92.

manifestation of this scenario is particularly important if it is accepted, as suggested by some commentators, that it is an illusion to believe that irregular migration can be completely tackled or that all irregularly staying third-country nationals will be removed in due time.¹⁰³

- 1.69 Such an outcome must also be considered in light of the difficulties experienced by persons granted status successfully transitioning from Direct Provision and integrating into Irish society. Living long term in Direct Provision impacts greatly on life in the community afterwards, which can be extremely challenging:

“... the social stigma associated with time spent in the Direct Provision system can be difficult to repair and may hinder prospects of integration.”¹⁰⁴

- 1.70 The value of refugee integration is recognised by the State on the basis that when “afforded the appropriate support and opportunities, refugees will be enabled to demonstrate their talent, skills, enthusiasm and culture and contribute to the social fabric of Ireland”¹⁰⁵ and that the benefits of such integration will be “evident through the increased contribution and participation of refugees in society”.¹⁰⁶ It has, however, been argued that residents of Direct Provision are not addressed by any national integration policies¹⁰⁷ and also that particularly vulnerable groups, such as victims of torture, have not always been accommodated in such policy development.¹⁰⁸
- 1.71 Particular challenges arise for persons transitioning to independent living with regard to accessing suitable housing, securing employment and navigating social services. Support from a local network or Irish friends and contacts is deemed instrumental when seeking housing,¹⁰⁹ so any experience of exclusion or isolation can hinder prospects.
- 1.72 Similarly, obtaining adequate accommodation largely depends on the availability of immediate financial resources which many exiting Direct Provision residents do not have. Furthermore, some commentators argue that the Irish system leads to structural unemployment partly as a result of persons spending years “cut off from society, leaving them with gaps in their employment and education history, a lack of contacts and networks, wasted skills and time lost”,¹¹⁰ the immediate consequence of which is the continued dependence of former protection applicants on the State.

103 Jesuit Refugee Service Europe (2007), “We Are Dying Silent: Report on Destitute Forced Migrants”; Jesuit Refugee Service Europe (2010), “ANDES Advocacy Network on Destitution: Living in Limbo – Forced Migrant Destitution in Europe”.

104 Diana Gouveia (2014), “Towards A New Beginning – Refugee Integration in Ireland”, UNHCR at 7.

105 Department of Justice, Equality and Law Reform (2000), “Integration - A Two Way Process: Report to the Minister for Justice, Equality and Law Reform by the Interdepartmental Working Group on the Integration of Refugees in Ireland” at 42.

106 Ibid.

107 Sue Conlan (2014), “Counting the Cost – Barriers to employment after Direct Provision”, Irish Refugee Council.

108 SPIRASI (2014), “Department of Justice and Equality – Review of integration policy”, submitted 9 May 2014.

109 See supra note 104 at 6.

110 See supra note 107 at 6.

COMPLAINTS PROCEDURES

- 1.73 In the recent High Court judgment in the CA and TA¹¹¹ case, RIA's complaints procedures were found to be unlawful. The issue of how complaints are dealt with in Direct Provision has been the subject of much commentary. The UN Human Rights Committee noted in 2014 that it regretted "the lack of an accessible and independent complaints mechanism in Direct Provision centres".¹¹²
- 1.74 Similarly, the government-appointed Special Rapporteur for Child Protection, Dr Geoffrey Shannon, has previously called on the State to "implement without delay an independent complaints mechanism and independent inspections of Direct Provision centres and give consideration to these being undertaken through either HIQA (inspections) or the Ombudsman for Children (complaints)".¹¹³
- 1.75 Finally, the Irish Human Rights and Equality Commission noted¹¹⁴ its concern in 2014 that the existing complaints procedure "lacks independence and is not an appropriate and effective remedy for the purpose of ensuring adequate protection of residents and is incompatible with the principle of non-discrimination".

CONCLUSION

- 1.76 The predominant focus of commentary on the Irish protection system has been conditions in Direct Provision. It is, however, universally acknowledged that the biggest single issue facing protection applicants is the length of time. This is a result of structural faults in the protection determination process, which have led to a situation where a significant number of protection applicants are waiting many years for a final decision on their claim:

*"The most negative aspects of life in Direct Provision such as institutionalisation, adverse effect on family life and relationships, the obsolescence of skills and qualifications and the creation of dependency are functions of duration and exacerbated by the length of time in the system."*¹¹⁵

111 C.A & anor. v Minister for Justice and Equality & Ors. [2014] IEHC 532; For academic commentary, see Liam Thornton (2014), 'C.A. and T.A.: The Direct Provision Case', Irish Journal of Family Law 1(4): 116-118.

112 See supra note 56.

113 See supra note 88 at 18.

114 See supra note 55.

115 JRS Ireland (2013), "No End in Sight", Working Paper, unpublished.

F. NATIONAL AND INTERNATIONAL APPLICATION TRENDS

- 1.77 As noted at para. 1.33, Ireland experienced a dramatic upward trend in protection application numbers in the late 1990s and early 2000s, peaking at 11,634 in 2002. Since then the number fell year on year until 2013, when 946 applications were received – the lowest yearly total since 1995.
- 1.78 In 2014 applications rose by 53% to 1,448. This trend has continued into 2015, and as of 16 February 2015 applications were 138% ahead of the same period in 2014. It is estimated that Ireland will receive approximately 3,000 applications by the end of 2015.¹¹⁶
- 1.79 This rise in numbers is of concern as it has already had an impact on the case processing rate at ORAC, potentially leading to significant delays in current and future case processing if left unaddressed. It is also of concern as it has the potential to put pressure on the availability of spaces within accommodation centres and may require RIA to source new providers to ensure that it can meet its responsibility to provide accommodation to any protection applicant who seeks it.
- 1.80 The upward trend in Ireland is, however, in line with international trends and may continue. In 2014, 38 European countries received 47% more applications than in 2013 – 714,300 applications versus 485,000. EU Member States registered 44% more applications in 2014 compared to 2013 – 570,800 compared to 396,700.¹¹⁷ Global forced displacement is now well over 50 million people, the highest level on record. Of this number, an estimated 5.5 million were newly displaced in the first half of 2014. Armed conflict, deterioration in the security or humanitarian situation and human rights concerns are the main reasons influencing the sharp rise in the number of persons seeking protection in industrialised countries including Europe. It is, however, important to put this in context; it remains the case that the vast majority of those in need of protection in the world are hosted by developing countries.
- 1.81 In terms of source countries, the experience of Ireland contrasts with that of other EU Member States where Syria, Eritrea and Afghanistan have been the top countries of origin of protection applicants in recent years, followed by Nigeria and Pakistan. In Ireland, Nigeria was the source country with the largest number of applicants for many years up to and including 2013. In 2014 Pakistan, which had been the second highest source country for a number of years, overtook Nigeria and this remains the position in 2015.

¹¹⁶ Provided by ORAC.

¹¹⁷ UNHCR Asylum Trends Report 2014, 26 March 2015.

Chapter 2 – Views of Persons in the Protection System

A. INTRODUCTION

- 2.1 This chapter seeks to provide a brief overview of the consultation process undertaken by the Working Group and the main themes that emerged. While recognising that many of its Members, in particular those representing residents in Direct Provision accommodation centres, providing supports to them and advocating for them, would articulate their concerns in their contributions, the Working Group took the view that it was essential to hear directly from those most affected by the system and to see first-hand the living conditions in accommodation centres. With this in mind the Working Group engaged in an extensive consultation process over the course of December 2014 and January and February 2015 to ensure that its deliberations were informed by those in the system.
- 2.2 The output from the process is referred to throughout this report in order to illustrate the wide-ranging concerns that have been identified. A comprehensive report of the consultation process is contained in Appendix 3. It is, to a large extent, based on direct quotes from participants in the process and conveys a strong sense of the frustration and powerlessness experienced by those in the system for lengthy periods and their desire for: a meaningful existence, the opportunity to work to support themselves and their families, and the opportunity to contribute to Irish society.

B. CONSULTATION PROCESS

- 2.3 The consultation process agreed by the Working Group included a number of phases:
- a call for written submissions from residents (adults and children) of Direct Provision accommodation centres;
 - regional consultation sessions with residents and visits to some accommodation centres;
 - consultations with particular groups of persons in the system including victims of torture, victims of trafficking/sexual violence, members of the LGBT community;
 - an opportunity for some participants to make oral submissions to a plenary meeting of the Working Group.
- 2.4 In order to help focus the consultations the following guide questions were provided, but participants were encouraged to express their views in their own words:
- What are the main challenges that you have experienced during your stay in Direct Provision?
 - How can living conditions and quality of life in Direct Provision centres be improved?
 - Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside Direct Provision, could be improved.

- How have you experienced the asylum application process? Suggest ways it could be improved.
- 2.5 To encourage participation, assurances were given that the process was confidential and would in no way impact on protection claims.
- 2.6 With the assistance of RIA and accommodation centre managers, notices were posted in all centres calling for written submissions. Child-friendly, colourfully illustrated packs were distributed to centres to encourage children to give their opinions (whether by drawing pictures or in writing) as to how the system could be improved. Submissions were received from 13 groups of residents and individually from 58 adults and 31 children.
- 2.7 Regional consultation sessions were held at 10 locations and were facilitated with the assistance of regional and local support groups. In all, 381 residents attended the sessions, most of which took place at locations outside of the accommodation centres in order to encourage participants to speak freely. In so far as practicable, five Members of the Working Group attended each consultation session. Visits to selected centres in the region concerned took place on the same day. Members visited 15 accommodation centres in all. The visits were announced. The centres were selected to ensure a representative sample in terms of family type hosted (family/single male centre etc.), accommodation type (former hotels, hostels, purpose built, etc.), and state-owned or not. In addition to allowing visiting Members to see the living conditions, the visits provided informal opportunities for residents to engage with the Working Group.
- 2.8 Consultations with particular categories of persons in the system were also held, including meetings with victims of torture, victims of trafficking/sexual violence, and members of the LGBT community. There were 35 participants in all. These sessions were facilitated by the NGO sector with particular expertise in the area.
- 2.9 The Department of Children and Youth Affairs, Children and Youth Participation Unit has agreed to undertake a full consultation with children living in Direct Provision accommodation centres to better understand their lives, ambitions and concerns. The Unit has extensive experience and is internationally recognised for its consultation projects. Work on this project will commence in June 2015. RIA has welcomed this initiative and it is expected that the findings will assist those with responsibility for the on-going implementation of the Working Group's recommendations.
- 2.10 Finally, a representative from each of the regional consultation sessions was invited to make an oral submission to the Working Group. Nine accepted the invitation. Eloquently describing their experiences of the system, they vividly conveyed the human costs of waiting indefinitely for a final decision on their cases.

C. MAIN THEMES

- 2.11 A striking feature of the consultation process is the consistency of the concerns articulated by participants regardless of location or type of accommodation centre.

LENGTH OF TIME

- 2.12 A constant underlying theme is intense frustration or despair arising from the lengthy determination process and resulting lengthy residence in centres originally designed for short stays of six months. As one resident noted:

“What could be said to be wrong with the system is, in one way or another, directly linked to the length of time spent in it.”

- 2.13 The “length of time” is at the heart of many of the concerns around Direct Provision and the supports available, and the fears of participants that they may not be capable of independent living when they get a final decision on their claim. The concerns raised include:

- the uncertainty overshadowing their lives,
- the lack of personal autonomy over the most basic aspects of their lives and daily living – cooking, going to the shops, cleaning,
- the lack of privacy and the challenges of sharing with strangers,
- the boredom and isolation,
- the inability to support themselves or their family and contribute to society in a meaningful way,
- the impact on children of being born and/or living their formative years in an institutional setting,
- the impact on parents’ capacity to parent to their full potential and on normal family life,
- the loss of skills and the creation of dependency, and
- the negative impacts on physical, emotional and mental health.

SENSE OF BEING IN PRISON

- 2.14 Some participants made strong statements identifying life in Direct Provision, notwithstanding their physical freedom, as equivalent to being in prison or indeed worse; prisoners know when they will be released and have opportunities to better themselves through education and ready themselves for their life outside. In the words of one participant:

“Living in direct provision is like living a prisoner’s life – we are free but we don’t have liberty.”

PROHIBITION ON ACCESSING THE LABOUR MARKET, DEPENDENCY, BARRIERS TO EDUCATION

- 2.15 A persistent theme is the desire to be allowed to work, to provide for themselves and their families, and not to be viewed as welfare dependent. This is accompanied by a desire to contribute to the economy and to integrate into Irish society generally. Many point to their professional qualifications and the frustration they experience due to the enforced dependency. A related theme includes concern around becoming deskilled and calls for barriers to further education and training to be removed to allow for the updating of skills or self-advancement through gaining new skills. The inadequacy of the weekly allowance to meet basic needs and to enable participation in social and community activities was frequently raised.
- 2.16 Participants described the effects of the lack of a meaningful daily purpose and of social isolation including monotony, boredom, loss of motivation, decline in skills set, institutionalisation and adverse effects on mental well-being.

DAILY LIFE IN ACCOMMODATION CENTRES

- 2.17 Many commented in detail on daily life in the accommodation centres, citing a range of concerns including the cramped conditions, the challenges of sharing with strangers from different cultural and religious backgrounds, the tensions that arise through living in such close proximity with others, the lack of control over basic daily activities, the inadequacies of the food provided, a lack of confidence in the complaints procedure and the inspection regime.
- 2.18 The lack of facilities to invite people to their homes was cited as adding to the social exclusion arising from the nature of Direct Provision. Participants feel isolated from their neighbours in the local community due to their living conditions and lack of means.
- 2.19 Some participants did suggest that an initial stay in Direct Provision had its merits as a means of orienting new arrivals to life in Ireland. Some commented positively on the staff in the centres but others cited a lack of compassion and sensitivity.
- 2.20 Single people expressed a keen sense of wasting critical years for finding a partner and creating a home and a family.

EFFECTS ON FAMILY LIFE AND CHILDREN

- 2.21 Many adults referred to their concerns around the effects on their children of growing up in Direct Provision. They argued that Direct Provision was an institutional setting and was not a normal environment in which to raise children. Concerns were raised about children, and in particular Irish-born children, being raised in Direct Provision because of the status or lack of status of their parents.

- 2.22 Parents cited feelings of inadequacy; their authority as parents and capacity to act as role models for their children are undermined by their economic dependency and their lack of control over their daily lives. They cited a lack of capacity to infuse their traditions and culture in their children due to the lack of private family living space and cooking facilities. They identified normal childhood activities including play, after-school activities, birthday celebrations and social outings as being beyond their means. A concern that their children would not be able to progress to third level education due to being classed as “international students” and not being eligible for student supports was very evident.
- 2.23 Many participants clearly stated their ambition to be granted status; they want to live in Ireland and to have their children grow up here and prosper.

VIEWS OF CHILDREN

- 2.24 The child-friendly packs supplied by the Working Group to facilitate communication encouraged children to draw (or write) about their ideal home, the things that they would like to do outside their home and any ideas that they had about how to make the process better for children. Their colourful contributions reflected societal norms: a house with a front door, separate bedrooms, a backyard; hanging out with friends at home; or going to dancing class, the library, the cinema – everyday activities that children and young people outside Direct Provision take very much for granted. Their written contributions reflected a desire to be normal, and to be able to engage in the same activities as their friends and peers in the general population.

SOLUTIONS OFFERED

- 2.25 Participants were encouraged to offer solutions to the issues raised in their submissions. Some could not see beyond the frustration of being in the system for so long. Others put forward proposals for reform including abolition of Direct Provision or the imposition of a time limit on Direct Provision. A frequent suggestion was an amnesty for those in the system for a long time to clear processing backlogs and to vindicate human rights. The right to work was identified as a key means of enhancing respect for the dignity of those in the system and improving the quality of life, as was an increase in the weekly allowance. Improved physical conditions to enable normal family life and greater privacy, and interaction with local communities were also identified as priorities. In terms of the process and oversight arrangements, suggestions were made to improve processing timelines, communications on the progress of applications, and the complaints and inspection regimes.

VIEWS ON THE WORKING GROUP

- 2.26 There was a strong welcome for the Working Group’s remit and a huge investment of hope for real change as a result of its deliberations. Many participants expressed

appreciation of the opportunity to be consulted. Great emphasis was placed on the need for urgent change, especially for people in the system for a long time. Some expressed a fear of engaging with the Working Group consultation process, and were concerned not to give offence in expressing an opinion. Others expressed concerns that the Working Group might be another source of delay in the reform process and expressed “consultation fatigue”.

- 2.27 Some participants encountered logistical difficulty with communicating with the Working Group. These matters were addressed during the consultation process.

Chapter 3 – Suggested Improvements to Existing Determination Process

A. INTRODUCTION

- 3.1 This chapter focuses on the operation of the different parts of “the system”, defined for the purposes of this report as comprising the protection process, the leave to remain process, the deportation order stage and the judicial review process. It examines, in particular, the length of time that protection applicants spend in the system. “Length of time” has been identified as the key problem with the system by a range of sources, not least the residents of Direct Provision accommodation centres through their participation in the consultation process. The effect of the length of the process and its causes are examined and solutions identified, not only to address the situation of those in the system at present but also to prevent the problem reoccurring in the future. Issues relating to the quality of the system including access to early legal advice, early identification of vulnerable persons and unregistered children, are explored and solutions proposed.
- 3.2 All figures quoted in this chapter are accurate as of 16 February 2015 unless otherwise stated.

B. LENGTH OF TIME IN THE SYSTEM

APPROACH ADOPTED BY THE WORKING GROUP

- 3.3 From its first meeting it was evident to the Working Group that the single most important issue that had to be resolved was the length of time that many of those in the system had to wait before their cases were finally determined. This resulted in many people spending years in a state of uncertainty, not knowing whether they would be allowed to stay in the State or not. It also resulted in people living long term in Direct Provision accommodation centres originally intended for stays of no more than 6 months and experiencing all the challenges associated with Direct Provision, including: the lack of personal autonomy over the most basic aspects of their lives, the lack of privacy, the boredom and isolation, the inability to support themselves or their family and contribute to society, the loss of skills and the creation of dependency.
- 3.4 In order to address the length of time issue, the Working Group concluded that it would be necessary to identify potential solutions for those in the system a long time and also to identify potential solutions to prevent a reoccurrence of the problem. The Working Group noted that the introduction of the single procedure (if properly resourced, of which more later) would provide in large part the solution for the future. In relation to those in the system a long time the Working Group discounted the possibility of an amnesty as it would be contrary to national and EU policy and, accordingly, not a practical or pragmatic way to proceed. In addition, the solutions proposed would need to address the specific stage within the system that a person is at. For instance, a person eligible for protection requires a positive protection decision

which can only be delivered through the protection process. Persons with a deportation order cannot be granted any status unless a decision is first taken to revoke a deportation order and so on. The Working Group concluded that the complexities of the system required tailored solutions that could not be delivered by means of an amnesty. The Working Group decided that the solution for those in the system a long time lay with fast-tracking their cases under the existing statutory regime within a defined time frame and with some modifications and guidance in relation to the leave to remain stage to expedite case processing. This approach would maintain the integrity of the protection process by ensuring that the proposed solutions would not constitute an inducement to persons who qualify for international protection to withdraw their application in favour of a lesser status thereby forfeiting the associated rights to which they are entitled.

- 3.5 The Working Group was conscious of the importance of maximising the number of people who would benefit from any solution while at the same time ensuring that border controls and existing immigration procedures were not compromised, as required by the terms of reference. Critical to this consideration was the number of years a person would need to have spent in the system before benefiting from any solution to resolve their situation.
- 3.6 With these considerations in mind, the Working Group conducted a detailed examination in order to establish: the number of persons in the system for lengthy periods, the stages they were at, the reasons for the delay at each stage and the processing capacity and human resource capacity at each stage. This last was necessary in order to quantify the financial implications of the recommendations as required by the terms of reference. The outcome of what was a very thorough examination is set out below, and is the basis for the solutions identified later in this chapter for those in the system for five years or more at present and into the future.

KEY STATISTICS

- 3.7 There are an estimated 7,937 people¹¹⁸ in the system, of whom 55% (4,350) have been in the system for over five years. 21% of the total are children.
- 3.8 Of the 7,937 people in the system:
- 49% (3,876) are in the protection process. Almost a third of them (1,189) have been in the protection process for over five years.
 - 42% (3,343) are at the leave to remain stage. Three quarters of them (2,530) have been in the system for over five years.
 - 9% (718) are at the deportation order stage. 88% of them have been in the system for over five years.

¹¹⁸ There are 154 children living in Direct Provision accommodation centres in respect of whom applications for protection or applications to have them included in an existing family application have not been made by their parent(s) or guardian(s). The number of any such children living outside Direct Provision whose parents or guardians are in the system is unknown. While these children are not technically in the system, they are persons of concern to the Working Group and included in the statistical data.

- Approximately 1,000 people are involved in judicial review proceedings relating to the various stages in the system. They are already accounted for in the preceding bullet points. 66% of persons involved in judicial review proceedings have been in the system for over five years. When a person is involved in a judicial review, the further processing of their case and those of family members is suspended pending the finalisation of the judicial review.
- 3.9 The data indicates that the proportion of persons in the system for over five years is highest at the leave to remain and deportation order stages and in the judicial review process.
- 3.10 Of the 7,937 persons in the system, 3,607 or 45% live in Direct Provision accommodation centres in the State.¹¹⁹ The remaining 4,330 persons or 55% are living outside Direct Provision or have left the State.¹²⁰
- 3.11 Of the 3,607 persons residing in accommodation centres:
- 41% (1,480) have been in the system for more than five years;
 - 59% (2,140) are in the protection process;
 - 25% (890) are at the leave to remain stage;
 - 16% (577) are at the deportation order stage;
 - 30% are children.
- 3.12 The best estimate is that there are 4,330 persons in the system living outside Direct Provision. Little is known about the living circumstances of this group. It is assumed that a significant proportion of them may have already left the State and that the remainder live with family, friends or in private accommodation at their own expense. The precise number currently in the State is unknown in the absence of exit immigration controls and/or the undertaking of a caseload verification exercise.
- 3.13 Of the estimated 4,330 persons living outside of Direct Provision:
- 66% (2,870) have been in the system for over five years;
 - 56% (2,453) are at the leave to remain stage;
 - 40% (1,736) are in the protection process;
 - 15% (649) are children.
- 3.14 Precise data is not available in relation to persons living outside of Direct Provision at the deportation stage. Based on information provided by GNIB it is estimated that there are 141 persons living outside of Direct Provision who continue to report to GNIB.
- 3.15 A detailed breakdown of the statistics is provided at **Appendix 6**.

119 This figure excludes 679 persons living in Direct Provision accommodation who have been granted some form of status.

120 Statistics in relation to the people living in the Direct Provision accommodation centres are more easily verifiable given their proximity to the national administration than statistics in relation to persons living outside of the accommodation centres. Accordingly the latter should be treated with caution.

LENGTH OF TIME BY STAGE IN THE SYSTEM – ANALYSIS

3.16 In this section we examine the length of time issue by reference to each stage in the system: (I) the protection process (comprising first instance consideration at ORAC and second instance at the RAT), (II) the leave to remain process, (III) the deportation order stage, and (IV) the judicial review process.

(I) THE PROTECTION PROCESS

3.17 There are an estimated 3,876 persons in the protection process. This is 49% of the total number of persons in the system. 20% of them are children.

ORAC – Overview

3.18 Of the 3,876 persons in the protection process, 2,476 are at ORAC. The 2,476 cases are composed of 983¹²¹ pending refugee status cases and 1,493 pending subsidiary protection cases. The figure of 1,493 includes 861 live cases.¹²²

Length of time in the system

3.19 An analysis of the ORAC caseload reveals the following:

- In the case of applications for refugee status, 97% (950) of persons have been in the system for less than one year with 0.3% (four) in the system for four years or more;
- In the case of applications for subsidiary protection 65% (976) of persons are in the system for four years or more, and 55% (824) in the system for more than five years.

Processing of applications at ORAC

3.20 As noted in chapter 1, applications for refugee status rose by 53% in 2014 and as of 16 February 2015 were 138% ahead of the same period in 2014. This has led to an increase in the median processing time from 12.4 weeks in January 2014 to 21.1 weeks in January 2015. The recognition rate for 2014 was 17%. For further details on the number of refugee applications processed over the last five years and their outcomes see **Appendix 6**.

3.21 As noted at para. 1.25, a backlog of 3,657 subsidiary protection applications was transferred from INIS to ORAC in November 2013. Some staff were also transferred from INIS to ORAC to assist with the processing of these cases. In the period between November 2013 and February 2015 a further 65 cases were added to this backlog to give a total of 3,722 cases. A verification exercise conducted by ORAC identified

121 Of which 649 are living in Direct Provision, 334 are not.

122 "Live cases" refers to cases where the applicant has confirmed their whereabouts and that they wish to proceed with their application. The remaining 632 in the subsidiary protection process are not considered as live cases, and will be finalised as withdrawn cases in due course.

1,619 live cases and potentially 2,103 withdrawal cases to be processed. Of these 1,471 have been processed, leaving 632 to be dealt with.

- 3.22 Of the 1,619 backlog live cases transferred to ORAC, 980 have been processed to decision with a 31% recognition rate. 639 live backlog applications are pending. Added to this figure are the 245 new applications for subsidiary protection received since the new procedure was introduced in November 2013. Of this number, seven have been processed and 16 withdrawn, leaving 222 new applications to be processed. This gives a total of 861 subsidiary protection applications pending.
- 3.23 The main priority of ORAC for subsidiary protection case processing in the first half of 2015 is clearing the backlog transferred to it from INIS. Cases are processed under a prioritisation procedure which prioritises in the main manifestly well-founded cases, applications of long duration and applications by children and the elderly. A median processing time is not a useful measure for this caseload due to the short time-span concerned.
- 3.24 Many of the subsidiary protection applicants whose backlog applications remain pending or whose applications were refused by ORAC have been in the system for significant periods of time.

Human resources at ORAC

- 3.25 The human resources available to ORAC for refugee and subsidiary protection case processing including support staff are as follows:
- 10 caseworkers (Executive Officers) and two supervisors (Higher Executive Officers – HEOs) are involved in refugee case processing;
 - 20 Legal panel members¹²³ and five supervisors (HEOs) are involved in subsidiary protection case processing;
 - 61 support staff¹²⁴ across all grades.

RAT – Overview

- 3.26 Of the 3,876 persons in the protection process, 1,400 are at the RAT. The 1,400 cases are composed of 1,098 pending refugee status cases and 302 pending subsidiary protection cases.

Length of time in the system

- 3.27 An analysis of the RAT caseload reveals that:

¹²³ “Legal panel” refers to a panel of legally qualified persons retained by ORAC by way of contracts for services in late 2013 and during 2014 in order to assist with the processing of subsidiary protection applications. In February 2015, a recruitment process began seeking further applications to become members of this panel; its remit is also being extended to include the processing of refugee cases.

¹²⁴ Support staff in ORAC, RAT, INIS carry out a wide range of functions related to the processing of applications and consequential to the decision-making process, including managing the overall process, dealing with extant judicial reviews and potential withdrawals of same, providing clerical support to decision-makers, and dealing with general correspondence and queries. In certain processing areas their functions may also include the fingerprinting of applicants, scheduling of interviews and appeals, organising translation of documents and interpreters, issuing notifications and taking whatever follow-up actions are required

- In the case of applications for refugee status, 29% (322) of persons have been in the system for less than one year, 23% (248) in the system for more than four years and 15% (162) in the system for five years or more;
- In the case of applications for subsidiary protection, 0% of persons are in the system for less than one year, 84% (254) are in the system for more than four years and 66% (199) are in the system for five years or more.

3.28 The distinction between refugee and subsidiary protection cases is important. Persons awaiting a decision on refugee status, if granted their appeal, will have a solution to their situation. If they are refused, they return to ORAC for consideration of their subsidiary protection application and, if refused at ORAC, may appeal to the RAT. As noted above there are 248 refugee appeals in the system four years or more and 162 refugee appeals in the system five years or more. In addition to these cases, as of 16 February there are 433 judicial review cases pending (affecting approximately 540 persons) at the High Court against the RAT, a proportion of which may return to the RAT for a new hearing.

3.29 Persons awaiting a decision on subsidiary protection, if granted their appeal, will have a solution to their situation. If their appeal is refused they can proceed to the leave to remain stage. There are 254 subsidiary protection appeals in the system for four years or more and 199 subsidiary appeals in the system for five years or more.

3.30 **In summary**, the numbers at RAT of relevance for the length of time issue are: 502 persons in the system for four years or more; 361 persons in the system for more than five years; the proportion (unknown) of the 433 judicial review cases involving long stay cases that may return to the RAT; and finally new subsidiary protection appeals (unknown) in 2015 as ORAC continues clearing the backlog. A portion of these will be long stay cases.

Processing of appeals at RAT

3.31 The median processing time for appeals of refugee status decisions was 49 weeks for oral appeals and 39 weeks for paper only appeals. The recognition rate for 2014 was 49% for oral appeals and 33% for paper only appeals.

3.32 The median processing time for appeals of subsidiary protection status decisions was 28 weeks. The recognition rate for 2014 was 23% (based on 13 cases decided).

3.33 These median processing times and recognition rate figures quoted above for refugee and subsidiary protection appeals should be approached with caution. The recognition rate statistics are based on a very small sample size. The newly constituted RAT (discussed further below) commenced decision-making after March 2014 and 262 decisions in total were issued in the year as opposed to over 600 per year in previous years. In addition, many of the refugee appeals involved cases where a significant amount of time had elapsed between the first instance decision and appeal, during which situations and information could have changed. For further details on the number of appeals processed in the last five years and their outcomes see **Appendix 6**.

Human resources at RAT

3.34 There are currently 26 members of the Tribunal. In addition there are 34 staff.¹²⁵

- one Chairman;
- one Principal; one Assistant Principal; two Higher Executive Officers; six Executive Officers; three Staff Officers and 20 Clericals.

Reasons for length of time in the protection process

3.35 There follows a list of the main factors which are relevant to the length of time applicants continue in the protection process.

(a) The two-step protection determination procedure

3.36 The two-step procedure under which refugee status and subsidiary protection status are processed sequentially is a cause of delay and inefficient use of resources. Where a person is eligible for subsidiary protection status the procedure causes an inevitable delay in their identification.

Solution in train

3.37 This cause will be addressed by means of the introduction of a single procedure by way of the International Protection Bill, the General Scheme of which was published on 25 March 2015.

(b) Increase in application numbers

3.38 As noted above, the rise in the number of applications for refugee status has already affected the case processing rate at ORAC. It has the potential to lead to significant delays in current and future case processing if left unaddressed.

3.39 The RAT will increasingly be affected by the rise in applications being lodged at the first instance level. Assuming a 20% to 30% recognition rate at the first instance level under a single procedure, 70% to 80% of the caseload may proceed to the RAT.¹²⁶

(c) Pending cases in the Subsidiary Protection backlog

3.40 Of the 1,619 live cases in the backlog transferred to ORAC, 980 have been processed to decision with a 31% recognition rate. 639 of these applications are still pending. Many of the subsidiary protection applicants whose backlog applications remain pending or whose applications were refused by ORAC have been in the system for significant periods of time.

3.41 Of the 780 subsidiary protection cases determined by ORAC in 2014, some 570 received a negative decision and can appeal to the RAT. As of 16 February 2015, 302 appeals are pending with the RAT. Many of the subsidiary protection applicants

¹²⁵ 30.5 FTEs – Full-time equivalent: An FTE of 1.0 is equivalent to a full-time worker, while an FTE of 0.5 signals half time.

¹²⁶ In 2014, close to half (45%) of EU first instance asylum decisions resulted in positive outcomes; that is, grants of refugee or subsidiary protection status, or an authorisation to stay for humanitarian reasons. Source: Eurostat. <http://ec.europa.eu/eurostat/web/products-press-releases/-/3-12052015-AP>

whose backlog applications are now pending on appeal have been in the system for significant periods of time.

Solutions in train

- 3.42 ORAC has made significant inroads into the processing of the subsidiary protection backlog transferred to it in November 2013. Case processing commenced in full in February 2014. Over the past year, over half of the verified backlog has been processed to decision under a prioritisation procedure favouring manifestly well-founded cases, applications of long duration and applications by children and the elderly. In early March 2015, the number of post-interview subsidiary reports finalised by ORAC reached 1,000.
- 3.43 In the case of the RAT subsidiary protection appeal hearings commenced in October 2014, with 13 appeals determined by the end of the year.

(d) Early identification of persons in need of protection

Early legal advice (ELA)

- 3.44 A very small proportion of applicants for refugee status receive early legal advice or other assistance in advance of contacting ORAC. Applicants can avail of the services of the Legal Aid Board; however, in the majority of cases the provision of legal advice is delivered just before the appeal stage. At the appeal stage difficulties can arise where information is provided that was not available at the first instance stage and it can be challenging for applicants to resolve issues in the negative first instance decision that arose due to a lack of early legal advice. The negative effect of this gap on protection applicants has been highlighted in research.¹²⁷ Pilot early legal advice projects have demonstrated the benefits of early legal advice to protection applicants and to the efficient operation of protection determination systems.¹²⁸

Solutions in train

- 3.45 At present the Legal Aid Board does provide legal information or assistance – to be distinguished from individual legal advice or representation – to refugee applicants at first instance. This service is provided by a paralegal under the supervision of a solicitor. It consists of information about: the asylum process; the need for applicants to be truthful and to cooperate with ORAC; the questionnaire; and attending for

127 Bridget Anderson and Sue Conlan (2014), “Providing Protection: Access to early legal advice for asylum seekers”, available at: http://www.irishrefugeecouncil.ie/wp-content/uploads/2014/09/Providing-Protection_Access-to-ELA-for-asylum-seekers.pdf;

“Asylum Aid, Evaluation of the Solihull Pilot for the United Kingdom Border Agency and the Legal Services Commission, 2008”, available at: <http://www.refworld.org/docid/4c62615e2.html>;

Jacki Kelly (2013), “Early Recognition of People in Need of International Protection: The Irish Refugee Council Independent Law Centre’s Early Legal Advice and Representation Project”, available at: [http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/616dfc369c03263580257c0b004bec26/\\$FILE/The%20Researcher%20-%20Oct%202013.%20Vol%208,%20Issue%202.pdf](http://www.legalaidboard.ie/lab/publishing.nsf/650f3eec0dfb990fca25692100069854/616dfc369c03263580257c0b004bec26/$FILE/The%20Researcher%20-%20Oct%202013.%20Vol%208,%20Issue%202.pdf); Elizabeth O’Rourke (2009), “‘Frontloading’: The case for legal resources at the early stages of the asylum process”, available at: <http://jrs.ie/hearing-voices/policy?download=3:policy>

128 The LAB currently operates an ELA scheme in the case of separated children and is also overseeing a pilot ELA scheme more generally; the Irish Refugee Council has been operating an Early Legal Advice Law Centre for some time with limited capacity. The experience of these schemes in the Irish context was discussed in depth recently at the IRC Early Legal Advice Conference: <http://www.irishrefugeecouncil.ie/event/early-legal-advice-conference-and-master-class>

interview with ORAC. In the case of vulnerable persons, the Legal Aid Board may provide assistance in completing the questionnaire and may attend with the applicant at the interview. Early legal advice is always provided for separated children by the Board. Under the new subsidiary protection procedure, applicants can avail of the provision of legal advice through the Legal Aid Board prior to their interview. The Board is currently conducting a pilot Early Legal Advice project and intends to extend this to all clients in the coming months.

- 3.46 The Irish Refugee Council's Independent Law Centre provides early legal advice services to a limited number of clients on a referral basis.¹²⁹

(e) Quality measures

- 3.47 A low rate of recognition of persons eligible for refugee status and subsidiary protection in the past, combined with the effect of the two-step procedure, led to some cases which were in need of refugee or subsidiary protection status not being identified at the earliest stage in the protection process. These cases then progressed to other stages in the system, with a consequent negative impact of delay on the persons concerned.
- 3.48 In the case of ORAC, for instance, many of the 300 persons determined to be eligible for subsidiary protection in 2014 under the new subsidiary protection procedure had been in the system for five years or more prior to recognition (at INIS under the pre-November 2013 procedure), primarily due to the two-step procedure. In addition, among the persons recognised as refugees by the RAT in 2014 were persons who had been in the system for five years or more. The rate of recognition for refugee status rose from 1.3% in 2010 to 17% in 2014. The rate of recognition for subsidiary protection status rose from 0.6% in 2010¹³⁰ to 32% in 2014. The combined protection recognition rate in 2014 was 30%.¹³¹ There are a range of factors behind variance in recognition rates, including country of origin profiles of applicants, the legal framework of the protection procedure and quality measures. A detailed analysis of the reasons behind trends in recognition rates was beyond the scope of the Working Group.

Solutions in train

- 3.49 Mechanisms are in place at ORAC to improve the quality of decision-making. The mechanisms include: use of checklists/decision templates; sign-off by two pairs of eyes (caseworker or legal panel member and supervisor); review of asylum recommendations by the quality assurance team; review and feedback to caseworkers of High Court judgments and RAT decisions; Early Legal Advice in some cases; and input by UNHCR to the whole protection process. In addition to these measures, ORAC has continued its investment in training personnel involved in the protection process.

¹²⁹ The Irish Refugee Council's law centre has also entered into partnership with A&L Goodbody, a commercial solicitors' practice, which, following training and with on-going support from the IRC, offers a pro bono service to a limited number of people claiming asylum.

¹³⁰ Source: Department of Justice and Law Reform Annual Report 2010 (three grants and 517 refusals).

¹³¹ Source: Parliamentary Question, 19 February 2015; <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015021900024?opendocument#WRA03700>

- 3.50 Mechanisms that are in place at the RAT to improve the quality of decision-making also include the adoption of decision-making templates. These cover the essential elements for analysing a claim for protection and aim to assist the members to ensure that the final decision is structured logically and in such a way that the basis of the determination is transparent to a reader. These are significant tools to assist members in identifying persons in need of protection and producing legally robust decisions. The templates were developed with the assistance of UNHCR. In addition to the decision templates there has been an investment in training new Tribunal members. A validation of the impact of this approach in terms of the quality of decision making is reflected in the fact that only one judicial review was taken in 2014 against a RAT decision issued in accordance with the new-style decision-making template.

(f) Early identification of vulnerable persons

- 3.51 For vulnerable persons including separated children, victims of torture, victims of trafficking, LGBTI applicants and the elderly, there is not at present any mechanism for the identification or systematic referral of such groups. The lack of early identification and the delivery of targeted supports can have a negative impact on the quality of their protection application, the length of time they are in the system and their care when in the system. Reports relating to their specific circumstances, including medico-legal reports for victims of torture, are, in most cases, not available at the first instance stage.

(g) Unregistered children

- 3.52 Under the current law, the children of parents or guardians in the system are included in the system only if their parents or guardians make an application on their behalf or request that they be included in an existing application. At ORAC, applicants are asked at various stages if they have any children and whether they wish to have them included as dependants in their own claims or registered separately for protection claims in their own right. There are no alternative immigration procedures for the registration of children.
- 3.53 In the absence of such action, children remain outside of the system, unregistered and without any defined immigration status, which is a cause of concern. There are 154 children in this situation living in Direct Provision accommodation centres. The number of any such children living outside of Direct Provision is unknown

(h) Extensive changes to the RAT membership

- 3.54 Under the 1996 Act members are appointed to the RAT for terms of three years. From 2012 onwards, no new appointments were made upon the expiration of terms of office of serving members. Towards the end of 2013, the appointments of all members had expired. In August 2013, a new Chairman was appointed and new appointments have been made since then bringing the current number of members to 26. The case-processing capacity of the Tribunal during 2014 was obviously affected by the time required to appoint and train new members. A total of 262 cases were processed in 2014 as opposed to 584 in 2013. This has led to some case-processing delays at the RAT.

(i) Judicial review

- 3.55 Where a person takes a judicial review against an ORAC decision or a RAT decision the further processing of the next stage of their case is suspended pending the finalisation of their judicial review.
- 3.56 There are approximately 75 persons affected by judicial reviews taken against ORAC decisions. Of this group, 67% (50) have been in the system for four years or more, and 35% (26) for five years or more. 31% (23) have been in the judicial review process for four years or more.
- 3.57 There are approximately 543 persons affected by judicial reviews taken against RAT decisions. Of this group, 74% (402) have been in the system for four years or more, and 56.5% (307) for five years or more. 36% (194) have been in the judicial review process for four years or more.

(II) THE LEAVE TO REMAIN PROCESS**Overview**

- 3.58 There are an estimated 3,343 persons in the leave to remain process. This is 42% of the total number of persons in the system. Of this number 19% are children.

Length of time in the system

- 3.59 An analysis of the leave to remain caseload reveals that:
- 1% (39) of persons have been in the system for less than 1 year;
 - 86% (2,859) have been in the system for four years or more;
 - 76% (2,530) have been in the system for more than five years.
- 3.60 Almost three quarters of the caseload of 3,343 were not residing in Direct Provision accommodation centres as of 16 February 2015. Of this group 89% were in the system for four years or more and 81% for five years or more. 44% were at the leave to remain stage for four years or more and 20% for more than five years.
- 3.61 Of the 890 persons residing in Direct Provision accommodation centres as of 16 February 2015, 77% were in the system for four years or more and 61% for five years or more.

Processing at INIS

- 3.62 In 2014, 1,126 decisions in respect of persons who had completed the protection process were made by 12.2 decision-making staff, which equates to an average 92.3 decisions per annum by each decision-maker, giving an approximate figure of 1.77 cases per decision-maker per week. 55% of persons who had completed the protection process were ultimately granted permission to remain in 2014 (622 out of 1,126 section 3 decisions).

Human resources at INIS

- 3.63 15.2 decision-makers in the INIS Repatriation Unit work on leave to remain cases. This number is made up of 12.7 Executive Officers (EOs) and 2.5 Higher Executive Officers (HEOs). 45% of the total number of leave to remain cases comes from persons who have not gone through the protection process (these are cases involving irregular migration). Therefore 55% of the total available human resources work on the processing of cases involving persons who have completed the protection process.¹³² This equates to 8.4 decision-makers, of whom seven are EOs and 1.4 are HEOs.
- 3.64 In addition, there are a number of support staff directly involved as part of the case processing teams and also indirectly as part of administration/correspondence teams, the Legal Services Support Unit (managing the judicial reviews) and arrangements in managing the deportation process itself.
- 3.65 The leave to remain process involves the consideration by the Minister for Justice and Equality of whether or not to issue a deportation order in respect of a person who has been deemed not eligible for protection. If the decision is that a deportation order should not issue, leave to remain in the State is granted under Ministerial discretion under the terms of section 3 of the Immigration Act 1999. As such, the human resources involved in decisions on both leave to remain and deportation orders are included in the figure of 8.4 decision-makers.
- 3.66 Human resources at the INIS Repatriation Unit have been reduced by 50% in recent years; this occurred against the backdrop of responsibility for the determination of subsidiary protection applications transferring to ORAC and the RAT in 2013.

Reasons for length of time at leave to remain stage

(a) The two-step determination procedure

- 3.67 As noted above in relation to the protection process, the two-step procedure under which refugee status and subsidiary protection status are processed sequentially is a cause of delay and an inefficient use of resources. A person at the leave to remain stage will typically have spent several years in the protection process before receiving a final negative protection status determination and moving on to the leave to remain process. Any judicial review that may have been taken against a protection determination decision will have compounded the delay.
- 3.68 The principal effects of these delays are threefold. Firstly, persons not eligible for protection but with humanitarian-type needs must wait a significant period of time before these needs can be considered by the State. Secondly, the delays can create the types of circumstances that may meet the criteria set out in section 3 of the Immigration Act 1999 (e.g. nature of connection with the State, family and domestic circumstances). Thirdly, the delays reduce the scope of the Minister's discretion under

¹³² Recently priority has been given to failed protection cases in Direct Provision accommodation, as denoted by the figure of 12.2 decision-makers referred to in relation to 2014; in order to avoid backlogs in processing applications from other categories of applicants it is intended to rebalance the number of staff working on such applications in the manner set out here.

section 3 of the 1999 Act as increasingly a range of human rights obligations come into play.

- 3.69 As noted above, the Government has committed to legislate for a single protection procedure by way of the International Protection Bill. The Bill will include provision for the consideration of any non-protection related reasons as to why a person should be granted permission to remain in the State. See para. 3.159 for a description of how this procedure is proposed to be enacted.

(b) “Trailing family members”

- 3.70 Under current practice, a person’s leave to remain case is not processed to finality if they have a family member at the protection process stage or in the judicial review process. The practice of INIS is to wait until all family members are at the leave to remain stage or until the case of the “trailing family member” has otherwise been resolved at the protection process or by means of the judicial review process. The total number of cases which cannot be processed due to the practice in relation to “trailing family members” is unknown but the number is considered to be significant. This practice results in delay for the person at the leave to remain stage and has created a cohort of cases which are stalled at this stage in the process.

Solutions in train

- 3.71 To address this issue some coordination in relation to “trailing family members” takes place between INIS, ORAC and the RAT. Specific requests have been made in the past to expedite certain cases.
- 3.72 The RAT and INIS recently found solutions in relation to approximately 50 cases of judicial reviews against the RAT in respect of children. The parents of the children had cases pending at the leave to remain stage. In those cases, leave to remain was granted to the parents and children concerned without prejudice to the children’s outstanding protection applications. In the cases concerned, it appears that none of the children continued with their judicial reviews or protection applications.

(III) THE DEPORTATION ORDER STAGE

Overview

- 3.73 There are an estimated 718 persons at the deportation order stage (of whom 31% are children). This total comprises 577 persons in Direct Provision accommodation and 141 persons living elsewhere who continue to report to GNIB. This is 9% of the total number of persons in the system. In addition there are persons in the State with deportation orders who are not signing on with the GNIB. This number is unknown.

Length of time in the system

- 3.74 A breakdown of statistics is available only in relation to the 577 persons in accommodation centres. An analysis in terms of length of time in the system reveals that:

- 0% are in the system for less than one year;
- 96.5% (557) are in the system for four years or more; and
- 88% (507) are in the system for five years or more.

3.75 An analysis in terms of the length of time since the deportation orders issued reveals that:

- 2% (12) issued less than one year ago;
- 37% (215) issued four or more years ago; and
- 20% (116) issued five or more years ago.

Procedure at INIS

3.76 A person (1) determined not eligible for protection under the protection process, (2) to whom the prohibition of refoulement set out in section 5 of the Refugee Act 1996 does not apply and (3) who has not been granted leave to remain will be issued with a deportation order under the terms of section 3 of the Immigration Act 1999.

3.77 A deportation order requires the person concerned to leave the State and to remain outside the State. The 1999 Act provides that where a person who consents in writing to the making of a deportation order is not deported from the State within three months of the making of the order, the order shall cease to have effect. Persons at this stage, however, do not generally avail of this provision.

3.78 A person in respect of whom a deportation order has issued is required to leave the State by a specified date. Where they fail to comply, they are asked to present to the GNIB until such time as they comply with the requirement to remove themselves from the State or, failing that, when the GNIB is in a position to remove them. Generally they are required to present at monthly intervals in the GNIB Headquarters at Burgh Quay, Dublin. The 1999 Act states that a person who contravenes a provision of a deportation order or a requirement in a notice under the Act shall be guilty of an offence.

3.79 Section 3 (11) of the 1999 Act provides that the Minister may by order amend or revoke a deportation order. There are currently approximately 200 applications pending at INIS.

Implementation of deportation orders

3.80 The number of deportation orders implemented in respect of persons who completed the protection process is given in Table 3.1.

Table 3.1: Deportation orders implemented in respect of persons who completed the protection process

Year	2011	2012	2013	2014	Total
No.	233	235	139	53	660

- 3.81 Of the 660 deportation orders implemented, 307 (47%) were in respect of persons in the system for five years or more. The median length of time from initial application to the date the deportation order was enforced was 57 months while the median length of time from initial application to the date the deportation order was signed was 30 months. The median length of time from the date the deportation order was signed to the date it was enforced was 17 months.

Compliance with presenting requirements

- 3.82 Persons with deportation orders who have not complied with the requirement to leave the State are asked to present to GNIB regularly. GNIB reports that 236 persons with deportation orders who do not reside in Direct Provision accommodation are currently signing on with it. Its records do not distinguish former protection applicants, but INIS estimates that approximately 60% of persons with deportation orders are likely to have come through the protection process, giving an estimated figure of 141 persons.
- 3.83 According to GNIB, 8,259 non-Irish nationals are classified as “failed to show”. These figures are in respect of the total number of persons with deportation orders. The statistics also seem to indicate that there are approximately 100 persons (and perhaps more) with deportation orders living in Direct Provision accommodation centres but classed as “failed to show” by GNIB.

Revocation of deportation orders

- 3.84 The number of deportation orders revoked in respect of persons who completed the protection process is given in Table 3.2.

Table 3.2: Deportation orders revoked in respect of persons who completed the protection process

Year	2012	2013	2014	Total
No.	180	247	262	698

- 3.85 The effects of the Ruiz Zambrano judgment¹³³ of the CJEU had a significant impact on the high number of revocations in 2013 and 2014. The CJEU found that an EU Member State may not refuse the non-EU parents of a dependent child who is a citizen of, and resident in, an EU Member State the right to live and work in that Member State.
- 3.86 The Irish authorities took a policy decision to go beyond the scope of the judgment and implement a generous regime in relation to parents of Irish citizen children. This resulted in a significant number of deportation orders being revoked.

133 Case C-34/09, Gerardo Ruiz Zambrano v. Office national de l'emploi (ONEm).

Reasons for length of time at deportation order stage

(a) Non-implementation of deportation orders

- 3.87 Approximately 20% of deportation orders are implemented. This implementation rate is in line with the average across the EU.¹³⁴ A deportation order places a legal obligation on a person to remove themselves from the State. Where a person does not leave the State, obstacles to the implementation of deportation orders include people evading deportation orders, judicial reviews being taken by persons who are the subject of deportation orders and the impact of a “trailing family member” at another stage in the system. Additional obstacles include the limited number of embassies in Ireland and the consequential gap in assistance with travel documentation and return arrangements. A recent court decision¹³⁵ has highlighted the lack of a legislative power of entry to private dwellings in order to enforce deportation orders. This has had a significant impact on the implementation of deportation orders. It is the principal reason why the number of deportation orders implemented in 2014 is down substantially on the annual average.
- 3.88 Low enforcement prospects are a matter taken into account by INIS when prioritising cases for processing.
- 3.89 A low deportation order implementation rate can have a negative impact on the integrity of the protection process. Persons at the deportation state may continue to reside in Direct Provision accommodation. Where such persons are unable or unwilling to return home and where there are practical obstacles to enforcing their deportation, such persons may remain in the system for prolonged periods of time.
- 3.90 The Department of Justice and Equality has indicated that it is intended to legislate as soon as possible to introduce a power of entry to private dwellings for the purposes of enforcing a deportation order. One option under consideration is to introduce an amendment by way of the International Protection Bill.

(b) Obstacles to accessing assisted voluntary return

- 3.91 The Assisted Voluntary Return programme is not accessible for persons with a deportation order. It is available only to persons who wish to return voluntarily and who do not have a deportation order issued in respect of them. Persons with deportation orders can apply to INIS for a revocation of the order so as to avail of assisted voluntary return. However, this option is rarely used.

(c) Judicial reviews

- 3.92 There are approximately 400 persons affected by judicial reviews taken against INIS decisions (including subsidiary protection cases pre-dating the introduction of the new processing arrangements in November 2013) and deportation orders.

134 The average across the EU – according to Eurostat, around 98,000 of 430,000 (22.79%) return decisions were effected in the EU in 2013 (http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation#The_number_of_non-EU_citizens_ordered_to_leave_has_decreased_between_2008_and_2013).

135 *Omar v Governor of Cloverhill Prison* [2013] IEHC 579.

- 3.93 Of this group, 94% (383) have been in the system for four years or more, and 84% (342) for more than five years. 40% (164) have been in the judicial review process for four years or more and 6% (26) for five years or more.

(IV) THE JUDICIAL REVIEW PROCESS

Overview

- 3.94 Information relating to the number of judicial review proceedings at each stage in the system has been set out above together with information of note on the length of time that the persons concerned have been in the system and in the judicial review process. The overall position is that there are currently some 1,000 persons awaiting the outcome of judicial review applications at various stages of the system. Of these 82% (835) have been in the system for four years or more and 66% (675) have been in the system for five years or more. 38% (381) have been in the judicial review process for four years or more and 5% (47) for more than five years.
- 3.95 The proportion of decisions made by the various bodies, ORAC, RAT and INIS, that are the subject of judicial review proceedings varies, as do the outcomes. For details of the number of judicial reviews relating to protection cases initiated each year against ORAC, RAT and INIS see **Appendix 6**.
- 3.96 In the case of ORAC, of the 9,434 negative decisions it issued between 2009 and 2014, 3.61% were the subject of legal proceedings. Of the proceedings determined, 60% were unsuccessful or were withdrawn, 12% were successful, and 14% were settled. Of note is that the number of judicial review proceedings filed against ORAC has fallen in recent years (from 92 in 2009 to 22 in 2014) as a result of the 2009 Supreme Court case AK,¹³⁶ which limited the circumstances in which applicants may judicially review the decisions of ORAC.
- 3.97 In the case of the RAT, of the 8,392 negative decisions it issued between 2009 and 2014, 15.41% were the subject of legal proceedings. Of the proceedings determined, 58% were unsuccessful or were withdrawn, 12% were successful, and 20% were settled. Of note is that the number of judicial reviews filed against the RAT fell very substantially from 303 in 2009 to four in 2014.
- 3.98 In the case of INIS, of the 5,931 negative decisions it issued between 2009 and 2014, 29% were the subject of legal proceedings. Of the proceedings determined, 39% were unsuccessful or were withdrawn, 5% were successful, and 56% were settled. The high settlement rate for INIS can be attributed to a large degree to the CJEU judgment in the Zambrano case referred to at para. 3.85.¹³⁷ The case concerned the grant of residency permission to parents of a dependent minor European Union child.

136 AK v The Refugee Applications Commissioner, 28 January 2009, Supreme Court (unreported). The Court held that an appeal to the RAT is a more appropriate remedy, particularly where the issues raised by the applicant principally, but not exclusively, relate to the quality of a decision. The consequences of this decision are evident in the high number of cases withdrawn in 2009 against ORAC.

137 Case C-34/09 Gerardo Ruiz Zambrano v Office national de l'emploi (ONEm).

Problems arising from length of time in the judicial review process

- 3.99 In the consultations carried out by the Working Group with those in the system, considerable frustration was evident in relation to the length of time it took to complete judicial review proceedings:

“Asylum seekers are blamed for taking JRs in the High Court. This is perceived as an abuse of the system and a way of frustrating the decision-making process. But what other choice do people have if they have not received a proper hearing before the asylum bodies?”

- 3.100 The issue of the length of time can also affect the relationship between clients and their legal representatives; a frequent complaint is that applicants have limited information from their legal representatives on the progress of their cases.
- 3.101 In addition to increasing the overall length of time applicants spend in the process, a high volume of judicial review proceedings can also have cost implications on the Exchequer. For the period 2009–2014 the costs arising out of judicial reviews against the State were in excess of €33m.¹³⁸ See **Appendix 6** for further details. The extra time spent by applicants in receipt of accommodation and other benefits while awaiting the outcome of their cases further contributes to the overall spend arising from judicial reviews.
- 3.102 Protection applicants and those outside the process have sought recourse to the Courts in significant numbers in recent years and waiting times for a full hearing had escalated to nearly four years by 2013–2014. While, as noted above, recent trends indicate a significant decrease in judicial review applications – which may point to improved decision-making at first and second instance – a large number of historical cases await final determination before the High Court.

Reasons for length of time in the judicial review process

(a) Volume of cases

- 3.103 One clear factor in the efficiency of the High Court to hear judicial review proceedings is the number of cases taken every year. There is one judicial review list for cases falling within the category of “Asylum and Immigration”, and another for all other judicial review proceedings. Although the number of asylum and immigration judicial reviews initiated has varied quite a bit from year to year, it always represents a considerable proportion of the overall number of judicial reviews heard by the High Court every year. For example, between 2004 and 2008 the percentage of asylum and immigration judicial review cases varied from 47% the first year to 54% in the last; in 2006 and 2007, it constituted 59% of the total judicial review workload in each year.¹³⁹ By 2013 it had fallen to 40%, a 13% decrease on the previous year (385 cases compared with 440 in 2012);¹⁴⁰ it must be remembered however that protection application numbers also fell considerably during that period.¹⁴¹

¹³⁸ This figure relates only to the payment of legal costs to applicants upon settlement or the successful determination of their claim; the legal costs of the State in processing and defending cases are not included.

¹³⁹ *Meadows v. Min for Justice* [2010] 2 IR 710, Hardiman J at 755.

¹⁴⁰ Court Service Annual Report 2013.

¹⁴¹ See Diagram 6.1.

- 3.104 As noted earlier, both ORAC and the RAT have experienced a decrease in the number of cases brought against them in recent years. In the case of ORAC the extension of its remit to determine subsidiary protection applications did not result in a significant increase in judicial reviews taken against its decisions. In the case of the RAT there was a dramatic fall-off to just four judicial reviews initiated in 2014. In relation to both agencies the use of new and revised decision-making templates, and the introduction of other quality tools and training, is considered to have contributed to the reduction in the number of judicial reviews taken in recent years.
- 3.105 There are other factors such as the impact of the AK¹⁴² Supreme Court judgment (see para. 3.96 above) and the proactive management of cases with similar grounds which could be recognised as having an important impact on the reduction in judicial reviews in respect of ORAC.

(b) Judicial resources

- 3.106 In recent years there has been a significant turnover in the judges assigned to hear immigration and asylum judicial reviews; the number of judges and their availability have similarly varied. In addition, many judges are often assigned to this list as their first judicial appointment; many would equally not have any previous experience in the area.
- 3.107 Asylum and immigration law frequently involves difficult and technical cases; when new judges are appointed to the list who have not previously worked in the area it can make it more difficult to process cases quickly. Equally, given the volume of judicial reviews in the area it is vital that a sufficient number of judges are available to keep the list progressing.
- 3.108 There have of late been a number of new appointments to the High Court and of the 36 judges currently sitting, four are now working full-time on the immigration and asylum list. This has led to clear improvements in the number of cases that can be heard each week. Having more judges hearing cases on a consistent basis has been a significant factor in reducing backlogs in recent times.

(c) Court procedures and case management issues

A number of issues

- 3.109 Unlike judicial review cases more generally, asylum and immigration judicial review applications had until recently required a leave application to be heard on notice to the State as a consequence of the provisions of the Illegal Immigrants (Trafficking) Act 2000. This was originally intended to provide a useful screening process to make the system more efficient. Unfortunately, most practitioners agree that it had the opposite effect to that intended and that it essentially resulted in many cases being heard twice, often before different judges.
- 3.110 The primary practice used to allocate hearing dates is the list-to-fix-dates; once a case was considered ready for hearing it would take its place on this list and await its turn. As a result, cases considered ready for hearing would become effectively dormant in

¹⁴² AK v The Refugee Applications Commissioner, 28 January 2009, Supreme Court (unreported).

this list until such time as the cases ahead of them have been heard and a hearing date can be allocated. In some cases this could be several years.

- 3.111 As the number of cases awaiting determination before the High Court increased in recent times, there were no coordinating mechanisms in place to monitor and react to such pressures. These practice issues arose against the backdrop of restrictive procedures set down in legislation, which, given the adversarial nature of such litigation, were not mitigated in any substantial way through cooperation or coordination between stakeholders and service-providers. The effects of this have been to the detriment of vulnerable persons in the system as well as the integrity of the system more generally.

Solutions in train

Telescoped hearings

- 3.112 In response to the increased backlogs of cases before the High Court in recent years, judges assigned to manage the asylum and immigration list have taken steps to process cases more quickly through the flexible prioritisation of cases. Telescoped hearings were introduced whereby the court would hear the application for leave and, if successful, the substantive application as part of one combined procedure. These hearings have led to significant improvements in the time required to determine a case to finality.

Ex parte rules

- 3.113 Section 34 of the Employment Permits (Amendment) Act 2014 has now amended the Illegal Immigrants (Trafficking) Act 2000 so that it is no longer necessary to put the State parties on notice when the applicant wishes to make a leave application; such an application may now take place on an ex parte basis (without the other side present). The relevant section was commenced in October 2014¹⁴³ and since then only a small number of judicial reviews have been initiated. Accordingly it is not possible to meaningfully assess the effects of the changes to date. It should be noted however that the new legal provisions do not make provision for telescoped hearing, as leave is now ex parte. The effect of this legal change on the positive developments made through the use of telescoped hearings has yet to be seen.

Positive call over

- 3.114 The former list-to-fix-dates system has been modified recently. Prior to allocating a hearing date a “positive call-over” is now held in order to confirm that all of the cases concerned remain live and ready for a hearing date. This change in practice has led to a number of cases being withdrawn from the list for a variety of reasons, e.g. where an applicant’s circumstances have changed, entitling them to residency on another basis; where it had been indicated to them that they would most likely be offered leave to remain should they withdraw; where case law has evolved following a significant judgment which has materially affected their chances of success. Another feature of the current listing practice is to list a number of cases provisionally for hearing per judge, per day. As a result, where a case settles there will be another case ready to make use of the available court time.

143 S.I. No. 435/2014 – Employment Permits (Amendment) Act 2014 (section 34) (Commencement) Order 2014.

(d) Imprecise pleadings

- 3.115 In some instances, the drafting of judicial review proceedings by applicants can be too generic or imprecise. This requires court time to narrow down the issues that are likely to be relevant.
- 3.116 Formerly, under the Illegal Immigrants (Trafficking) Act 2000, only 14 days was afforded from the date of a decision to initiate proceedings. That time-limit was particularly short in practice as the majority of judicial review proceedings are initiated by legal practitioners on the basis of a no win, no fee arrangement (“no foal, no fee”). Where an applicant has been represented by the Legal Aid Board, they may not request that they continue to represent them under legal aid unless they first endeavour but fail to secure a private practitioner. This process undoubtedly takes some time and thus makes it difficult for the applicant to access quality legal advice and reduces the capacity of the legal representatives to take detailed instructions and draft proceedings with an appropriate degree of precision.
- 3.117 Following the recent commencement of the relevant section of the Employment Permits (Amendment) Act 2014, the period of time within which to commence a judicial review has now been doubled to 28 days. It is hoped that this will assist in addressing the problem of imprecise pleadings.

(e) Early settlement of cases

- 3.118 The timing of settlement of cases in the process has been identified as a problem. This arises where cases which could be settled earlier are not identified until late in the process. The reasons for not settling cases early can include: the content of the case not being reviewed for a period of time, changes in jurisprudence or legal opinions or policy reasons. Delays in settling appropriate cases at the earliest possible stage have a negative impact on applicants and can lead to an increase in the legal costs borne by the State.
- 3.119 While significant improvements have recently been made to the system overall, there remains a historical body of cases at the judicial review stage that will have to be dealt with individually. Recently, increasing numbers of cases have been either withdrawn or settled, indicating an appetite among both protection applicants and ORAC, RAT and INIS to bring about more speedy resolutions and avoid the full rigours of the judicial review process, including the associated costs.

(f) Communication issues between legal representative and clients

- 3.120 The experience of many legal practitioners and Members of the Working Group is that applicants frequently have a very limited understanding of the nature of judicial review proceedings. They commonly feel frustrated at the delays experienced in processing their applications to completion and such delays can have a considerable psychological cost to the applicant. There can in some instances be a perception that it is in an applicant's interests to continue a judicial review for as long as possible, for example, to bolster a leave to remain application or where family circumstances change, leading to a grant of residency on another basis. It is very important therefore that applicants be able to access quality legal advice in relation to all these aspects.

Equally, applicants in many instances do not understand the limitations of a judicial review or that status does not flow from a successful judicial review. It can come as a shock to applicants to find out that they have to go back to ORAC or the RAT to have a fresh determination.

- 3.121 The lengthy backlogs experienced in recent years have created difficulties in many instances in the relationship between applicants and their legal advisers. For example, it can be difficult for applicants to accept that their legal representatives may not be able to do anything to shorten the time required to progress a judicial review. Similarly, it can be difficult for applicants to accept updated legal advice that their case may no longer have a good chance of success, particularly where, in the case of challenges to a deportation order, it may be their last opportunity to seek any kind of status. These challenges have been borne out in consultations held with those in the system.

(g) Impact of judicial review on progress of application

- 3.122 At any stage in the system, a person can go to the High Court and seek judicial review of a decision made in respect of them. When a judicial review is lodged at the High Court, the person remains at the stage in the process where they are until the judicial review is resolved.
- 3.123 Because, under the previous system that pertained until recently, applications for subsidiary protection and leave to remain were often decided upon in quick succession, some persons at the JR stage may have received decisions in relation to both of those processes, and may be challenging one or both together.

(h) Impact of judicial review on other family members

- 3.124 Under current practice, a person's leave to remain case is not processed to finality if they have a family member who is awaiting the outcome of judicial review proceedings. The practice of INIS is to wait until all family members are at the leave to remain stage or until the case of the "trailing family member" has otherwise been resolved at the protection process or judicial review stages. Similarly, where a family member has a deportation order against them, the State will not move to remove such persons where to do so would split up family members. This practice results in delay for the person at the leave to remain or deportation stage and has created a cohort of cases which are stalled at this stage in the process.

C. PROPOSED SOLUTIONS FOR PERSONS FIVE YEARS OR MORE IN THE SYSTEM

3.125 In its in-depth deliberations on the length of time issue, the Working Group was mindful of a range of matters including:

- the views of persons in the system;
- the particular situation of children and vulnerable persons;
- the need to deliver efficient and effective solutions that can be easily understood;
- the need to maximise existing resources and the need for additional resources;
- the need to maximise the impact of the solutions proposed on those in the system for lengthy periods; and
- the consequences of the solutions proposed for those in the system, the system itself and the integrity of the protection process.

3.126 Having considered the views of persons in the consultations process, reviewed relevant statistics, consulted with experts and taken account of humanitarian considerations, the Working Group considers that no persons should, in principle, be in the system for five years or more. The Working Group makes the suite of recommendations below to give effect to this principle for those in the system.

3.127 As regards additional resources required, given the intricate connections between the different stages and processes which make up the system, the Working Group considers that the additional resources should come from outside of the system, and not through reallocations within the system as the latter approach would only have the effect of shifting backlogs from one part of the system to another.

Recommendation – Persons awaiting decisions at the protection process and leave to remain stages for five years or more

3.128 All persons awaiting decisions at the protection process and leave to remain stages who have been in the system for five years or more from the date of initial application should be granted leave to remain or protection status as soon as possible and within a maximum of six months from the implementation start date subject to the three conditions set out below for persons awaiting a leave to remain decision. It is recommended that an implementation start and end date be set by the authorities as soon as possible.

MECHANISMS TO ACHIEVE THIS SOLUTION – PERSONS AWAITING A LEAVE TO REMAIN DECISION

3.129 The cases of persons awaiting a leave to remain decision should be prioritised for accelerated processing under the existing procedure with consideration focused on the provisions of section 3 (6) (g), (j) and (k) of the Immigration Act 1999 to facilitate a speedy review:

(g) the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);

(j) the common good;

(k) considerations of national security and public policy.

3.130 These three conditions should be considered in light of the following guidance:

- the situation of persons who have been in the system for five years or more should be the central consideration in the operation of the accelerated processing;
- the conditions of “character and conduct” or “the common good” should be considered met except where it is clear that the person’s continued presence in Ireland would constitute a real threat to the safety or well-being of others;
- the condition relating to national security and public policy should be invoked only where the person’s continued presence in the State would give rise to real and substantial concerns;
- only serious criminal activity should be considered, with criminal convictions and criminal activity to mean as follows:
 - conviction of a crime or crimes whereby a term of imprisonment of 12 months or more has been imposed;
 - in the case of conviction of an offence or of offences against the person, where a term of imprisonment of three months or more has been imposed (including where such a sentence has been suspended);
 - where someone is under investigation or has been charged with a serious offence (as understood by reference to the above), they will not be eligible for consideration under these solutions until the investigation or prosecution has been concluded, at which point they will be assessed by reference to the above conditions;
- in all cases where there are indications that a condition might not be met, full account must be taken of a person’s experiences prior to arrival in Ireland which may have influenced his/her conduct. Account must also be taken of his/her state of mental health. Persons availing of this solution will be asked to confirm their identity and to resolve any identity issues in advance of being granted leave to remain. Persons should be informed that the resolution of identity issues prior to a grant will not be held against them.

- 3.131 Additional human resources, as set out in chapter 6, will be required for the implementation of this measure. As noted above, the additional resources must come from outside of the system and not through reallocations within the system.

MECHANISM TO ACHIEVE THIS SOLUTION – PERSONS AWAITING A PROTECTION DECISION

- 3.132 The cases of persons awaiting a protection decision should be prioritised for accelerated processing under the existing protection procedures.¹⁴⁴ If a protection decision is not delivered within six months, leave to remain should be granted without prejudice to the on-going protection claim subject to the three conditions above. If a final negative protection decision issues within the six month period, leave to remain should be granted within the six month period or immediately thereafter (for example, if the negative decision issues towards the end of the six month period) subject to the three conditions above.
- 3.133 Additional human resources, as set out in chapter 6, will be required for the implementation of this measure. As noted above, the additional resources must come from outside of the system and not through reallocations within the system.

Recommendation – Persons with a Deportation Order

- 3.134 All persons with a deportation order who have been in the system for five years or more from the date of initial application should have their deportation order revoked under section 3(11) of the Immigration Act 1999 as soon as possible and within a maximum of six months from the implementation start date subject to the conditions below:
- that they confirm their identity, or if unable to do so, that they swear a declaration as to their identity and that they have no other identities;
 - that they cooperate with the State with the review of their case;
 - that the person has not been evading deportation;
 - that they pose no threat to public order or national security and that they have not been involved in criminal activity.
- 3.135 Leave to remain should then be granted, as soon as possible and within a maximum of six months from the implementation start date subject to the three conditions at para. 3.129 above. This is recommended as an exceptional measure. The Working Group notes that the median time for the implementation of a deportation order is 17 months. The Working Group also notes that over 90% of the deportation orders in respect of persons in the system for five years or more are already outstanding for over 24 months. In the interest of maximising the impact of this solution, no further time period in relation to the outstanding deportation order is suggested in relation to persons who currently come within the scope of these solutions.

¹⁴⁴ Refugee Act 1996 for refugee status and S.I. 426 of 2013 for subsidiary protection.

- 3.136 In relation to condition (3) above, a person may be considered to be evading deportation where they have failed to meet a presentation date with their local immigration officer and have not provided a satisfactory explanation for missing the presentation appointment. Persons who have been living in Direct Provision accommodation centres can cure a failure to present by presenting at their local immigration office at the earliest opportunity. In relation to condition (4), the same guidance relating to public policy, national security and “serious criminal activity” as at para. 3.130 should apply.
- 3.137 Additional human resources, as set out in chapter 6, will be required for the implementation of this measure. As noted above, the additional resources must come from outside of the system and not through reallocations within the system.

BEST INTERESTS OF THE CHILD AND VULNERABLE GROUPS

- 3.138 In respect of all persons mentioned at paras. 3.128 and 3.134, the best interests of the child should be a primary consideration and due weight should be given to the circumstances of vulnerable groups. Appropriate weight should be given to the best interests of the child and the circumstances of vulnerable groups in particular when considering the application of the three conditions at para. 3.129 and the four conditions at para. 3.134. Guidance on the application of the best interests of child principle is set out in international law, national law and the jurisprudence of national and international courts. Of particular relevance in this jurisdiction is the Supreme Court judgment in the Okunade Case of 2012.¹⁴⁵

CASE PRIORITISATION

- 3.139 In respect of all persons mentioned at paras. 3.128 and 3.134, cases are to be prioritised on the basis of oldest cases first.

UNREGISTERED CHILDREN AND TRAILING FAMILY MEMBERS

- 3.140 To further the best interest of the child, parents/guardians should be encouraged to have all their children recorded on their file at the earliest opportunity. In respect of the children who fall within the ambit of this solution, children should be recorded on their parent’s/guardian’s file wherever they currently are within the system.
- 3.141 Where “trailing children” are in the protection process and their parent(s) are at the leave to remain or deportation order stage, their parent(s) will be granted leave to remain subject to the relevant conditions without prejudice to their children’s

¹⁴⁵ Okunade v Minister for Justice, Equality and Law Reform & the Attorney General, [2012] IESC 49, October 2012 (see in particular paras 11.2, 11.3 and 10.8).

protection claim. If the children subsequently withdraw their claim, or if they continue it but do not receive a final decision within six months (as above), they will fall under their parents' leave to remain grant.

RESOLUTION OF JUDICIAL REVIEWS

- 3.142 In respect of all persons mentioned at paras. 3.128 and 3.134, outstanding judicial review cases will need to be determined for the solutions to apply. Judicial reviews should be determined within six months of the implementation start date as set out below.
- 3.143 It is anticipated that when persons to whom these solutions apply become aware of them, many may be minded to withdraw their judicial reviews. This is one way in which judicial reviews may be concluded. Given the significant improvements in the number of cases being heard by the High Court each term, remaining cases are more likely to be finally determined within the maximum six month period concerned. Where a judicial review relates to a decision taken in the protection process, it is vital that the person concerned is appropriately legally advised on the consequences of withdrawing any such proceedings before they do so.
- 3.144 The consultation process with persons in the system has indicated a significant lack of knowledge, control and power on their part when it comes to judicial review. They may not be in a position to assess whether it would be good for them to withdraw. Even if they are in such a position, they may not know how to go about withdrawing a judicial review or how to effect such a withdrawal if they are having communication problems with their legal representative. In the words of one participant in the consultation process:
- "It can be difficult to access your solicitor, particularly if he/she is not based [locally], and there is not enough money to travel to visit him/her."*
- 3.145 It also needs to be kept in mind that many lawyers have, in good faith, advanced judicial review proceedings and borne the costs of same on behalf of clients. The interests of fairness, equity and the preservation of "no foal, no fee" arrangements into the future need to be considered.
- 3.146 Accordingly, it is recommended that consideration be given by the authorities to making a contribution towards costs incurred in respect of cases where applicants wish to withdraw judicial review proceedings taken on a "no foal, no fee" basis in order to facilitate that process and to ensure it happens in an expeditious manner. It would be a matter for agreement between the parties as to how much such a contribution would be. The Working Group notes that this solution may not be appropriate in every case; for example, it may not be appropriate in cases which have recently been heard by the Courts and in respect of which judgments are awaited.
- 3.147 It is hoped that the remaining judicial reviews will be dealt with expeditiously by the Courts, which have been given additional resources in recent years.

REVIEW AT THE CLOSE OF THE SIX MONTH PERIOD

3.148 The Working Group recommends that the authorities commit to a review of the operation of this solution for those in the system five years or more at the close of the six month period and prioritise remaining long stay cases on the basis of oldest cases and cases involving children and vulnerable persons first. The Working Group notes that the continuation of the solution can only be maintained if the required resources are put in place and maintained.

IMPLEMENTATION MEASURES AND RESOURCE REQUIREMENTS

3.149 Legal change will be required to facilitate access to leave to remain without prejudice to an on-going protection case. This will involve the amendment of section 9 of the Refugee Act 1996 and Regulation 4 of S.I. 426/2013 – European Union (Subsidiary Protection) Regulations 2013. In their current form section 9 and Regulation 4 would prevent a protection applicant with leave to remain from accessing the labour market. Legal change may also be required to section 246 of the Social Welfare Consolidation Act 2005 in order to facilitate protection applicants with leave to remain to apply for social welfare. The authorities have indicated their willingness to advance the required legal change where necessary.

3.150 Investment of additional financial and human resources will be required for the Legal Aid Board, ORAC, RAT and INIS. See chapter 6, which deals with costs and case processing capability.

POTENTIAL IMPACT OF THE SOLUTION FOR THOSE FIVE YEARS OR MORE IN THE SYSTEM

3.151 The recommended solution for those five years or more in the system has the potential to affect 3,350 persons (see also para. 3.152). This figure is arrived at as follows:

1,480 is the number of persons in the system at the five year mark living in Direct Provision accommodation centres. Of these:

545 persons are at the leave to remain stage

507 persons have deportation orders

428 persons are in the protection process.

2,870 is the number of persons in the system at the five year mark living outside of Direct Provision. Of these:

1,985 persons are at the leave to remain stage

761 persons are in the protection process

124 persons with deportation orders and signing on.¹⁴⁶

This gives rise to 4,350.

3.152 The numbers of persons at the leave to remain stage living outside of Direct Provision is, however, expected to fall once a verification exercise is undertaken by the authorities. By way of example, ORAC successfully undertook a verification of the subsidiary protection backlog caseload in 2014 which reduced the caseload from 3,657 cases to 1,619 live cases. The Working Group considers that it is reasonable to assume a fall-off of around 50% of the 1,985 leave to remain cases through such a verification exercise. This would give rise to a fall-off of 1,000 in the total number of cases more than five years in the system, resulting in 3,350 people potentially benefiting.

3.153 The Working Group considers that the greatest potential obstacle to the maximum number of eligible persons benefiting from the proposed solution is the judicial review caseload. There are currently 1,000 persons involved in judicial review proceedings, of whom 675 persons are at the five year mark. If this issue is not resolved as recommended at paras. 3.142 to 3.147 above there is a risk that the potential impact of the suggested solution will be reduced by 675 persons.

¹⁴⁶ GNIB reports that 236 persons with DOs who do not reside in Direct Provision accommodation centres are currently signing on with them. GNIB records do not distinguish between former protection applicants, but INIS estimates that approximately 60% of this cohort has come through the protection process. Applying the percentage of those with DOs in Direct Provision who have been in the system for five years or more – 88% – the figure of 124 is arrived at.

D. PROPOSED SOLUTIONS FOR THE FUTURE TO PREVENT LONG DELAYS IN THE SYSTEM

THE SINGLE PROCEDURE

- 3.154 The lack of a single protection determination procedure has been identified in this report as a key cause of long delays in the system. Ireland remains the only EU Member State without a single protection determination procedure. As noted in chapter 1, it has long been Government policy to introduce a single procedure. There have been several iterations of the Immigration, Residence and Protection Bill including provision for such a procedure but none has been enacted. In 2014, the Government committed to making provision for a single procedure through a separate piece of legislation: the International Protection Bill, the General Scheme of which was published on 25 March 2015.¹⁴⁷
- 3.155 At the First Meeting of the Working Group, the Minister for Justice and Equality asked the Working Group to make recommendations in relation to how the future International Protection Bill might best affect existing applicants. Unfortunately, given the timing of the publication of the General Scheme, the Working Group has not had an opportunity to consider this matter in detail. It is noted that the transitional provisions of the General Scheme of the Bill¹⁴⁸ do extend the application of the single procedure to some classes of persons in the system who have not received a final determination of their applications. It is welcomed that the General Scheme seeks to strike a balance in applying the new procedures to existing applicants but does not envisage the reopening of determinations that are already finalised.
- 3.156 Given the very short time the Working Group has had sight of the General Scheme, it does not make specific recommendations in relation to its content. It is noted that the Government has referred the Heads of the Scheme to the Joint Oireachtas Committee on Justice, Defence and Equality for pre-legislative scrutiny. It is hoped that this process will provide a suitable forum for broad consultation and closer consideration of the contents of the proposed Bill.
- 3.157 The Working Group did consider generally a number of problems with the existing system, with a view in some instances to matters that might be addressed by the Bill; these are detailed further below. Where issues arising from the likely contents of the General Scheme were flagged sufficiently in advance – such as the proposed dissolution of ORAC – these matters are addressed specifically and are the subject of recommendations. Such recommendations are made in the knowledge that the Bill is currently being drafted.
- 3.158 The Working Group also notes and welcomes that the Department of Justice and Equality took on board some of the concerns raised by the Working Group in its

147 General Scheme of the international Protection Bill is available at <http://justice.ie/en/JELR/Pages/PB15000080>

148 Head 64.

deliberations and introduced amendments and additions to the Scheme before it was finalised. As a result, the Scheme as published provides for greater separation of the protection and humanitarian determination procedures and the introduction of AVR procedures that may be availed of at any stage of the process up to and immediately following a final decision on permission to remain.

OVERVIEW OF THE PROPOSED SINGLE PROCEDURE

3.159 Officials of the Department of Justice and Equality briefed the Working Group on the proposed approach to the single procedure under the International Protection Bill. They gave the following overview of the main aspects of how they expect it to operate in practice:

1. ORAC will be abolished and the functions previously performed by ORAC will be performed by the Minister.
2. The RAT will be replaced with a new Tribunal called the International Protection Appeals Tribunal (IPAT).
3. A person applies for international protection (refugee and subsidiary protection status) and completes the application form.
4. The applicant is informed (at the outset) that he/she is under a continuing obligation to inform the Minister of any reasons why he/she should be given permission to remain in the State in the event that his/her application for protection is refused.
5. The Minister investigates the application and decides if the applicant is a person entitled to refugee or subsidiary protection status, or if he/she is to be granted permission to remain in the State.
6. The investigation of the protection application includes a personal interview with the possibility to record in the interview notes anything relevant to a request for permission to remain in the State.
7. The investigation of, and decision in relation to, any permission to remain is to be made in the event that the applicant is refused protection at first instance, with such investigation to be undertaken without a personal interview, i.e. paper based.
8. The applicant has a right to appeal a decision to refuse protection irrespective of the decision to grant or refuse permission to remain in the State.
9. Where the applicant:
 - a) does not appeal a decision to refuse protection,
 - b) has not informed the Minister of any reasons why he/she should be given permission to remain in the State, or has informed the Minister of reasons why he/she should be given permission to remain in the State but such permission has been refused,
 - c) does not notify the Minister, within five days of the decision to refuse protection and/or permission to remain in the State, of his/her wish to voluntarily return to his/her country of origin/former habitual residence,

then, subject to the rule against *refoulement*, a deportation order shall issue.

10. Where the applicant:

- a) appeals the Minister's decision to refuse protection and that decision is upheld by the Tribunal, and
- b) since receiving a decision to refuse permission to remain at first instance, has not informed the Minister of any reasons why he/she should be given permission to remain in the State, or since receiving a decision to refuse permission to remain at first instance, has informed the Minister of reasons why he/she should be given permission to remain in the State, but such permission has been refused, and
- c) does not notify the Minister, within five days of the decision to refuse protection and/or permission to remain in the State, of his/her wish to voluntarily return to his/her country of origin/former habitual residence,

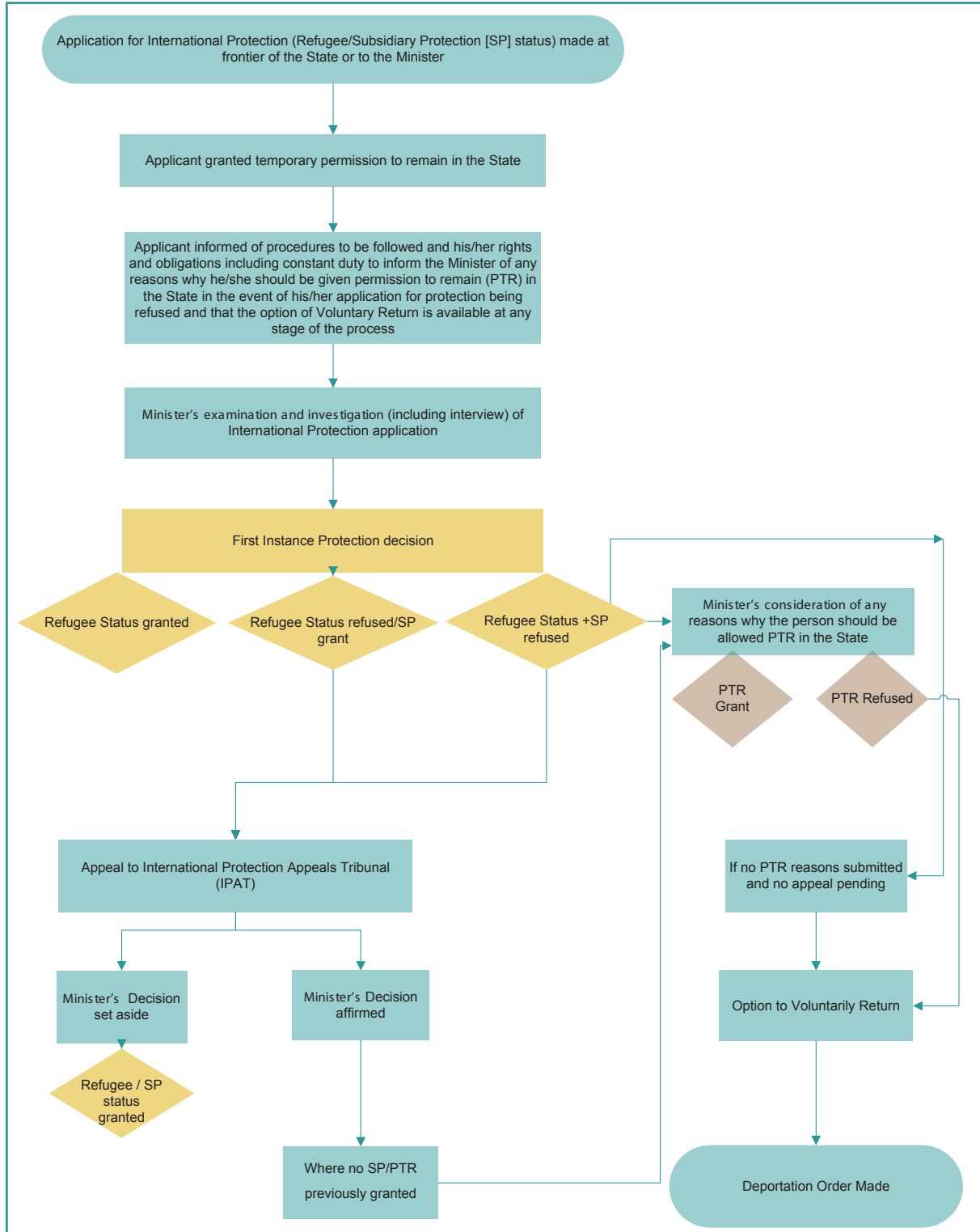
then, subject to the rule against *refoulement*, a deportation order shall issue.

11. Where the applicant has received a decision at first instance from the Minister refusing permission to remain in the State and has since receiving that decision, informed the Minister of any reasons, including further reasons, why he/she should be given permission to remain in the State, the Minister may decide to give the applicant permission to remain in the State.

3.160 In relation to voluntary return, the Department of Justice and Equality officials informed the Working Group that an applicant may voluntarily return to his/her country of origin/former habitual residence at any time after having made a protection application. Where protection and permission to remain are refused under the proposed single procedure and a deportation order is to issue, the person concerned will have the option, within five working days, of notifying the Minister of his/her wish to voluntarily return to his/her country of origin/former habitual residence. Where a person notifies the Minister of this intention and, subject to there being no national security or criminality related concerns, a deportation order shall not issue and the Minister may facilitate such voluntary return. Unless the applicant so notifies the Minister, a deportation order shall issue.

3.161 When making a decision on permission to remain under the proposed single procedure the Minister shall be required to have due regard to the following matters:

- 1. the family and personal circumstances of the applicant (with particular reference to Article 8 ECHR rights);
- 2. the nature of the person's connection with the State, if any;
- 3. humanitarian considerations;
- 4. the character and conduct of the person both within and (where relevant and ascertainable) outside the State (including any criminal convictions);
- 5. considerations of national security and public order;
- 6. the common good.

Diagram 3.1: Steps of the proposed single application procedure

THE URGENCY OF EARLY INTRODUCTION AND IMPLEMENTATION

3.162 The Working Group stresses the importance of the enactment and implementation of a single application procedure as a matter of urgency. As noted in chapter 1, protection applications in Ireland were up by 53% in 2014. The early introduction of a single procedure will assist the authorities in dealing more expeditiously with a continued rise in applications in 2015 and also possibly in the years to come. As urgently as this measure is needed, it is important that the proposed procedures be sound and reflect best practice: especially, perhaps, given that Ireland has not yet opted-in to the Recast Directives of key relevance to the operation of the protection process. This last point is addressed later in this chapter.

Recommendation

3.163 The Working Group recommends:

- The early enactment and implementation of a single procedure by way of the International Protection Bill as a matter of urgency.

TIME LIMIT MEASURE

3.164 The Working Group has considered at length the desirability of placing a limit on the length of time that a person may spend in the system. In this context it is important to recall the solution aimed at reducing long stays already recommended in this report at paras. 3.128 and 3.134. That solution addresses the situation of persons currently in the system for five years or more and includes a recommendation that the authorities commit to a review of the operation of the solution at the close of its six month time frame and prioritise remaining long stay cases on the basis of oldest cases and cases involving children and vulnerable persons first. A solution for the future has been set out at para. 3.163 dealing with the single procedure. Under the single procedure, the authorities aim to process cases within 12 months. Solutions for the future with respect to AVR and deportation orders are set out later in this chapter, again with a view to limiting the number of persons found not eligible for protection or leave to remain status remaining in a precarious long-term position in the State.

3.165 Having considered the views of persons who participated in the consultation process, reviewed relevant statistics, consulted with experts, and taken account of humanitarian considerations, the Working Group considers that no person should in principle be in the system for five years or more. The Working Group recommends that this principle continue to apply into the future notwithstanding the solution for the future referred to above.

Recommendations

3.166 The Working Group recommends:

- Once the single procedure has been enacted, to avoid a repeat of the circumstances which gave rise to the establishment of the Working Group, that the same principle and mechanisms aimed at addressing the situation of persons currently in the system for five years or more should apply for persons who have cooperated with the process in line with statutory obligations. This does not apply to the situation of persons with deportation orders, which is dealt with later in this chapter.
- As an additional safeguard, an annual review of the system with a view to making recommendations to guard against any future backlogs, e.g. failure to provide adequate resources to all decision-making bodies, should take place.
- The review should also look at the option of reducing the five year mark in future years as appropriate.

Implications including costs

3.167 A time limit could assist in the allocation of adequate resources to the system and the future single procedure by creating a policy imperative to ensure cases are finalised well before the five year mark. In its operation, it would ensure that persons at the five year mark would have a route to exit the system, thus preventing any future build-up of cases at the five year mark. The time limit could also guard against the primary negative effects of long stays in the system in so far as the bar on access to the labour market, limited educational opportunities for adults, and the key challenges faced by residents in Direct Provision accommodation centres may continue into the future. A time limit would provide some degree of clarity to persons currently in the system, below the five year mark and who may not benefit from the provisions of the new single procedure, as to a future end point in relation to their case. This degree of clarity, however, might carry a risk that persons might seek to reach the five year mark through action or inaction. There is also a risk that such a measure could compromise existing immigration controls. In order to mitigate these risks the Working Group has restricted eligibility for its recommendation for a future time limit measure to those persons who have cooperated with the process in line with statutory obligations.

3.168 The time limit measure set out above would facilitate the exit from Direct Provision of all persons at the five year mark into the future. There are currently 357 persons in Direct Provision accommodation centres for four to five years and 298 persons in Direct Provision for three to four years. Accordingly, over the next 12–24 months, this measure could lead to an additional 655 persons exiting Direct Provision (minus the number of persons whose cases are otherwise resolved in the intervening period). This could provide a real saving in terms of Direct Provision costs and the human costs associated with long stays in Direct Provision. However, these costs might be offset should any of the risks noted above be realised.

E. QUALITY OF THE DETERMINATION PROCESS

3.169 Section B above highlights issues relating to the quality of the determination process which influence the length of the process. These include early legal advice, quality measures, and early identification of vulnerable persons and unregistered children. These and other quality-related issues are explored further in this section.

LEGAL FRAMEWORK

3.170 As regards the legal framework relating to the quality of the process, there are a number of relevant domestic legal measures which are highlighted later in this section. At EU level, as detailed in chapter 1, there are the “Recast” or updated EU instruments which constitute the second phase of CEAS and provide a suite of common standards to be applied in the determination of applications for international protection. The core instruments are: the EURODAC Regulation,¹⁴⁹ the “Dublin III” Regulation,¹⁵⁰ the Reception Conditions Directive,¹⁵¹ the Asylum Procedures Directive,¹⁵² and the Qualification Directive.¹⁵³

3.171 As noted in chapter 1, Ireland is not bound to participate in European instruments in this area but may opt-in to any it wishes (subject to approval of both Houses of the Oireachtas). As also noted in chapter 1, Ireland has opted-in to four instruments of Phase 2 of CEAS, the Recast Dublin and EURODAC Regulations and also the EASO¹⁵⁴ and AMIF¹⁵⁵ Regulations.

3.172 Where the State opts-in to such EU instruments, primary legislation is not normally required in order to implement them. The European Communities Act 1972 provides for the adoption of statutory instruments to implement binding instruments of EU law with the same effect as if they were Acts of the Oireachtas. Such statutory instruments may also contain “such incidental, supplementary and consequential provisions as may appear necessary for the purposes of the regulations”. This provides

149 Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of “Eurodac” for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013.

150 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person.

151 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

152 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

153 Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

154 Regulation (EU) No. 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office

155 Regulation (EU) No. 516/2014 of the European Parliament and of the Council of 16 April 2014 establishing the Asylum, Migration and Integration Fund

a flexible procedure whereby the law in the area may be amended in order to meet the requirements of EU law.

- 3.173 Subsidiary protection, for example, was initially given effect under Irish law in 2006¹⁵⁶ as a temporary measure in anticipation of the Immigration, Residence and Protection Bill, which was expected to be enacted a short time later. For a number of reasons, including competing legislative priorities, that Bill was not advanced. In 2013, however, a new statutory instrument¹⁵⁷ introduced considerable reforms to the assessment of subsidiary protection applications. This followed a finding by the European Court that Ireland's existing procedures were not in conformity with EU law.¹⁵⁸
- 3.174 Opting-in to the revised instruments of the CEAS would provide greater flexibility for Ireland to keep pace with developments in the law governing this area without needing to always do so by way of primary legislation. For example, as already noted, Ireland remains the only country in the EU without a single application procedure for both refugee status and subsidiary protection, a procedure which could have been introduced by way of a statutory instrument if Ireland opted-in to the Recast Asylum Procedures Directive. The two-stage nature of Ireland's determination procedure remains today one of the biggest drivers of delays in processing applicants' claims to finality.
- 3.175 The authorities have indicated that Ireland's decision not to opt-in to the Recast Asylum Procedures Directive relates in particular to difficulties with the implicit withdrawal provisions¹⁵⁹ as well as the time limit of six months for a first instance decision¹⁶⁰ (with the possibility of a nine month extension under certain circumstances).¹⁶¹ Officials of the Department of Justice and Equality clarified to the Working Group that the State's objection with respect to the latter provision pertains, for practical reasons, only in the absence of a single procedure which will be remedied upon the enactment of the International Protection Bill.
- 3.176 The authorities also indicated that, despite not having opted-in to the recast Directives, Irish law and policy currently adheres to a great degree to the common standards they set out. This is certainly true in many areas and relatively minor legislative change would be required to opt-in to the Recast Asylum Procedures and Qualification Directives in particular; in fact the Heads of the International Protection Bill have been drafted so as to meet the standards set out in the Recast Qualification Directive notwithstanding that Ireland has not to date exercised its opt-in. As Ireland has never participated in the Reception Conditions Directive, in either its original guise

156 S.I. No. 518 of 2006.

157 S.I. No. 426 of 2013.

158 *M. M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General*, C-277/11, CJEU, 22 November 2012 – following the implementation of the CJEU's decision by the High Court here, the State appealed this decision to the Supreme Court. Following a preliminary consideration by that Court, another reference has now been made to the CJEU.

159 Articles 27-28.

160 Article 31.

161 Parliamentary Question: Tue, 9 July 2013. <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013070900081?opendocument#WRY02050>.

or its Recast form, this is the area where the most legislative reform would be required if the State were now to opt-in.

- 3.177 The EU Directives and Regulations that together constitute the CEAS aim to offer protection applicants consistent levels of protection throughout the Union and represent a consensus on a set of common standards to be applied; this is an important objective.

Recommendations

- 3.178 With this in mind the Working Group recommends that:

- The State opt-in to all instruments of the Common European Asylum System, unless clear and objectively justifiable reasons can be advanced not to.
- Where the State does not opt-in to an instrument for discrete reasons (as above), the State should give full effect to the remaining provisions in order to safeguard important common standards and to promote consistency in the application of protection procedures and standards across the EU.

Implications including costs

- 3.179 The benefit of implementing the above recommendations would be that Ireland's procedures and practices on protection would be more in harmony with the vast majority of other EU Members. Such harmonisation aims to reduce secondary movements of protection applicants and guarantee equality of access to protection procedures. The Heads of the International Protection Bill already aim to reflect the Recast Qualification Directive and the changes required to opt-in to the Recast Procedures Directive would not be significant. Many of these would be cost neutral and would result in enhanced standards for protection applicants.
- 3.180 Opting-in to the Reception Conditions Directive would have the greatest implications for the State as the State's arrangements for the reception of protection applicants, namely Direct Provision, are not currently on a legislative footing. It is beyond the capacity of this Working Group to quantify the costs and implications of such a measure. In the event that the Receptions Conditions Directive were to be transposed into Irish law, a key new element to be introduced would be a right for protection applicants to access the labour market subject to certain conditions. Access to the labour market was one of the main issues raised during the consultation process with those in the system, second only to the length of time issue, and is considered in chapter 5.

LEGISLATING FOR BEST INTERESTS OF THE CHILD

3.181 The principle of the best interests of the child derives from Article 3(1) of the UN Convention on the Rights of the Child (CRC), which provides that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

3.182 The concept of the best interests of the child is elaborated upon by the UN Committee on the Rights of the Child:¹⁶²

“6. The Committee underlines that the child’s best interests is a threefold concept:

- (a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child...*
- (b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child’s best interests should be chosen...*
- (c) A rule of procedure: ... the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account ... explain ... what has been considered to be in the child’s best interests; what criteria it is based on; and how the child’s interests have been weighed against other considerations, be they broad issues of policy or individual cases.”*

3.183 In the application of the principle to protection decisions it is important to note that the consideration of the best interests of the child does not trump all other considerations. In other words, the child does not have a right to be recognised as a refugee or beneficiary of subsidiary protection on the basis of being a child or on the basis of the best interests principle per se. In this regard, the child has to meet the same eligibility criteria as all other protection applicants. However, the principle of the best interests of the child directs the attention of the decision-maker to the rights of the child that may be relevant to the assessment of eligibility for protection. To give some examples: violations of the rights of the child as laid down in the CRC may be relevant to a finding of “persecution” or “serious harm”; the right of the child to be heard may be relevant to the conduct of an interview or appeal hearing; and child-specific country of origin information may be relevant to assessing the well-foundedness of an application. In this sense, the best interests principle is a conduit

¹⁶² General Comment No. 14, p. 4.

to relevant rights of the child.¹⁶³ Furthermore, the best interests principle is not absolute: the best interests of the child must be “a primary” (as distinct from “the paramount”) consideration. Nonetheless, the Committee on the Rights of the Child has stated that where the rights of the child are in conflict with other rights, “the child’s interests have high priority and [are] not just one of several considerations”.

LEGAL OBLIGATIONS RELATING TO THE BEST INTERESTS PRINCIPLE

3.184 Ireland ratified the CRC in 1992. Because of what is known as Ireland’s “dualist” legal system, instruments of international law do bind the State under international law but cannot be directly relied upon in domestic courts unless they have been given effect by changes in domestic legislation.¹⁶⁴

Best Interests Principle under European Convention on Human Rights

3.185 As noted in chapter 1, the ECHR is given effect in domestic law through the European Convention on Human Rights Act 2003. Although the Convention itself does not specifically address the principle of the best interests of the child, the Court has developed a practice of interpreting certain substantive Convention rights in the light of the principle. In the case of *Neulinger and Shuruk v Switzerland*,¹⁶⁵ the European Court of Human Rights held that “there is currently a broad consensus – including in international law – in support of the idea that in all decisions concerning children, their best interests must be paramount”. The Court adopts a rights-based approach to the best interests principle, interpreting the principle in light of relevant rights of the child as stated in the CRC.

Best Interests Principle under EU law

3.186 Certain rights of the child, including the principle of the best interests of the child and the right of the child to be heard, are restated in Article 24 of the EU Charter of Fundamental Rights.¹⁶⁶ As noted in chapter 1, the Charter became legally binding in 2009 and has the same legal status as the Treaties. All EU secondary legislation and national measures that implement EU law must conform to the rights in the Charter. The International Protection Bill 2015, when enacted, will implement the Asylum Procedures Directive, the Qualification Directive and the Temporary Protection

¹⁶³ Thus, the Committee on the Rights of the Child has stated that “assessment and determination [of the child and children’s best interests] should be carried out with full respect for the rights contained in the Convention and Optional Protocols”. General Comment No. 14, para. 32.

¹⁶⁴ Article 29.6 of the Constitution provides that: “No international agreement shall be part of the domestic law of the state save as may be determined by the Oireachtas.” See further *Kavanagh v Governor of Mountjoy Prison* [2002] 3 I.R. 97 and *Dos Santos & Ors. v Minister for Justice & Equality & Ors.* [2014] IEHC 559.

¹⁶⁵ *Neulinger and Shuruk v Switzerland*, Appl. No. 41615/07, Judgment of 6 July 2010, para. 135.

¹⁶⁶ See generally Ciara Smyth (2014) *European Asylum Law and the Rights of the Child*, Oxford and New York: Routledge.

Directive¹⁶⁷ under Ireland’s commitment to the CEAS. In implementing these instruments the State is bound to conform with the rights contained in the Charter.

- 3.187 Finally, the relevant EU secondary legislation itself – the Dublin III Regulations, the Asylum Procedures Directive and the Qualification Directive – makes reference to certain rights of the child. These rights should therefore be reflected in the domestic implementing legislation. The Recast Procedures and Qualifications Directives contain more robust references to the rights of the child. Although Ireland has not opted-in to the Recast Directives, the Working Group considers that the enhanced protection they offer to the child should nonetheless be reflected in the International Protection Bill 2015.

Domestic legislation

- 3.188 In Ireland, Tusla – the Child and Family Agency¹⁶⁸ became an independent legal entity on 1 January 2014, comprising the Health Service Executive Children and Family Services, the Family Support Agency and the National Educational Welfare Board as well as incorporating some psychological services and a range of services responding to domestic, sexual and gender-based violence. Tusla is now the dedicated State agency responsible for improving well-being and outcomes for children.¹⁶⁹ It represents a comprehensive reform of child protection, early intervention and family support services. Both the Child and Family Agency Act 2013 and the Children First Bill 2014¹⁷⁰ (published but not yet enacted) give significant prominence to the principle of the best interests of the child in relation to all functions the Agency performs under the legislation.
- 3.189 Giving effect to the CRC generally, and the best interests principle in particular, is not solely a question of incorporating provisions into domestic legislation on substantive rights. As the Committee on the Rights of the Child describes above, it is also a question of interpreting and drafting legal provisions in a manner that is compatible with the principle together with designing rules of procedure to ensure they are compatible with and facilitate the application of the principle. Dr Geoffrey Shannon, Special Rapporteur on Child Protection, in his oral submission to the Working Group, identified the Children and Family Relationships Bill 2015 (since enacted) as containing the best example he has seen of a framework for applying the “best interests of the child”. In relation to the International Protection Bill – bearing in mind the limited time available and the pre-legislative scrutiny phase to come – the Working Group makes a number of preliminary recommendations below on ways the principle should be incorporated into the Bill.

167 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

168 <http://www.tusla.ie/>

169 See further: <http://www.tusla.ie/about>

170 <http://www.oireachtas.ie/documents/bills28/bills/2014/3014/b3014d.pdf>

Giving effect to the substantive principle

3.190 The Refugee Act 1996 makes no reference to the best interests principle although there is a reference to it in secondary legislation made under that Act in relation to separated children.¹⁷¹ The chairperson of the RAT has also issued guidelines on appeals from child applicants according to which the best interests of the child shall be a primary consideration of the Tribunal during all dealings with a child.¹⁷² The 2013 Regulations concerning subsidiary protection apply the principle to certain limited aspects of the Regulations.¹⁷³ While the Asylum Procedures Directive originally required the best interests principle to be applied in the case of separated children only,¹⁷⁴ it is notable that its Recast version now requires the principle to be applied to the Directive as a whole.¹⁷⁵ The Recast Qualification Directive also contains a statement to that effect in Recital 18.¹⁷⁶ The Recast instruments contain a number of more specific provisions and recitals in relation to the principles and give some examples of how it is to be applied.

3.191 Under the Heads of the International Protection Bill the best interests of the child are required to be a primary consideration in the application of a number of sections:

- Head 23 concerning medical assessment to determine the age of a separated child;
- Head 33 concerning separated children;
- Heads 47–49 concerning the extension to refugees and beneficiaries of subsidiary protection of certain rights – permission to reside in the State, access to employment; access to education; social welfare; healthcare; access to accommodation; freedom of movement; access to travel documents;
- Heads 50 and 51 concerning the right to family reunification.

Recommendation

3.192 The Working Group recommends:

- The International Protection Bill 2015 should reflect the general principle contained in the Convention on the Rights of the Child that the best interests of the child be a primary consideration in all actions concerning children.

171 S.I. No. 52/2011.

172 Guidance Note No. 2015/1 issued pursuant to paragraph 17 of the Second Schedule of the Refugee Act 1996.

173 S.I. No. 426/2013.

174 Recital 14, Article 2(i) and Article 17.

175 Recital 33, Article 25(6)

176 The Recitals of a Directive are the statement of reasons for the Act and are thus not “normative” or binding; they are intended to inform the interpretation of its provisions.

Implications including costs

- 3.193 The cost of implementing the above recommendation would be neutral. As the right concerned is already binding on the State through international and European law in the protection area, giving greater recognition to the principle in domestic legislation would have the positive consequence of giving it more visibility in the domestic protection system. This could reduce the scope for litigation seeking to enforce this right where it is not being applied in a clear fashion.

ENSURING PRACTICAL IMPLEMENTATION OF THE BEST INTERESTS PRINCIPLE AND OTHER CRC RIGHTS

The right of the child to make a protection application

- 3.194 The UN Committee on the Rights of the Child's General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin states that "Asylum-seeking children, including those who are unaccompanied or separated, shall enjoy access to asylum procedures and other complementary mechanisms providing international protection irrespective of their age."
- 3.195 Separated children on arrival in the jurisdiction are placed in the care of Tusla.¹⁷⁷ While procedures are in place for age determination, the process is not infallible and there can be difficulties in establishing an applicant's true age. Each separated child is allocated a social worker, who is responsible for the development and implementation of an individualised statutory care plan for the child. They also supervise the standard of the child's placement and provide services and support to meet the child's needs. If the social work assessment indicates that applying for protection in Ireland is in the child's best interest, the social worker assists with the making of the application.
- 3.196 The Working Group heard different views on the appropriate timing of such an application. While the policy of the Department of Justice and Equality is not to deport separated children, some professionals expressed the view that it could be clinically unsound for a child to receive a negative decision regarding their status with the implication of being deported following their 18th birthday. It was suggested that this could lead to them going underground, leaving school or engaging in self-destructive behaviours. Other child advocates expressed a view that it was important that the application process be initiated as soon as possible so that the separated child at

¹⁷⁷ Section 8(5)(a) of the Refugee Act 1996 places a statutory duty on an authorised officer or immigration officer where it appears to that officer that a child (i) is under the age of 18, and (ii) is unaccompanied to refer that child to the Child and Family Agency. It is a matter for the Child and Family Agency to determine if it is in the minor's best interest to make a protection application and, if so, to assist the minor throughout the protection process, including by accompanying them to their interview. ORAC does not conduct age determinations but is required to form an opinion as to whether an unaccompanied person is under 18 and therefore requires to be referred to the Child and Family Agency. Where there is doubt as to whether the applicant appears over 18, an authorised officer will converse with the individual to try to form a reasonable opinion as to whether the person is under or over 18. If it appears that the person is over 18 they will be dealt with as an adult and be offered accommodation in Direct Provision. However, if there is any doubt the benefit is given in favour of the applicant and they are referred to the Child and Family Agency as being under 18.

18 years would know their status and be able to proceed with their peers to further and higher education (rather than transition to Direct Provision while waiting for a determination of their protection claim), employment or training, or leave the country (voluntarily or by way of deportation).

- 3.197 In relation to separated children the Working Group considers that work should be undertaken to clarify the position with regard to access to the protection process in practice and age assessment procedures.
- 3.198 The situation of an accompanied child is somewhat ambiguous: is he/she entitled to lodge an independent application or is it enough that his/her claim be subsumed into that of his/her parent? In the case of the former option, the child acquires his/her own status; in the case of the latter, the child derives his/her status from that of his/her parent. In many situations, it is entirely appropriate to include the child within the parents' application. In some situations, however, it may not be, for example, where there are significantly different aspects to the child's claim, such as child-specific forms of persecution or serious harm, or where the parent(s) may be the locus of persecution or serious harm.

Recommendations

3.199 The Working Group recommends:

- The International Protection Bill should clearly provide that all children have the right to lodge an application for international protection directly or through a representative which, in the case of accompanied children, may be the parent(s) if this is appropriate in the circumstances of the case.
- In relation to separated children, work should be undertaken to clarify the position with regard to access to the protection process in practice and age assessment procedures.

Implications including costs

- 3.200 The benefit of the recommendations would be to provide greater clarity and guidance to the State protection institutions and related agencies on how applications from minors should be treated. This recommendation would not result in any increased costs.

The right of the child to be heard

3.201 Article 12 CRC provides:

"1.State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child."

2. *For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or appropriate body, in a manner consistent with the procedural rules of national law.”*

3.202 Article 12 is restated in Article 24 of the Charter of Fundamental Rights and various dimensions of the right are dealt with in the Asylum Procedures Directive and its Recast form. It follows from Article 12(2) that the child who is capable of forming his/her own views must be provided the opportunity to be heard at all stages of the protection procedure. One important aspect of this is to ensure that staff who deal with children in the protection process receive appropriate training, which is dealt with below.

Recommendation

3.203 The Working Group recommends:

- The International Protection Bill 2015 should be further scrutinised to ensure the rights of the child to be heard are given sufficient expression and protection.

Implications including costs

3.204 The benefit of the recommendation would be to ensure that the International Protection Bill 2015 meets its obligations under international law and meets the highest standards in safeguarding children’s rights. This recommendation would not result in any increased costs.

Training requirements

3.205 The Qualification Directive requires that those working separated children have had, and continue to receive, appropriate training concerning their needs.¹⁷⁸ It similarly requires more generally that authorities and other organisations implementing this Directive have received the necessary training.¹⁷⁹

Solutions in train

3.206 ORAC has for many years collaborated closely with UNHCR in the provision of training to new staff and the coordination of refresher training. There is also close collaboration between ORAC and the European Asylum Support Office (EASO) and a number of staff have attended “train the trainer” courses at EASO in relation to children. ORAC undertakes regular in-house training sessions on a range of topics with its staff, including specific training on children.

¹⁷⁸ Article 30; Article 32, Recast Qualification Directive.

¹⁷⁹ Article 36; Article 37, Recast Qualification Directive.

- 3.207 In relation to the RAT, the chairperson has issued guidelines on appeals from child applicants according to which “the Tribunal shall use its best endeavours to ensure that all Members and, as appropriate support staff dealing with Child applicants, shall receive adequate Child-specific training”.¹⁸⁰ Training sessions have been held in respect of all appointed and reappointed members of the current Tribunal, in collaboration with UNHCR.
- 3.208 Multi-agency training sessions on children in the system are held for staff from INIS, ORAC, RAT, LAB and Tusla, most recently late 2014.
- 3.209 While the provision of training in this area is already the practice in Ireland, it is not currently a requirement in domestic legislation for all decision-makers.

Recommendation

3.210 The Working Group recommends:

- The International Protection Bill 2015 should contain a provision requiring decision-makers who take decisions in relation to children and those who interview them to have received and continue to receive appropriate procedural and substantive training.

Implications including costs

- 3.211 The benefit of this recommendation would be the safeguarding of current good practice by way of legislation. It would not result in any increased costs.

The rights of the child relevant to protection

- 3.212 Interpretation of the terms “persecution” in the refugee definition and “serious harm” in the definition of subsidiary protection must be informed by human rights standards and violations. In other words, human rights law provides a yardstick by which alleged persecution and serious harm can be evaluated. The Qualification Directive in its provisions on the meaning of persecution¹⁸¹ also refers to acts of a child-specific nature. It follows that the rights of the child as enumerated in the CRC may be relevant to international protection in cases concerning children.

Recommendation

3.213 The Working Group recommends:

- The International Protection Bill 2015 should provide that the rights of the child as enumerated in the UN Convention on the Rights of the Child are potentially

¹⁸⁰ Guidance Note No. 2015/1 issued pursuant to paragraph 17 of the Second Schedule of the Refugee Act 1996.

¹⁸¹ Article 9; this is reflected in the heads of the Protection Bill at Head 6.

relevant to evaluating a claim for refugee or subsidiary protection status where the applicant is a child.

Implications including costs

3.214 This recommendation would provide clearer guidance to decision-makers on the interpretation of the law on refugee or subsidiary protection. It would not have any cost implications.

Prioritisation of cases involving children

3.215 According to a recent ESRI (2014) report on separated children,¹⁸² cases involving such minors are prioritised in the system. The median processing time for such cases was 24.9 weeks in 2013. Both the Refugee Act 1996¹⁸³ and the 2013 Regulations concerning subsidiary protection¹⁸⁴ facilitate the prioritisation of applications to ORAC by reference to age, although not specifically by reference to their status as separated children.¹⁸⁵ Under the Heads of the International Protection Bill, Head 67 deals with prioritisation, and lists a number of matters the Minister may have regard to in prioritising an application. The Head, as proposed, does not cover the same grounds as apply under the law at present but they do refer to a general discretion for the Minister to “where he or she considers it necessary or expedient to do so, accord priority to any application or any applications”. No further detail is provided as to how that discretion should be exercised.

Recommendation

3.216 The Working Group recommends:

- The International Protection Bill 2015 when drafted should ensure that the Minister may continue to prioritise cases where appropriate by reference to the age of the applicant, or his/her status as a separated child.

Implications including costs

3.217 The prioritisation of specific categories of applicants gives the State protection institutions greater flexibility to ensure that the rights of applicants are safeguarded and may assist with the early identification of persons eligible for protection. The more quickly a positive determination can be made, the greater will be the savings on reception costs and the expense of onward appeals.

¹⁸² Emma Quinn, Corona Joyce and Egle Gusciute (November 2014), Policies and Practices on Unaccompanied Minors in Ireland.

¹⁸³ Section 12.

¹⁸⁴ S.I. No. 426/2013; Regulation 5.

¹⁸⁵ It refers to “persons under the age of 18 years in respect of whom applications are made”.

PROTECTION PROCEDURE QUALITY MEASURES

- 3.218 A low rate of recognition in the past in the refugee status and subsidiary protection procedures, combined with the effect of the two-step procedure, led to some persons who were in need of protection not being identified at the earliest stage in the protection process.
- 3.219 Across Europe, there is an increasing emphasis on the development of quality systems to support and monitor protection determination procedures. Quality systems ensure that applicants receive a fair and correct decision on their application and vindicate the rights of refugees and beneficiaries of subsidiary protection (it is worth noting that grants of refugee status and subsidiary protection status are declaratory in nature). There are also ancillary benefits to the efficiency of the system overall, as a high-quality determination procedure results in the early identification of protection beneficiaries and limits the need for onward appeals or judicial reviews.
- 3.220 In 2011, UNHCR began a quality initiative with the authorities, at their invitation, which is on-going. The initiative is a continuation of the work of UNHCR in Ireland over many years. The quality initiative draws on the outputs of three UNHCR projects: the Asylum Systems Quality Assurance and Evaluation Mechanism (ASQAEM),¹⁸⁶ the Further Developing Asylum Quality in the European Union (FDQ) Project¹⁸⁷ and the CREDO Project: Credibility Assessment in EU Asylum Systems.¹⁸⁸ A chart setting out the core elements for the building and maintenance of high-quality asylum decisions as published in the ASQAEM report is set out at **Appendix 7**. These core elements and other key measures are detailed below.
- 3.221 In the consultations process conducted by the Working Group concerns were voiced by residents about the quality of the determination process. In the words of three participants in the process:
- “The system for determining whether an individual has a legal right to refugee or some other protection status needs to ensure that well-reasoned decisions are taken in a fair and transparent manner that will offer certainty to applicants.”*
- “The Government need urgently to reform the system to ensure that asylum applications are dealt with speedily, efficiently, fairly and humanely.”*
- “‘Review Appeals Process’. Give more time in advance of the first questionnaire. Improve access and information on legal aid and more time for consultation with solicitors.”*

RECRUITMENT

- 3.222 The Refugee Applications Commissioner is appointed following a competition under the Public Service Management (Recruitment and Appointments) Act 2004.¹⁸⁹

186 <http://www.unhcr.org/4e60a4549.html>

187 <http://www.unhcr.org/4e85b4c59.html>

188 <http://www.refworld.org/docid/519b1fb54.html>

189 First Schedule of the Refugee Act 1996 as amended by the Public Service Management (Recruitment and Appointments) Act 2004.

The Refugee Applications Commissioner is independent in the performance of his/her functions. The Minister for Justice and Equality appoints “such and so many members of the staff of the Commissioner as he or she considers necessary to assist the Commissioner in the performance of his or her functions”. In practice, ORAC decision-makers are civil servants sourced from within the Department of Justice and Equality. Under the proposed International Protection Bill the functions carried out by ORAC will be undertaken by the Minister for Justice and Equality and ORAC will be dissolved.

- 3.223 The Refugee Act 1996 further provides for the appointment of a chairperson of the Refugee Appeals Tribunal following the holding of a competition and selection by the Public Appointment Service (previously the Civil Service Commission). The Minister appoints “such number of ordinary members as the Minister, with the consent of the Minister for Finance, considers necessary for the expeditious dispatch of the business of the Tribunal”. Tribunal Members must have not less than five years’ experience as a practising barrister or practising solicitor. Tribunal Members are part-time and remunerated according to the number of appeals they conduct. The Minister can remove a Tribunal Member from office for stated reasons. The Tribunal is independent in the performance of its functions. Its support staff are civil servants.
- 3.224 There are a number of provisions under Irish law in relation to the requirements for training and staff in the protection process. Interviewers of separated children are required to have the necessary knowledge of the special needs of children.¹⁹⁰ More generally, interviewers must be sufficiently competent to take account of the personal or general circumstances surrounding the application, including the applicant’s cultural origin or vulnerability, insofar as it is possible to do so.¹⁹¹
- 3.225 The Recast Asylum Procedures Directive contains a number of noteworthy standards in this regard. Article 4 provides that Member States shall ensure that a determination authority shall be “provided with appropriate means, including sufficient competent personnel, to carry out its tasks in accordance with this Directive”. Article 15(3)(a) provides that Member States shall ensure that the person who conducts protection determination interviews “is competent to take account of the personal and general circumstances surrounding the application, including the applicant’s cultural origin, gender, sexual orientation, gender identity or vulnerability”. This is broader than the current position in Irish law.
- 3.226 A gap that has been highlighted in the work undertaken by the Working Group is the lack of possibilities for protection determination bodies to recruit and retain legally qualified persons to provide advice and assistance in relation to legal developments. The Irish and European Courts provide a wealth of information and guidance on the decision-making process and such legally qualified personnel could assist determination bodies in translating judgments to practice more easily and efficiently.

¹⁹⁰ Regulation 19, S.I. No. 426 of 2013.

¹⁹¹ Regulation 3, S.I. No. 52 of 2011.

Solutions in train

Refugee Appeals Tribunal

- 3.227 In December 2012, the then Minister for Justice and Equality decided that arrangements should be made with the Public Appointments Service to advertise for members of the Refugee Appeals Tribunal with a view to establishing a panel of potential appointees from which he could appoint members to the Tribunal as the need arises.
- 3.228 The advertisement invited expressions of interest from suitably qualified barristers and solicitors to serve as a Tribunal member. The essential qualification requirements were that candidates have at least five years' experience as a practising barrister or solicitor and a satisfactory knowledge and experience of national, EU and international asylum and human rights law and practice.
- 3.229 A Selection Committee was established to assess the applications and to identify potential appointees. Upon completion of the Committee's work the Minister was presented with the names of persons in no particular order, deemed by the Selection Committee to be qualified for appointment to the Tribunal. In August 2013 a new Chairperson of the Refugee Appeals Tribunal was appointed following a selection process run in conjunction with the Public Appointments Service.

ORAC legal panel

- 3.230 A number of persons were retained by ORAC by way of contracts for services in late 2013 and during 2014 in order to assist with the processing of subsidiary protection applications at ORAC. In February 2015, a recruitment process began seeking further applications to become members of this panel; its remit is also being extended to include the processing of refugee cases. The requirements were for applicants:
- to hold an Honours Bachelor Degree (Level 8 National Framework of Qualifications) with minimum grade 2.2 in which Law is a single or joint major, or have been called to the Bar, or have been admitted and be enrolled as a Solicitor in the State;
 - to have proven research, drafting and report writing skills; and
 - to have a qualitative approach to work and the capability to produce well-researched submissions.
- 3.231 Among the desirable attributes were listed:
- a thorough knowledge/experience of Irish refugee law (including EU/international aspects); and
 - a thorough knowledge/experience of the law in Ireland in relation to subsidiary protection (including EU/International aspects), immigration, and leave to remain.
- 3.232 The ORAC legal panel has operated very successfully since it commenced work on subsidiary protection backlog cases in December 2013. Since then, over 1,000 decisions have issued. Stakeholders have welcomed the high quality of the decisions that have issued under the procedure. The utilisation of such a panel has an added

benefit as it can allow for capacity to be scaled up or down at short notice in response to changing scenarios subject to suitable candidates being available.

Recommendations

3.233 The Working Group recommends that:

- Transparent and competitive recruitment procedures for the protection determination bodies be maintained and further developed.
- Provision be made for open recruitment procedures and relevant expertise in law.
- The preceding recent examples of good practice for the knowledge and experience required in the recruitment process be followed to ensure that appropriate candidates are sought.
- Adequate human resources be provided to the protection determination bodies.
- The recruitment of dedicated legal support staff to the various agencies (ORAC, RAT, INIS) should be facilitated to ensure that issues identified in emerging jurisprudence are disseminated and addressed by the agencies concerned.

Implications including costs

3.234 These recommendations would not result in any increased costs in relation to recruitment. The benefits would be the safeguarding of current good practice by way of legislation. In relation to the sufficient resourcing of the protection determination bodies, the financial model developed by the Working Group demonstrates the high financial and human costs of delayed determinations (see chapter 6). The recruitment of dedicated legal support staff would have modest cost implications and could be equated to the rates currently paid to advisory counsel at the Office of the Attorney General. The provision of dedicated legal support staff could ultimately result in savings if they prevent through their work legal errors that would otherwise result in litigation.

QUALITY TOOLS

3.235 Quality tools provide guidance to decision-makers through practical means, such as templates for common decisions and checklists to help guide them in the day-to-day work. A high-quality protection process needs continuous support to ensure that standards of quality, once put in place, will be maintained. A Quality Audit Team or mechanism empowers national protection authorities to take forward useful tools, methods and principles identified or developed through quality projects or related initiatives. Such audits ensure that needs and available resources are identified and passed along to management and, where applicable, to a training unit.

Solutions in train

- 3.236 There are a number of areas where the quality of service provision in the system has been further developed by the State determining bodies; many of these have been developed with the support of, or in collaboration with, UNHCR. Some of these would benefit from being institutionalised through more formal mechanisms.
- 3.237 Quality mechanisms have been in place at ORAC for a number of years. From 2011 on, ORAC invited UNHCR to collaborate in further developing those processes, which include: use of checklists/decision templates; sign-off by two pairs of eyes (caseworker or legal panel member and supervisor); review of recommendations by the quality assurance team; review and feedback to caseworkers of High Court judgments and RAT decisions; early legal advice; and input by UNHCR to the overall protection process. In addition to these measures, ORAC has continued its investment in training personnel involved in the protection process.
- 3.238 In relation to the RAT, a new chairperson was appointed in August 2013 and, following on from the Public Appointments process referred to earlier, new members of the Tribunal were appointed, with some previously serving members reappointed. Under this newly constituted Tribunal there has been a great deal of collaboration between UNCHR and the Tribunal on training and the development of quality tools and mechanisms. In particular, new decision-making templates were developed to assist members in identifying persons in need of protection and producing legally robust decisions. In addition, a number of chairperson's guidelines have been utilised to bring clarity and transparency to particular aspects of the work of the Tribunal. These cover topics such as: Assigning Appeals to Members of the Tribunal; Access to Previous Decisions; Child Guidance; Country of Origin Information; the Effect of Order of Certiorari. A validation of the impact of this approach in terms of the quality of decision-making is the fact that only one judicial review was taken in 2014 against a RAT decision made using the new-style decision-making template.

Recommendations

3.239 The Working Group recommends that:

- Quality tools and templates be maintained and continually updated in conjunction with legal support and training staff to ensure that decision-makers are guided by the latest jurisprudence and best practice.
- Mechanisms to review on a regular basis the quality of decision-making be maintained and further developed.
- Sufficient resources be allocated to enable staff with appropriate levels of experience and training to manage quality systems and to coordinate this work with those in charge of training and with the relevant legal expertise.

- The determining bodies continue to engage constructively with UNHCR, NGOs and other stakeholders to monitor the operation of the protection system and to welcome feedback on the experiences of those in the system.

Implications including costs

- 3.240 The above recommendations would be cost neutral as the cost of training and legal support staff are set out in respect of other recommendations. Their implications would be the continuance of current good practice and further development of tools to ensure the overall quality of the protection process.

TRAINING

- 3.241 The initial training offered to decision-makers is vital. Where a national protection authority's hiring scope is limited – for example where they may only be chosen from existing civil servants with no prior experience or related expertise – it may need to devote even greater attention to the training it provides initially. Because a decision-maker is frequently dealing with people of different cultures, there is a great need for training in cultural sensitivity. How to conduct an appropriate and an effective interview is also critical, as that is at the very heart of adjudication of protection claims. Decision writing and how to articulate facts, country of origin information and law are other important components of the initial training.
- 3.242 On-going training is also very important to ensure that standards are maintained and that decision-makers are always kept up to date on relevant jurisprudence and best practice. On-going training should address both the specific needs of individuals, who require it due to shortcomings in a particular area or concerning a certain issue, and those of all staff, where particular themes seem to be causing difficulties in the decision-making process. As such, training needs should be identified in collaboration with management, the Quality Audit Team and legal support staff as well as in consultation with staff directly.
- 3.243 Regular Professional Development Days where topics of current interest are addressed are of particular use. They afford to national authorities with significant workloads an opportunity to discuss their professional challenges, achievements and interpretations.

Solutions in train

- 3.244 As noted above, there are a number of solutions in train. ORAC has for many years collaborated closely with UNHCR in the provision of training to new employees and the coordination of refresher training from time to time. There is also close collaboration between ORAC and the European Asylum Support Office (EASO), and a number of staff have attended “train the trainer” courses at EASO. ORAC undertakes regular in-house training sessions on a range of topics with its staff.
- 3.245 In relation to the RAT, particularised training sessions have been held in respect of all appointed and reappointed members of the current Tribunal, in collaboration with

UNHCR. The Refugee Act 1996 requires the chairperson to convene “a meeting of the members of the Tribunal at least twice a year to review the work of the Tribunal and, where necessary, to make provision for training programmes for members of the Tribunal”.¹⁹² In addition, from time to time experts have been invited to address Tribunal Members on particular topics.

3.246 Multi-agency training sessions are also held; for example, in 2014 staff from INIS, ORAC, RAT, the Legal Aid Board and Tusla attended training on children in the protection process.

Recommendations

3.247 The Working Group recommends that:

- Consideration be given to formalising in law the requirement that decision-makers be provided with sufficient and dedicated training adequate to their needs.
- The development of closer ties between state protection agencies, academics, NGOs and legal practitioners be promoted in order to promote open dialogue on legal issues of concern and the open exchange of knowledge.
- Adequate funding and human resources be provided to the protection determination bodies in terms of dedicated training and legal support staff.

Implications including costs

3.248 The recommendation at para. 3.233 in relation to legal support staff set out the costs concerned. Such staff should play a prominent role in the provision of training. Otherwise there should be no increased cost implications as the state determining bodies already provide for the training of staff, both in-house and with the assistance of outside agencies, notably UNHCR. The implications of these recommendations would be the continuance of current good practice and further development of training provided to ensure the overall quality of the protection process.

EARLY LEGAL ADVICE

3.249 It is generally accepted that early legal advice, i.e. prior to the first instance interview, is the most effective and ultimately cost-saving form of legal advice, in that it increases the likelihood of applicants receiving an appropriate first instance decision, concluding the procedure in the case of applicants who are recognised, and facilitating an expeditious appeals decision in the case of applicants who are not recognised.

3.250 The Legal Aid Board provides a legal service to applicants for refugee status under the auspices of the Civil Legal Aid Act 1995. General advice on the procedure, provided by paralegals under the supervision of a solicitor, is available prior to the first instance

¹⁹² Section 12 of the Schedule.

interview. It consists of information about: the process; the need for applicants to be truthful and to cooperate with ORAC; the questionnaire; and attending for interview with ORAC. With some exceptions (e.g. separated children and exceptionally vulnerable applicants), legal representation is generally confined to the appeals stage and beyond. Legal representation at this stage is provided by a solicitor of the Legal Aid Board or a solicitor or barrister drawn from a panel of private practitioners.

Solutions in train

- 3.251 The Legal Aid Board provides a legal service to applicants for subsidiary protection status under the auspices of the Civil Legal Aid Act 1995 whereby early legal advice is available to all applicants prior to their interview at ORAC. Legal advice for appeals in respect of a negative decision before the RAT is also available. This early legal advice service has been available to all subsidiary protection applicants since early 2014. As part of the roll-out of this service the Legal Aid Board has developed a new Quality Audit mechanism in conjunction with UNHCR to monitor the standards of service provision among private practitioners participating in the scheme. Approximately one in 10 files are reviewed.
- 3.252 The Legal Aid Board established an early legal advice pilot project in November 2014 for refugee status applicants. Approximately 40 cases have been included in the project, which aims to meet clients prior to the submission of the questionnaire to ORAC. The pilot has proved useful in structuring the proposed service for early legal advice for all applicants.
- 3.253 The Board is moving towards providing early legal advice to all applicants. The service will be delivered by way of a mixed model, using Board solicitors and solicitors on the panel of private practitioners. The assignment of cases to solicitors is subject to completion of specialised training which took place in March 2015. The Board has sought approval for a fee structure for payment of the solicitors on the panel and it is hoped that the new scheme will begin to be implemented over the coming months.
- 3.254 The Irish Refugee Council (IRC) Law Centre provides advice to applicants for refugee status in the early stage of the process, in advance of their interview with ORAC. For capacity and quality reasons the IRC offers this service to a maximum of approximately 100 clients per year. The Working Group was informed that the IRC is due to publish a manual on early legal advice soon.

Recommendations

3.255 The Working Group recommends that:

- Resources be provided to the Legal Aid Board to fund the roll-out of early legal advice to all applicants.
- The development of the Quality Audit reviews of legal service provision be continued and applied to the operation of the new early legal advice scheme under development.

- The monitoring and review of the roll-out of early legal advice continue with regard to its effectiveness and all relevant stake-holders be consulted regularly to see if any new/changed procedural or practical measures may be beneficial to its enhanced operation.
- Applicants should be clearly informed of the availability of early legal advice and advised to seek it at the earliest possible stage, particularly before they complete the questionnaire.

Implications including costs

3.256 The implications for the roll-out of early legal advice would represent a considerable shift in focus to the first instance procedure. By providing applicants with legal representation at the earliest possible stage it should ensure that the correct decision is made at the earliest stage in the system. This would result in savings both on appeal costs and in the provision of Direct Provision accommodation. The resources required for the implementation of these recommendations have been estimated in conjunction with the Legal Aid Board (see chapter 6).

Special measures with regard to children

Child-sensitive protection process

3.257 Giving effect to the principle of the best interests of the child in practice requires those working in the system to have a high level of awareness of the rights and needs of children and their obligations under the law; the provision of appropriate training is essential in this regard. The application of these rights and principles to children in the protection system is a discrete and specialised area, with much guidance and training now available.¹⁹³ Ensuring that the protection process is child sensitive could be said to require it to “guarantee the respect and the effective implementation of all children’s rights at the highest attainable level”.¹⁹⁴

3.258 As mentioned earlier, the CRC also requires that the right of children to be heard be safeguarded. Interviews of and the gathering of statements from children should, as far as possible be carried out only by those with specific training. Every effort should be made for children to give evidence in the most favourable settings and under the most suitable conditions, having regard to their age, maturity and level of understanding and any communication difficulties they may have.

193 See for example UNHCR/UNICEF, “Safe and Sound: what States can do to ensure respect for the best interests of unaccompanied and separated children in Europe”.

194 The United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime; Council of Europe, Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers’ Deputies).

Solutions in train

3.259 ORAC has a policy on dealing with separated children and its staff have undergone specific training with UNHCR and EASO. The RAT issued a guidance note in January 2015¹⁹⁵ in relation to appeals from child applicants. Members of both bodies attended inter-agency training in November 2014 organised by UNHCR on best practice in the assessment of protection applications by children. This training covered child-relevant considerations to substantive legal consideration and decision-making as well as child-sensitive practices and procedures.

Recommendations

3.260 The Working Group recommends that:

- Good practice in relation to training and the provision of child-sensitive procedures be maintained and developed further, particularly under a future single procedure.
- Inter-agency co-operation be maintained and further promoted in order to ensure that the principle of the best interests of the child can be effectively implemented.
- An inter-agency review of procedures and practices relating to children occur regularly to ensure that procedures do not fall short and that best practice is maintained.

Implications including costs

3.261 The benefits of the implementation of the above measures would be the continuance and further development of good practice in the provision of training and coordination of services to safeguard the best interests of children in the protection process. They would be cost neutral.

Provision of information

3.262 Child-friendly materials containing relevant legal information should be made available and widely distributed, including through special information services for children such as specialised websites.¹⁹⁶ This will assist in making the protection process more accessible for children.

¹⁹⁵ Guidance Note No. 2015/1.

¹⁹⁶ See for example Irish Refugee Council's guide, "Welcome to Ireland's Asylum Process": <http://irc.fusio.net/wp-content/uploads/2011/08/Welcome-to-Irelands-Asylum-Process-a-child-friendly-guide.pdf>

Recommendations

3.263 The Working Group recommends that:

- ORAC, the Department of Justice, the Legal Aid Board and the RAT provide child-friendly materials containing relevant legal information for children.
- Initiatives to make information about the protection process more accessible to children should be supported by the relevant agencies.

Implications including costs

3.264 The costs of producing child-friendly materials would be minimal and could be based on the information already provided to adult applicants. NGOs, Tusla and others already working with children in the system should be consulted and their expertise availed of to avoid duplication of work and increased costs.

Unregistered children

3.265 Under the current law, the children of parents or guardians in the system are included in the system only if their parents or guardians make an application on their behalf or request that they be included in an existing application. At ORAC, applicants are asked at various stages if they have any children and whether they wish to have them included as dependants in their own claims or registered separately for protection claims in their own right. There are no alternative immigration procedures for the registration of children.

3.266 In the absence of such action, children remain outside the system, unregistered and without any defined immigration status. There are 154 children in this situation living in Direct Provision accommodation centres. The number of any such children living outside Direct Provision is unknown.

Recommendations

3.267 The Working Group recommends that:

- In order to ensure that children have access to the protection process, where an accompanied child has not made an application/has not been included in a protection application by their parent/guardian, the law should be amended to provide that the child be deemed to be an applicant for protection.
- A presumption that children are included in their parent/guardian's application should apply, but in all cases the State and the applicant's legal adviser/representative should assess whether this presumption is appropriate. If not, the child should be deemed to have made an application in their own name.

- A child who is incapable of expressing his or her own views should have access to the assistance of a representative.

Implications including costs

3.268 The benefits of the implementation of these recommendations would be a notable improvement to the overall integrity of the process and the elimination of the lacuna where a protection application for an unregistered child may be made after a considerable passage of time, by which time their parents may have already received negative protection and leave to remain decisions. This would result in savings in the provision of reception services and in the costs involved in processing family members separately in cases where it may have been appropriate to consider their applications jointly. From the child protection perspective, their implementation would address the situation of children who may be present in the State for a number of years with no legal immigration status and who remain outside of the protection process. Implementation of the recommendations would be broadly cost neutral in terms of direct costs, as they would largely be covered by personnel already working with children in the area.

USE OF INTERPRETERS

3.269 The Refugee Act 1996 provides that the initial interview (which is conducted at the time an application is lodged) and the substantive first instance interview “where necessary and possible, be conducted with the assistance of an interpreter”. The Act further specifies that the RAT shall “where necessary for the purpose of ensuring appropriate communication during the hearing, provide the applicant with the services of an interpreter”. Regulations also require ORAC to select an interpreter who is able to ensure appropriate communication between the applicant and the person who conducts the interview so that the applicant may present the grounds for his/her application in a comprehensive manner.¹⁹⁷

3.270 In the case of both ORAC and the RAT, considerable efforts are made to ensure that appropriate and competent interpreters are engaged to ensure effective communication. UNHCR trains both decision-makers and interpreters in respect of both ORAC and the RAT on the essential aspects of practice in the use of interpreters in the protection process. Both agencies require interpreters to attend such training before working in the area, and to attend occasional refresher training.

3.271 It must be acknowledged, however, that there is no legislation regulating translators or interpreters in Ireland, nor is there any national professional qualification on foot of statute, or a practice direction from the Courts. This lack of regulation means essentially that anyone who speaks English and another language can call themselves a translator or an interpreter. Ireland is a small country with a limited pool of persons available who speak the vast number of languages required in administering the protection process. It is therefore not surprising that many stakeholders, including

¹⁹⁷ Regulation 3, S.I. No. 52 of 2011.

applicants themselves and NGOs, report that they have concerns regarding the quality of interpreting in some instances.¹⁹⁸

3.272 The Irish Translators' and Interpreters' Association submitted a paper to the Working Group. It makes the point that a lack of regulation is a problem not only for the protection process but also for other areas, particularly police interviews and the Courts. It believes that, if a solution is to be found, this issue needs to be approached holistically and the solution must involve both training and testing for interpreters who work in all of these areas. It also makes the point that there is no longer a properly accredited training course in Ireland, although one ran from 2004 to 2009 in Dublin City University. The fact that graduates were not prioritised for work and were paid the same rates as interpreters who had no qualifications undermined the value of the course.

3.273 Participants in the consultation process undertaken by the Working Group revealed similar concerns:

"Some interpreters used by the State don't have proper language skills therefore sentiment of the interpreter is not necessarily the sentiment of the applicant. They don't know what is being presented on their behalf."

"LGBT friendly interpreters should be available: Some participants found that interpreters would sometimes chastise the person for being LGBT; they also experienced people using derogatory terms to describe their sexual orientation or gender identity."

3.274 It is clear from the consultation process that the provision of good-quality interpretation is essential to safeguard the interests of protection applicants.

Recommendations

3.275 The Working Group recommends that:

- More formal procedures be introduced to ensure appropriate training is provided to all interpreters and a register be maintained to indicate who has completed this training in order to be eligible to work.
- A coordinated system of reforms be implemented on a phased basis to move to a system where all interpreters in the protection process have appropriately accredited qualifications.
- A system of accreditation to be established and maintained.
- The tendering process and terms of contracts for interpreting and translation firms should require them to prioritise or incentivise more those who have recognised accredited qualifications. Once the process of reform has been completed, accreditation to be a necessary requirement.

¹⁹⁸ The Law Society in its submissions states: "On occasion, the interpreters provided by the agencies for ORAC interviews in the ORAC and RAT hearings have been most unsatisfactory."

- All parties should ensure in the selection of an interpreter that there is no potential conflict of interests or potential breaches of confidentiality.¹⁹⁹
- Mechanisms should be put in place to carry out randomised independent assessments of the standards of interpreting to ensure they meet appropriate standards.

Implications including costs

- 3.276 The costs of implementing these recommendations would be minimal during the initial phases, amounting to some minor administrative costs in the maintaining of a register and the cost of providing training. The benefits would be a more transparent and formalised system of regulation in the absence of more formal accreditation structures. Prioritising or incentivising those who have recognised accredited qualifications through the tendering process would give recognition to and reward persons who take the time to up-skill and would increase the commercial value for academic institutions of courses on interpretation, which are currently very limited.
- 3.277 In the longer term it is to be expected that the introduction of a suitable system of accreditation will result in increased costs in procuring interpreting services. Such services are currently procured by way of public tender. Accordingly it cannot accurately be assessed how much that would be likely to change were these recommendations implemented, as the availability of interpreting services and competition in the industry will determine the costs agreed through the tendering process. Although it is expected that the provision of higher quality interpreting services will come at a cost, it is so central to the process of protection determination that the Working Group considers it a high priority.
- 3.278 Ensuring that no conflicts of interest occur with the use of interpreters is a basic standard to safeguard the integrity of the protection process. Doing so will eliminate the need for applicants to challenge any such cases by judicial review.
- 3.279 Randomised independent assessments of the standards of interpreting would need to be carried out in conjunction with the audio recording. The Working Group is not in a position to cost such introduction of recording facilities and has recommended below that this be explored further. Engaging an independent interpreting service to assess randomised samples would have financial implications. It is the only way to accurately assess the quality of the service provided.
- 3.280 Adequate communication between applicants and decision-makers is essential to the determination process – implementing these recommendations would have enormous utility in ensuring the quality of the process.

¹⁹⁹ This recommendation reflects a concern raised by the Human Rights Committee of the Law Society in its submissions to the Working Group.

RECORDINGS OF INTERVIEWS/HEARINGS

- 3.281 UNHCR's Manual on Building a High Quality Asylum System (from the FDQ project referred to at para. 3.220) states that the most effective manner of making an accurate record is to audio or video record interviews. In its absence the interviewer will always need to take notes during an interview and will be focused on typing or handwriting a verbatim record of the interview. As a consequence he/she will have less opportunity to observe the applicant as he/she recounts their claim. It may also facilitate speedier interviews; digital audio typists may be retained to produce transcripts where necessary. If there is a dispute over the content of an interview, it can be very difficult to resolve it in the absence of a recording. It can further provide opportunities to have interpreting services evaluated independently or for legal representatives to seek to clarify any mistakes or misunderstandings at interview.
- 3.282 At ORAC a written record of the interview is taken contemporaneously and the decision-maker reads the record back to the applicant at or after the conclusion of the interview, noting any comments or objections made by the applicant, in order to ensure the accuracy of the record. The High Court has considered these procedures and found them to go beyond what is strictly required under the Refugee Act 1996;²⁰⁰ similarly it found that the procedure meets the appropriate standard of fairness and is in compliance with the rules of natural and constitutional justice.
- 3.283 Nonetheless, while this method can, where thoroughly and rigorously done, ensure an accurate account, there are some drawbacks with this approach. Firstly, it requires of the applicant great concentration, after what can be a long interview, in order to correct anything in the record with which there is disagreement. Secondly, an applicant may look for what is recorded incorrectly, and miss other aspects that were never recorded by the decision-maker in the first place, which should have been. An applicant may also be disinclined to antagonise the adjudicator by objecting too often. This means that a full audio or video recording, either in addition to or in place of a summary written report, is more effective as a record of the evidence given.
- 3.284 At RAT an inconsistent approach to recording occurred in the past whereby some Tribunal Members or the applicant's legal representatives used their own recording devices to record hearings. More recently this practice has been discontinued upon the direction of the Chairman. A draft Guidance Note on the Practices and Procedures at the Tribunal has been prepared and shared widely with legal practitioners. It states simply "No recordings of oral hearings are permitted." The Chairman has indicated that this rule is intended to ensure compliance with data protection obligations until such time as a suitable recording system may be installed – it does not represent a fixed policy of the Tribunal.
- 3.285 The Working Group was not in a position to look at the above issues in sufficient detail to agree on specific recommendations. The question of cost is an important consideration, as well as data protection concerns and questions of the appropriate storage of such recordings. It must be acknowledged that the introduction of recording

200 J.R.H. v Minister for Justice [2006] IEHC 355; [2009] 4 I.R. 474.

may result in increased administrative responsibilities and costs in order to ensure that recordings are done in a manner that is fully compliant with relevant data protection laws and which safeguards the confidentiality of applicants. Such issues would need to be explored by persons with the appropriate expertise in conjunction with the relevant State agencies.

Recommendation

3.286 The Working Group recommends:

- An expert group consider the issue in more detail in order to fully explore the implications and costs concerned and to come to a conclusion on whether or not recording of interviews/hearings should be implemented at first instance and/or appeal.

Implications including costs

3.287 The Working Group is not in a position to set out fully the implications and costs of introducing the recording of interviews/hearings. These matters should be addressed by the expert group recommended above.

IDENTIFICATION OF VULNERABLE APPLICANTS

3.288 The early identification of vulnerable applicants is an issue that has been raised by a number of Members of the Working Group, in particular those who work with vulnerable applicants. Protection applicants themselves in the consultations conducted by the Working Group also raised the issue, as illustrated by the following extracts from the consultation session conducted with members of the LGBT community:

“Some of those present did not have any legal advice or support. They completed the application without any support and were afraid to disclose information about their arrest or persecution due to their sexual orientation; they felt that this may have a negative impact on their case. This experience was echoed by others – some have gone to private solicitors recommended by people in different accommodation centres and feel they have received poor legal advice or that the solicitor did not have any knowledge about LGBT rights around the world.”

“Those that were at the consultation talked about being asked inappropriate questions e.g. “Do you want to be normal? You don’t look gay, You were married/have children, how can you be gay?” Participants don’t know what evidence to give apart from them self-identifying as LGBT: “how can you prove you’re gay?”

3.289 The Refugee Act 1996 contains a provision relating to the identification of just one class of vulnerable persons: separated children. Section 8 establishes a procedure to be followed where a separated child is identified by an immigration officer or the

ORAC. As mentioned above, the child is essentially referred to Tusla, the provisions of the Child Care Act 1991 apply and an employee of the Agency may make a protection application on behalf of the child.

3.290 The Recast Asylum Procedures Directive²⁰¹ – to which Ireland has not opted-in – requires Member States to assess within a reasonable period of time after an application for protection is made whether an applicant is in need of “special procedural guarantees”. An “applicant in need of special procedural guarantees” is defined²⁰² as an applicant whose ability to benefit from the rights and comply with the obligations provided for in the directive is limited due to individual circumstances. The directive²⁰³ cross-references the provision concerning the assessment of the needs of vulnerable applicants in the Recast Reception Directive.²⁰⁴

3.291 Under the Recast Asylum Procedures Directive, states must ensure vulnerable applicants are provided with adequate support in order to allow them to benefit from the rights and comply with the obligations of the Directive throughout the duration of the procedure. Recital 29 provides further explanation as to what is intended under this provision:

“Certain applicants may be in need of special procedural guarantees due, inter alia, to their age, gender, sexual orientation, gender identity, disability, serious illness, mental disorders or as a consequence of torture, rape or other serious forms of psychological, physical or sexual violence. Member States should endeavour to identify applicants in need of special procedural guarantees before a first instance decision is taken. Those applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.”

3.292 Where this cannot be done in the context of accelerated procedures then applicants should be assessed by way of the regular procedure, particularly in cases of torture, rape or other serious forms of psychological, physical or sexual violence.

3.293 These special provisions with regard to the treatment of vulnerable persons are not replicated in Irish law at present. It is the view of the Working Group that such safeguards should be put in place in Ireland as much as is practicable, even on an administrative basis, notwithstanding that Ireland is not obliged to do so under EU law as discussed above.

201 Article 24.

202 Article 2.

203 Article 24.

204 In particular Article 22. The Directive gives a number of examples of vulnerable persons including: minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation.

Solutions in train

- 3.294 Protection applicants who enter Direct Provision may avail of a voluntary public health screening service offered by the HSE in the Baleskin Reception Centre. Vulnerabilities may be disclosed or discovered as part of that screening or subsequently in consultation with an applicant's General Practitioner. No formal mechanisms exist currently however to notify the appropriate determining body of the specific needs arising out of such vulnerability or indeed to notify RIA, the Agency with responsibility for accommodation decisions.
- 3.295 ORAC, as part of its initial and on-going training to decision-makers, includes modules on how to deal with vulnerable and child applicants; particular aspects of the training provided on interview techniques and procedures address how to cater to vulnerable applicants. UNHCR further addresses vulnerability in its provision of training at ORAC and in its on-going collaboration on quality issues. A spokesperson from SPIRASI, an NGO that works with survivors of torture, has also addressed decision-makers on the work it does and the relevance of medico-legal reports.
- 3.296 The Chairman of the RAT has published guidelines on a number of matters including child applicants for protection status. Training has been delivered in relation to vulnerable groups and a new level of cooperation between the RAT and NGOs working with vulnerable groups is developing.
- 3.297 SPIRASI is the main provider of medico-legal reports and counselling to victims of torture in Ireland. Through bilateral contact with the State agencies it may assist in identifying vulnerable persons or advocate for particular assistance to be given in individual cases. Other NGOs often play a supporting role to vulnerable applicants, who may feel more comfortable disclosing sensitive information or traumatic experiences to their staff. They advocate on behalf of such clients and may make representations to State agencies in individual cases.
- 3.298 As part of the procedures put in place for the processing of subsidiary protection applications as part of the backlog carried over under the 2013 Regulations, ORAC put in place in March 2014 a prioritisation policy in order to encourage the early identification of subsidiary protection beneficiaries. One of the prioritisation grounds was age, including:
- Separated children in the care of the State,
 - applicants who applied as separated children, but who have now reached adulthood,
 - applicants over 70 years of age who are not part of a family group.

Persons who were potential victims of torture by reference to the submission of a medico-legal report were similarly prioritised. Notwithstanding the above, there is a need to put systems in place to more proactively ensure that vulnerabilities of applicants are identified early in the process and that appropriate responses are taken in such cases.

Recommendations

3.299 The Working Group recommends:

- The continuance and further development across the system of a method of prioritisation of cases for vulnerable applicants. This must however be balanced with the need to be sensitive to the needs of vulnerable applicants who in appropriate cases may need extra time, for example, to allow for the disclosure of traumatic experiences or for referral to appropriate psychological/social/health services or the preparation of reports.
- The introduction of vulnerability screening for all applicants beyond the scope of the current public health screening available to residents of Direct Provision accommodation. This should be made equally accessible to applicants who chose not to live in Direct Provision accommodation and should be performed no later than 30 days after an initial application has been made.
- The establishment of formal mechanisms of referral in the case of disclosed or diagnosed vulnerabilities to ensure that such persons are provided with appropriate information, health or psychological services and procedural supports.
- Follow-up and monitoring of persons who fall into the category of vulnerable should occur on an on-going basis until such time as the applicant exits the system.
- Public awareness and training programmes should be developed as part of such procedures to include legal representatives (to be involved from the earliest stages possible), health professionals, NGO staff and other frontline workers, so that they will be aware of the type of vulnerabilities frequently found in the protection-seeking population and what they can do to refer them to the appropriate services.
- That sufficient resources be made available at the earliest possible stage, to both relevant NGOs and state agencies, particularly under the proposed more truncated single procedure in order to facilitate early identification.

Implications including costs

3.300 The benefit of these recommendations generally would be the more efficient operation of the protection process. They would help decision-makers and other front-line staff to better understand the vulnerabilities and needs of applicants and to tailor their procedures as deemed appropriate. The production of medico-legal or other reports may also assist decision-makers in the early identification of refugees and beneficiaries of subsidiary protection. This would reduce the costs of Reception and of onwards appeals in such instances.

3.301 The nature of the vulnerability screening and cost implications are addressed in more detail under chapter 4 in the context of a recommendation to review and strengthen the existing HSE voluntary health screening service so that vulnerabilities can be identified and taken into account in decisions on dispersal and room allocations;

such screening can also serve as an assessment for the purposes of the protection process. The additional cost implication of the above recommendations would be in the assessment of the vulnerability of persons who are not living in Direct Provision accommodation but who avail of the service.

RETURN

- 3.302 The primary focus of national protection determination procedures is to identify persons in need of protection at the earliest opportunity. In the sections above, the report sets out the legal framework and measures the Working Group recommends to ensure that persons in need of protection are identified at the earliest opportunity under quality procedures which deliver a decision in a reasonable period of time.
- 3.303 It is envisaged that the legislation providing for the new single procedure set out in the General Scheme of the International Protection Bill will be enacted later this year and implemented in late 2015/early 2016. When the new procedure is implemented, and assuming that adequate resources are allocated to its operation and the quality measures recommended in this report are implemented, final quality decisions on eligibility for protection or, in the alternative, humanitarian leave to remain should issue to applicants within a 12 month timeframe.
- 3.304 As indicated earlier in this chapter, the combined protection recognition rate in Ireland for 2014 was 30%. Separately, 55% of the cases assessed at the leave to remain stage were granted leave to remain. On this basis it is reasonable to assume a combined protection and leave to remain recognition rate of around 40% in future years, with approximately 60% of future applicants deemed not to be in need of protection or leave to remain.
- 3.305 To deliver solutions for individuals and families and to maintain the integrity of the protection process, the Working Group considers that options and solutions need to be in place for persons deemed not eligible for protection or leave to remain status. The primary options and solutions are Assisted Voluntary Return and, where that option is not availed of, deportation.

Assisted Voluntary Return (AVR)

- 3.306 Information on obstacles to accessing AVR under the current legal framework is set out at para. 3.91. To gain a greater understanding of how the option of AVR has operated to date and what the Working Group might recommend for the future, it met with representatives of the Office of the International Organization for Migration (IOM) in Ireland. The IOM has been involved in AVR activities in Ireland since 2001. From 2007 to 2012 the IOM assisted in the return of approximately 400 individuals annually (mainly migrants and a lesser number of persons who had engaged with the protection process). The number of individuals availing of AVR fell to 200 in 2014. Of this number 145 were migrants and 43 were protection applicants or persons who had engaged with the protection process.

- 3.307 The IOM advised that AVR is something people without a protection need were more likely to consider and reflect on during the early stages of arrival in a new country. The longer their stay, the more their connections to the new place develop and the less likely they are to consider AVR.
- 3.308 It is likely that a primary reason for the very low uptake of AVR from Ireland in recent years by persons who have engaged with the protection process is the average length of time the two-step procedure has taken to complete to finality. Long delays at the judicial review stage will also have had an impact, as will the uncertainty as to timing of the implementation of long-mooted changes to the protection process.
- 3.309 The IOM's experience in other EU Member States with a single procedure has been that there is a greater uptake of AVR where information about this option is provided at an early stage. The IOM said they welcome opportunities to present information about voluntary return at the earliest possible moment after arrival in a country. The key defining factor of AVR is that it is voluntary. As such, and in appropriate cases, information on this option should be included in the early legal advice to be provided to applicants, which would facilitate an informed consideration of this option.
- 3.310 The legal framework of the protection process should also support access to AVR at all stages. Under the subsidiary protection procedure in operation prior to November 2013, applicants had to choose either to make an application for subsidiary protection or to avail of AVR. Under the current procedures, an applicant can avail of AVR up to the moment when a deportation order issues. Under the future single procedure, as envisaged in the General Scheme of the International Protection Bill, a person will be able to avail of AVR at all stages prior to a deportation order issuing. In addition, a person who has been refused protection and who is not to be given leave to remain will be notified that he/she has five days to opt to avail of AVR rather than be the subject of a deportation order. This is intended to provide a last opportunity to the person to avoid a deportation order.²⁰⁵
- 3.311 A further measure to support the uptake of AVR would be the extension of supports to persons considering return and on return to facilitate their reintegration. EU Member States offer different levels of supports with the assistance of the IOM.

Recommendations

3.312 The Working Group recommends:

- Swift implementation of an adequately resourced single procedure to deliver quality decisions within a 12 month time frame which will create the conditions whereby Assisted Voluntary Return is more likely to be availed of.
- Provision of support to the International Organization for Migration (IOM), NGOs and other organisations to raise awareness about Assisted Voluntary Return and provide quality information about this option.

²⁰⁵ Heads 43A and 45.

- Provision of support to the IOM for the delivery of Assisted Voluntary Return counselling and services to persons wishing to avail of Assisted Voluntary Return.
- Where appropriate, the Legal Aid Board should include information about Assisted Voluntary Return as part of the early legal advice it plans to deliver in all cases in the near future.
- Inclusion of specific provision for access to Assisted Voluntary Return at all stages of the new single procedure, and expansion of the time period before the issuance of a deportation order when Assisted Voluntary Return can be availed of (five days is envisaged in the General Scheme of the International Protection Bill).

Implications including costs

- 3.313 If the recommendations are implemented in full and adequately resourced, they will likely lead to an increase in the uptake of AVR. Increased use of AVR would have a number of positive benefits. It would offer to an increased number of persons who are not in need of protection or who are not granted leave to remain an opportunity to return home in dignity and safety. It would reduce the proportion of persons determined not to be in need of protection or who are not granted leave to remain progressing to the deportation stage otherwise remaining in the State with an irregular status. It might also reduce the proportion of persons without grounds for a protection claim or leave to remain from continuing with their applications. Finally, it would enhance the integrity of the protection process by demonstrating that solutions are in place for persons deemed not to be in need of protection.
- 3.314 If the recommendations are not implemented in full and if AVR is not availed of by an increasing number of persons, there is a risk that additional persons determined not to be eligible for protection or leave to remain will in the future stay in the State for prolonged periods of time with no solutions open to them or the State other than deportation. In short, the risk is that the situation currently being addressed by the Working Group could continue into the future.
- 3.315 The costs involved in the adequate resourcing of the single procedure and the delivery of quality decisions within a 12 month timeframe are set out elsewhere in this report (see chapter 6).
- 3.316 In relation to the costs associated with supporting AVR activities, in 2007, the European Migration Network produced a study entitled “Return Migration from Ireland”.²⁰⁶ The report included information on voluntary return, costs and evaluations. An updated report is currently being prepared by the European Migration Network.²⁰⁷ Suffice it to say that the 2007 report identified a cost of €1,806 per person availing of AVR in 2005. This was composed of €606 per person for travel costs and reintegration assistance of €600 per person or €1,200 per family. Additional

206 Emma Quinn (2007), ‘Return Migration from Ireland’, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/return-migration/ie-report14-2_en.pdf

207 Draft European Migration Network/ESRI report: E. Gusciute and E. Quinn (2015), ‘Strategies Used to Support Return Policy in Ireland’, European Migration Network. Unpublished draft, Dublin: ESRI.

human resources costs and funding for IOM and NGO activities in support of Assisted Voluntary return would be on top of these costs.

- 3.317 Given the human and financial costs involved in prolonged stay in the State for persons found not eligible for protection or leave to remain, the small investment in AVR would represent a cost saving overall. The forthcoming European Migration Network publication may help to clarify the position on costs further.

Deportation

- 3.318 As noted above, to deliver solutions for individuals and families and to maintain the integrity of the protection process, options and solutions need to be in place for persons deemed not eligible for protection or leave to remain status. The primary options and solutions are AVR and, where that option is not availed of, deportation.
- 3.319 Information on the deportation order stage is set out at para. 3.87, where it is noted that approximately 20% of deportation orders are implemented. This implementation rate is in line with the average across the EU.²⁰⁸ 660 deportation orders were implemented from 2011 to 2014. The median length of time from the date the deportation order was signed to the date it was enforced was 17 months.
- 3.320 Obstacles to the implementation of deportation orders include people evading deportation orders, judicial reviews being taken by persons who are the subject of deportation orders and the impact of a “trailing family member” at another stage in the system. Additional obstacles include the limited number of embassies in Ireland and the consequential gap in assistance with travel documentation and return arrangements. A recent court decision²⁰⁹ has highlighted the lack of a legislative power of entry to private dwellings in order to enforce deportation orders, which has had a significant impact on the implementation of deportation orders.
- 3.321 There are three principal issues to be addressed. The first is resolving the situation of persons currently in the State for long periods with deportation orders. The second is improving the deportation process so that it operates more efficiently and the third is identifying measures to address the situation of persons who may, in the future, remain in the State for long periods of time with deportation orders.

Persons currently in the State for long periods with deportation orders

- 3.322 This issue is dealt with at para. 3.134, which recommends a solution for persons in the system for five years or more with a deportation order as an exceptional measure.

208 The average across the EU – according to Eurostat, around 98,000 of 430,000 (22.79%) return decisions were effected in the EU in 2013 (http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation#The_number_of_non-EU_citizens_ordered_to_leave_has_decreased_between_2008_and_2013).

209 *Omar v Governor of Cloverhill Prison* [2013] IEHC 579.

Improving the deportation process

- 3.323 It is possible that, if an adequately resourced single procedure capable of delivering quality decisions within a 12 month time frame is implemented swiftly, the conditions may be created whereby AVR is taken up by persons rather than evading a deportation order. The “trailing family member” or unregistered child issues discussed above, which have impacted on the deportation order process to date, should also be resolved or reduced under the proposed single procedure given the shorter time frame for the procedure and the specific provision in the General Scheme of the International Protection Bill on the registration of children.²¹⁰
- 3.324 To address the obstacle of people evading deportation orders, the lacuna in the legal framework identified in the Omar judgment needs to be addressed.²¹¹ While there is a power to arrest a person with a deportation order, the judgment identified a lack of legal provision for a power of entry to private dwellings for the purposes of enforcing a deportation order. As mentioned earlier, the authorities have indicated that it is intended to legislate as soon as possible to introduce a power of entry to private dwellings for the purposes of enforcing a deportation order. One option under consideration by the authorities is the introduction of an amendment by way of the International Protection Bill.
- 3.325 Persons who have completed the protection process will, of course, continue to have access to the Courts for judicial review purposes after the introduction of the proposed single procedure. The procedure, as envisaged under the Heads of Bill, will involve a reduction in the number of stages in the system and the number of decisions which may be subject to judicial review. This change in the legal framework, combined with the reduction in the backlogs and delays at the judicial review stage, should provide for more timely resolution of judicial reviews for persons who have completed the protection process. These developments should assist in addressing one of the primary obstacles to the implementation of deportation orders identified above.
- 3.326 Additional human resources may be required for the GNIB in respect of any increased implementation of deportation orders. Procedures for the practical enforcement of deportation orders should be drafted setting out guidance in compliance with human rights standards. Such procedures should take specific account of the position of children where family groups are to be deported. The current practice in Ireland under which separated children are not deported should be maintained. Training should be delivered to all personnel involved in the implementation of deportation orders. There may be additional information and suggestions on improving the deportation order process in the forthcoming European Migration Network publication.²¹²

210 Head 12(3).

211 *Omar v Governor of Cloverhill Prison* [2013] IEHC 579.

212 Draft European Migration Network/ESRI report: E. Gusciute and E. Quinn (2015), “Strategies Used to Support Return Policy in Ireland”, European Migration Network. Unpublished draft, Dublin: ESRI.

Measures to address unenforced deportation orders

3.327 The issue of persons with a deportation order remaining in a State and the State not being in a position to implement the deportation order is common to other EU Members States and globally. The United Kingdom is faced with a similar challenge²¹³ and the concept of so-called non-returnable migrants is recognised as a Europe-wide phenomenon.²¹⁴ While acknowledging the inherent complexities within the process and the role of the applicant themselves, the question arises as to whether there should be a point when the failure to execute a deportation order necessitates further action by the State. A failure to do so results in a significant number of persons within the system living with the possibility of deportation hanging over them. Persons subject to a deportation order for several years and signing on each month with GNIB experience considerable mental strain. This human cost is particularly acute when children are involved. The European Union Agency for Fundamental Rights has proposed that “mechanisms should be set up either at Union or Member State level to avoid a situation where persons who are not removed remain in legal limbo for many years”.²¹⁵ Table 3.3 provides details of mechanisms in other European countries.

Table 3.3: International mechanisms for non-returnable migrants²¹⁶

Country	Mechanism
Norway	Residence permit may be granted to failed asylum seekers if their return has been pending for more than three years and is unlikely to be enforced, on the condition that their identity is established and they have cooperated.
Netherlands	There are several possibilities to obtain a temporary residence permit based on situations in which return is not possible despite the third-country national cooperating on the return process.
Lithuania	After one year in official postponement, third-country nationals can be granted a temporary residence permit.
Sweden	When a return order expires after four years, a new application for asylum may be lodged. A right to stay will be granted on the basis of the new application if the third-country national can show the reasons for being non-removable have been beyond his control.

3.328 In addition to the above, “Tolerated stay” schemes are in place in Austria and Germany. “Tolerated stay” is a limited form of status for persons whose deportation cannot be facilitated for reasons of fact and for which the person is not responsible. In Austria the scheme leads only to the issuance of an identity card. After a year, a person can be granted residence permission of limited duration if they meet income, housing and language eligibility criteria. The position is similar in Germany,

213 Amnesty International, ‘Down and out in London – The road to destitution for rejected asylum seekers’, London: 2006.

214 European Union Agency for Fundamental Rights, ‘Fundamental Rights of Migrants in an Irregular Situation in the European Union’, Luxembourg: 2011 at 27.

215 See supra note at 11.

216 See supra at Chapter 2, pages 27 – 38.

although some limited social benefits are extended during the “Tolerated stay” period. Luxembourg also operates a “Tolerated stay” scheme, where the applicant demonstrates that it is impossible for them to leave Luxembourg for reasons beyond their control and they cannot return to their country of origin or another country. A similar scheme applies in Switzerland.

3.329 In total, one-third of EU Member States have enacted legislation that explicitly provides for the possibility of allowing irregular migrants to remain if their removal interferes unduly with their right to family life.²¹⁷ Also, the possibility of suspending removal, if it proves impossible due to technical reasons²¹⁸ or is considered to be in the public interest,²¹⁹ is available in roughly half of EU Member States.

Recommendations

3.330 The Working Group recommends:

- Swift implementation of an adequately resourced single procedure which creates the conditions whereby Assisted Voluntary Return may be taken up by a greater proportion of persons and which includes provisions to address the “trailing family member” and unregistered child issues.
- Introduction of a legal power of entry for the purposes of enforcing a deportation order, possibly by way of the International Protection Bill to this effect.
- In the future for persons who are five years or more in the system, who have an unenforced deportation order for 24 months and who have cooperated with the authorities, and taking into account relevant public policy issues, consideration should be given on a case by case basis to applying the principles and solutions outlined at para. 3.134.
- Continuation of current efforts to reduce the backlog of judicial review cases at the Courts and expedite case processing at the Courts.
- Review human resource capacity at the Garda National Immigration Bureau and ensure adequate resources are in place for the implementation of deportation orders.
- Establishment of procedures for the practical enforcement of deportation orders setting out standards and guidance in compliance with human rights standards. Deliver training to all personnel involved in the implementation of deportation orders.
- Maintenance of the current practice in Ireland under which separated children are not deported.

²¹⁷ See supra at 30.

²¹⁸ See supra at 32.

²¹⁹ See supra at 34.

Implications including costs

- 3.331 If an adequately resourced single procedure is implemented swiftly this will assist the operation of the deportation process significantly. If there are delays in implementation or if the new procedure is not adequately resourced, the current obstacles to the deportation order process will likely remain in place. The introduction of a legal power of entry for the purposes of enforcing a deportation order would address a significant gap in the current legal framework and could facilitate an increase in the rate of implementation of deportation orders.
- 3.332 Arrangements for persons with a deportation order which has not been effected within a specified period would provide a possible solution for persons whose deportation order has not been implemented. It could assist in the orientation of resources towards the early implementation of deportation orders by creating a policy imperative to resolve such cases at an early stage. Such a scheme could prevent a future build-up of long stay cases involving unimplemented deportation orders. There are also risks involved in this approach, as persons seeking to remain in the State may actively seek to reach the time threshold. Action to manage such risk could be taken through the maintenance of efficient procedures and case management at the Courts and the allocation of adequate resources.
- 3.333 In relation to the costs associated with the deportation order process, the 2007 European Migration Network study “Return Migration from Ireland”²²⁰ included information on the deportation order process, costs and evaluations. An updated report is currently being prepared by the European Migration Network.²²¹ The 2007 report identified a cost of €4,218 per person deported in 2005. This cost relates only to the costs of chartered or commercial flights: human resources and administrative costs would be in addition to this figure. The report notes that “in terms of transport costs alone, voluntary return is a much less expensive option for the State than deportation. It is reasonable to assume that forced return would become more expensive relative to voluntary return if staff and administrative costs were included. Garda overtime and subsistence payments for example, paid for from the Garda budget, make up a significant part of the costs associated with forced return. Developing cooperation with carriers and airports has resulted in increased use of commercial as opposed to chartered flights and the decreasing need for Garda escorts – both of which should bring the overall costs of forced return down.” As mentioned above, the forthcoming European Migration Network publication updating the 2007 report may help to clarify the position and may assist in estimating the costs of any enhanced use of the deportation order process.
- 3.334 The administrative costs relating to arrangements for persons with a deportation order which has not been effected within a specified period would depend on what type of scheme might be considered. The costs could be kept to a minimum if, for example,

220 Emma Quinn (2007), ‘Return Migration from Ireland’, European Migration Network, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/return-migration/ie-report14-2_en.pdf

221 Draft European Migration Network/ESRI report: E. Gusciute and E. Quinn (2015), ‘Strategies Used to Support Return Policy in Ireland’, European Migration Network. Unpublished draft, Dublin: ESRI.

arrangements based on existing legal provisions were envisaged. Savings could be achieved where a scheme or arrangements would facilitate a person leaving Direct Provision accommodation centres.

DATA COLLECTION AND POLICY ANALYSIS

- 3.335 The system, as it is currently constituted and as it will be constituted in the future under the International Protection Bill, comprises many parts, each having an impact on the others. For example, a rise in the number of applicants for protection will have an impact on the system as a whole; however, the nature of the impact on the later stages in the system will depend on case processing times, human resources, recognition rates, withdrawals of applications and other factors at the earlier stages. Backlogs or expedited cases processing will also have an impact on the next stages in the process by delivering a smaller than average or a greater than average caseload.
- 3.336 The collection and regular analysis of good-quality data on the system, its constituent parts and case processing flows and trends are essential for the maintenance and further development of the system. Data sets which deliver a comprehensive and accurate picture of how the system as a whole operates can assist decision making on human resource allocation and indicate where early action may be necessary to prevent backlogs from building up or where a change in practice or policy should be pursued to improve processing times or quality.
- 3.337 The Working Group invested significant time in the sourcing and analysis of the data contained in this report. In particular, INIS, ORAC and the RAT undertook a lot of work in a collegiate manner to provide the comprehensive information required to provide the evidence base for the recommendations and financial model set out in this report. The Working Group appreciates the work undertaken by INIS, ORAC and RAT and acknowledges the additional pressures placed on the limited resources of those organisations by the Working Group's series of information requests.
- 3.338 Comprehensive statistics are provided by ORAC on its website and by both ORAC and RAT in their Annual Reports on the first instance and appeals process respectively. However, the Working Group is aware that the human resources assigned to data collection and policy analysis work within INIS have been reduced in recent months during a period when the policy demands have been great in light of the establishment of the Working Group, the preparation of the General Scheme of the International Protection Bill and a range of other matters.
- 3.339 The Working Group provided a useful and appropriate forum in which data and information could be shared among Members in a safe setting. Information was shared, exchanged and discussed between Members in a more detailed manner than would have been the case previously in other bilateral exchanges or fora. This facilitated a greater level of mutual understanding of the complexity of the issues under discussion, including from the different perspectives of all of the Members of the Working Group.

Recommendations

3.340 The Working Group recommends that:

- Appropriate staffing levels be established and maintained with the necessary expertise at the Asylum Policy Unit and Statistics and Reporting Unit in INIS and other relevant bodies (and their successors under the General Scheme of the International Protection Bill) to enable them to carry out their functions effectively. Any vacancies arising should be filled as soon as possible, particularly at times of increased workload.
- Unified data collection systems be developed which can produce up-to-date data on the operation of the system as a whole and all of its constituent parts on an on-going basis. The systems should include built in indicators capable of identifying stresses in the system so that measures to address those stresses can be put in place at the earliest opportunity.
- The good practice established through the work of the Working Group of sharing and discussing statistics and other information in a safe setting among key stakeholders be continued.

Implications including costs

3.341 Increasing human resources in data collection and policy analysis will carry a cost. An estimate of human resources costs would flow from the establishment of appropriate staffing levels. The filling of vacancies in the relevant units in INIS would involve the costs of such posts (see chapter 6); however, it is presumed that these vacancies would be filled in the normal course (i.e. absent the Working Group). The costs incurred through lacunae in data must, however, also be considered. The costs of providing Direct Provision accommodation is estimated at €10,950 per annum per person. A lack of data to facilitate the identification of trends at the earliest moment can lead to delays in the system which carry a defined financial cost in terms of length of stay in Direct Provision and a recognised human cost as evidenced through the consultation process with persons in the system.

INSTITUTIONAL ARRANGEMENTS

3.342 Under the proposed International Protection Bill the functions carried out by ORAC will be undertaken by the Minister for Justice and Equality and ORAC will cease to exist. The explanatory text in the Heads does not indicate the rationale for this change other than to note:

“This Head proposes the repeal of existing primary and secondary legislation in the field of international protection with the consequent ending of the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) which were established by the Act of 1996.

In accordance with these Heads, ORAC is to be replaced by the Minister for Justice and Equality as the determining authority at first instance for applications for international protection.”

3.343 The Regulatory Impact Assessment published with the Head of Bill states:

“The subsuming of ORAC into the Department of Justice and Equality would realise the longstanding objective of improving efficiency in the administration of the asylum caseload and related business.”

3.344 Officials of the Department of Justice and Equality informed the Working Group that the decision to bring the functions of ORAC back into the Department was long-standing Government policy as originally set out in the Immigration Residence and Protection Bill 2007. The Government confirmed its policy intent in this regard in 2012 by including ORAC in a list of agencies to be abolished under its agency rationalisation programme. Another primary reason cited was the view that decisions on leave to remain concern the exercise of executive power²²² and that it would not be appropriate for such powers to be delegated to an independent agency.

3.345 As can be seen above, the Working Group has not had cause to be critical of the institutional arrangements currently pertaining to ORAC and its role in the determination of refugee status and subsidiary protection. This report sets out many positive examples of good practice in this respect and notes the organisation’s ability to adapt to changing circumstances. The recent transfer of responsibility for the processing of a subsidiary protection backlog of cases, for example, has been a very successful initiative. Of the 1,619 backlog live cases transferred to ORAC at the end of 2013, 980 have been processed to decision with 639 cases pending.

3.346 While the Working Group notes the reasons given for the dissolution of ORAC, it is not a measure on which the Members would have reached unanimous agreement due to the positive regard in which the agency is held. Some Members also expressed concern that there would be insufficient separation between the protection determination procedure and the leave to remain aspects. It should be acknowledged in this regard, however, that the Heads of the International Protection Bill do endeavour to separate out these two decisions to ensure that protection applications retain their priority and independence. Members welcomed the policy decision to proceed with the reform of the protection system independently to the wider reform of the immigration system by way of the International Protection Bill. However, there was not unanimous support for the principle of abolishing the current practice of having an agency independent of the immigration services of the State being responsible for the determination of protection status.

3.347 It is noted also that in practice, ORAC staff are, for the most part, civil servants sourced from within the Department of Justice and Equality. The determination of refugee status and subsidiary protection status is a responsible and complicated task requiring a great deal of training and support for staff who do this work. If this policy

²²² See for example: *Bode (A Minor) v Minister for Justice, Equality & Law Reform & Ors.* [2007] IESC 62 or Article 26, Referral of the Illegal Immigrants (Trafficking) Bill 1999 ([2000] 2 IR 360).

decision is ultimately effected, it is noted that it is intended to have continuity in both the managerial and institutional arrangements and personnel concerned. As such, the proposed institutional changes should in some respects be minimised, without any major disruption of service provision.

3.348 Under the Heads of the International Protection Bill it is proposed that the RAT will be replaced by an International Protection Appeals Tribunal (IPAT). The institutional changes set out in the Heads are minimal, however, as it will continue to operate in many respects as the current Tribunal does. It is noted that it is intended that there will be continuity in relation to management, administration and personnel. Aspects relating to the governance of the new Tribunal are dealt with below.

Recommendations

3.349 The Working Group recommends that:

- Careful transitional planning should be put in place to minimise any disruption in the transfer of responsibilities and the on-going processing of applications.
- Continuity of personnel and institutional arrangements should be maintained as much as possible in order to safeguard institutional memory and human capital.
- Existing quality procedures and tools should be carried over to the Department of Justice and Equality when it takes over responsibility for case processing from ORAC.
- All staff must be suitably trained and appropriately skilled to carry out protection determination work; no Department of Justice and Equality staff should be transferred to do this work without being so qualified and without undergoing appropriate training.

Implications including costs

3.350 The implementation of the above recommendations would result in financial savings to the State in the operation of the protection services by maintaining, as much as possible, the knowledge and experience developed by ORAC in the years since its establishment. Appropriate training can continue to be delivered under the new arrangements without any additional costs. The consequence of not implementing these recommendations would be a drop-off in quality which would negatively affect the early identification of persons qualifying for protection. This would result in increased costs due to onward appeals or judicial reviews in such cases and in the provision of Direct Provision accommodation.

ADVISORY AND GOVERNANCE ARRANGEMENTS

Advisory Body

- 3.351 In 1999 an amendment²²³ was made to the Refugee Act 1996 to legislate for the establishment of a Refugee Advisory Board. The provision originally envisaged that the Board would begin its work in 2001; this provision was further amended²²⁴ in 2003, however, to provide that the work of the Board would instead begin in 2005. The Board was subsequently never established.
- 3.352 Under the terms of 1996 Act the Board was to meet every second year to prepare and submit to the Minister a report in writing on the operation of the asylum system. The report was to include information and comment in respect of asylum policy and refugees, including any proposals to amend legislation and recommendations regarding the practice or procedures of public or private bodies in relation to applicants. The report would then be required to be laid before each House of the Oireachtas. The Minister could also request a report on a specific matter.
- 3.353 The Board was to consist of a chairperson and 15 ordinary members appointed by the Minister for Justice. The schedule to section 7A of the Act gives further guidance as to the Board's composition: appointments should be made for a period of five years; a person or persons representative of refugees and applicants should be appointed; and regard should be had to a prospective Member's interest in, or knowledge of, asylum and the provision of protection and assistance to refugees, or his/her competence otherwise.
- 3.354 In the absence of the establishment of the Refugee Advisory Board, no other body has fulfilled the advisory role envisaged in its place. The Working Group process is the first time a comprehensive review of the operation of the system has taken place in this way, and many of the same Departments are represented as required to be appointed to the Refugee Advisory Board by the Act. Although the Working Group has been somewhat limited in the scope of its enquiries due to time constraints, the process of bringing together so many key stakeholders has been enormously beneficial as the Members of the Working Group were able to gain, through the sharing of information and perspectives, an increased insight and detailed understanding of the operation of the system as a whole and the interconnection between its components. Accordingly the benefits of such an advisory body are apparent as a result.
- 3.355 It should be noted that the terms of reference of this Working Group are wider than those of the Refugee Advisory Board under the Act. It would be important to acknowledge in the establishment of any new advisory body that arrangements for the reception of protection applicants, for AVR, procedures for leave to remain and deportation, and all other related matters have a significant effect on the operation of the protection system in Ireland.

223 Section 11(b) of Immigration Act 1999.

224 Section 7(b)(i) of Immigration Act 2003.

Governance of the Refugee Appeals Tribunal

- 3.356 In relation to the RAT specifically, its members may be removed by the Minister for Justice “for stated reasons” in accordance with the Refugee Act, although the circumstances in which this may take place are not elaborated upon.²²⁵ The independence of the Tribunal has been challenged in the Courts due to such links with the Department. The European Court of Justice considered its independence in the HID case.²²⁶ The Court considered that the availability of judicial review before the High Court, and a possible onwards appeal to the Supreme Court, was sufficient to safeguard the RAT from “potential temptations to give in to external intervention or pressure liable to jeopardise the independence of its members”.
- 3.357 The Department of Finance Code of Practice for the governance of State bodies²²⁷ states that “State bodies must serve the interests of the taxpayer, pursue value for money in their endeavours (including managing risk appropriately), and act transparently as public entities. The Board and management should accept accountability for the proper management of the organisation.” The entire Code of Practice assumes the existence of a board to provide the necessary oversight and reporting structure to give effect to the Code. It does, however, acknowledge that where certain bodies do not have a board structure, they should reach agreement with their parent Department on the extent to which the requirements might be suitably adapted in their case. This is currently the arrangement in relation to the RAT and the Department of Justice and Equality.
- 3.358 Under the Heads of the International Protection Bill it is proposed that ORAC will discontinue as an independent body, and the Minister for Justice will assume sole responsibility for the determination of protection applications at first instance. This will alter the position of the RAT when it is replaced by the International Protection Appeals Tribunal vis-à-vis the Department of Justice and Equality, as it will hear appeals of decisions of the same Department on which it relies for administrative supports, such as staffing and funding. Therefore it is important to provide a mechanism for the Tribunal to be accountable while maintaining its independence from the Department.
- 3.359 Following the Leggatt Report of the Review of Tribunals,²²⁸ the UK’s system, which closely resembled Ireland’s existing one, was discontinued in 2006 and a dedicated Tribunal Service was established which is accountable to HM Courts and Tribunals Service Board. The HMCTSB is considered an executive agency, sponsored by the Ministry of Justice.

225 Section 7, Second Schedule.

226 Case C-175/11 HID, B.A. v ORAC, RAT, Minister for Justice, Equality and Law Reform, Ireland, Attorney General.

227 A revised Code of Practice was published in May 2009.

228 <http://webarchive.nationalarchives.gov.uk/+http://www.tribunals-review.org.uk/leggatthtm/leg-00.htm>

Recommendations

3.360 The Working Group recommends that:

- An advisory body be established, following and further developing the general scheme of the Refugee Advisory Board.
- Any such independent advisory body established be given the necessary flexibility to consider all matters related and relevant to the operation of the system.
- The International Protection Bill put in place appropriate governance structures to safeguard the independence of the International Protection Appeals Tribunal while providing for robust forms of accountability. Ideally this should be achieved by the introduction of a traditional board structure. For the avoidance of doubt, this would be separate to any advisory body that might be established.

Implications including costs

3.361 The establishment of governance structures for the proposed International Protection Appeals Tribunal would have consequences in terms of expenditure for the State. It is the view of this Working Group, however, that any such expenditure is likely to be offset by the consequential benefits to the taxpayer in pursuing value for money, managing risk appropriately, and ensuring transparency in the operation of the public entities concerned. While it is possible that such savings would not be entirely offset, appropriate structures to ensure accountability and good governance are considered an essential requirement, outweighing solely financial consideration.

3.362 The implementation of an advisory body more generally would result in continuing improvements in the efficient operation of the system. It could play an important role in foreseeing and preventing the build-up of backlogs and systematic deficiencies. The work of this Working Group and the financial model underlying its recommendations are evidence of the cost savings that can be achieved through a process of comprehensive review featuring the broad participation of all relevant stakeholders.

ADEQUATE FUNDING OF THE NGO SECTOR

3.363 Protection services are not only provided by the State: information and referral services, early legal advice, counselling and support for vulnerable persons, medico-legal reports for victims of torture and violence, and capacity-building and professional training activities are provided by a range of NGOs, some of which are represented on the Working Group. Such services make an important contribution to ensuring that the rights of protection applicants are safeguarded. They frequently assist in the efficient processing of cases by bringing particular difficulties to the attention of authorities and in assisting in finding solutions in individual cases. With respect to vulnerable applicants, the availability of independent advocates can be essential to persons who may experience difficulties in disclosing intimate or traumatic details to legal

representatives or persons working for State agencies. It should also be noted that NGOs have an important role to play in the implementation of the recommendations contained in this report and the communication of information around that.

- 3.364 Although some of these NGOs also conduct advocacy and lobbying activities in order to bring about policy change, this should not detract from the fact that they operate in partnership with State bodies, providing services that can play a key role in the overall operation of the system. With the withdrawal of the two main external funders of the asylum/migration sector, namely the One Foundation and Atlantic Philanthropies, the sustainability of some of these organisations is in doubt and many NGOs have undergone a process of downsizing, resulting in reduced capacity.

Recommendation

3.365 The Working Group recommends that:

- The State should give consideration to providing appropriate financial support to the NGO sector to continue to provide essential services to protection applicants. In particular this may be facilitated through the allocation of domestic funds as well as the funds to be distributed at the national level via the European Asylum, Migration and Integration Fund (AMIF). Administrative support should also be provided in applying for EU funds more generally.

Implications and costs

- 3.366 The implications of not implementing this recommendation would be the further curtailment of services provided by NGOs, resulting in protection applicants no longer being able to access independent information and support. Vulnerable applicants may no longer be able to access the independent support they need in order to access appropriate services or request special procedural arrangements appropriate to their needs.
- 3.367 The costs of implementing this recommendation are beyond the capacity of this Working Group to quantify. However, the NGOs in this sector are generally of a small size with limited personnel. The funding recommended would be modest in scope in return for an important safety net for protection applicants. The AMIF is an important source of funding that could be used to provide such funding without any additional costs to the exchequer.

COMMUNICATIONS WITH APPLICANTS AT ALL STAGES IN THE SYSTEM

- 3.368 In the consultation process applicants consistently highlighted their frustration with “not knowing” where they were in the process and expressed concern about difficulties with contacting their legal representatives.

Protection Process

- 3.369 While protection applicants are provided with information leaflets (where possible in a language that they understand) explaining how the process operates and their rights, in general those who made submissions to the Working Group indicated that they did not understand the complexities of the protection process and the various stages. Many did not understand the distinction between the protection process and consideration for leave to remain as an immigration status. In particular, the role of judicial reviews was poorly understood, and the fact that if successful this would lead to a rehearing of their case rather than to a grant of status.
- 3.370 The main concerns expressed in respect of communicating with decision-making bodies in the protection process were around the scheduling of interviews and the length of time to receive a decision.
- 3.371 In recent times a significant number of longer term applicants have chosen to withdraw a protection claim in order to move to a leave to remain consideration for which they believe they are eligible due to passage of time. Many have experienced difficulties in contacting and instructing their solicitors to withdraw the protection claim.

Judicial Reviews

- 3.372 The significant delays arising in respect of the judicial reviews were highlighted earlier in this chapter. Many applicants did not understand the length of delays and found themselves “in limbo” for years in a communication vacuum. As nothing was happening in their case, there was no reason for their solicitor to contact them.
- 3.373 More recently communication difficulties have arisen as applicants have sought to withdraw judicial reviews. In this instance also there have been significant difficulties in contacting legal representatives and in some cases they have received a hostile response to their instructions.
- 3.374 The Bar Council’s submission to the Working Group highlighted the difficulties from the legal representative side. Essentially under the “no foal, no fee” system if an applicant withdraws their judicial review proceedings, the legal representatives will not be paid for any outlays incurred or time spent on the case. Potentially this could lead to applicants being billed for incurred costs. It also has implications for the sustainability of the “no foal, no fee” system into the future.

Leave to Remain Consideration

3.375 Similar concerns were raised in communications about the time frame of leave to remain considerations, although it should be noted that in recent times there has been a prioritisation and acceleration of the processing of leave to remain decisions, especially for those in the system for a lengthy period. Historically, there was considerable frustration that there was no indicative time frame for when decisions would be processed.

Understanding the system

3.376 At the present time SPIRASI provides information on the system to new applicants in Baleskin Reception Centre. Other NGOs also assist applicants with advice and outreach throughout the process. Legal representatives (Legal Aid Board and private practitioners) also provide information on the process although, due to the legal complexities, it is frequently not well understood by applicants. All the actors have a role going forward to address the information and understanding deficit and consideration could be given, under para. 3.365 to fund and support these services.

Communication with Decision-Making Bodies

Solutions in Train

3.377 Under section 13 (12) of the Refugee Act 1996, where ORAC has not issued a decision within six months of the application date, it must, upon request from the applicant, provide him/her with information on the estimated time within which a recommendation may be made. This estimate, however, does not of itself oblige ORAC to make a recommendation within that time. There is no similar legislative provision applicable to the RAT.

Communication with Legal Representatives

3.378 It is hoped that the progress in dealing with the backlog in judicial review proceedings will address some of the historic problems. It is clear that legal representatives are bound to take a client's instructions, yet applicants feel "very concerned" in giving instructions that they perceive might anger their solicitor. Training of legal representatives could help highlight and address the difficulties experienced by applicants when there are no responses to their calls or efforts to contact their solicitor. NGOs also have a role in advocating for and assisting applicants in the interactions with legal representatives. Training and support could be provided to NGOs that provide these services. A more speedy process resulting from the implementation of the proposed single procedure will clearly improve the situation for applicants going forward, as most of the communication problems stem from their spending long periods at different stages in the system.

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Recommendations

3.379 The Working Group recommends that:

- Applicants should be able to personally access information with State agencies on time frames applicable to the processing of their case.
- Any necessary IT and administrative supports should be provided for this purpose.

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Implications including costs

3.380 Implementing these recommendations would ensure that applicants better understand the system and the stage that their claim is at. The costs of these recommendations would depend on the extent of the IT and other administrative supports identified by the bodies concerned, and cannot be assessed at this stage.

Chapter 4 – Suggested Improvements to Living Conditions in Direct Provision Accommodation Centres

A. INTRODUCTION

- 4.1 This chapter and the following chapter consider the receptions conditions for protection applicants in the State. This chapter identifies issues of concern relating to the conditions in which residents in Direct Provision accommodation centres live, and makes a series of recommendations for practical improvements aimed at showing greater respect for their dignity and improving their quality of life. Chapter 5 examines the supports (financial, educational, health care, etc.) available to applicants and makes recommendations for improvements, again with the same aim – greater respect for their dignity and improving the quality of their life.
- 4.2 The implications of the High Court judgment in “CA and TA” delivered on 14 November 2014²²⁹ are also considered. The applicants in the proceedings were a mother and child residing in an accommodation centre and they challenged the legality of Direct Provision. The main grounds of their challenge were:
- (1) that it is a breach of their fundamental human rights,
 - (2) that it breaches Article 15.2.1 of the Constitution because it is an administrative scheme without a legislative basis, and
 - (3) that the Direct Provision allowance is ultra vires the Social Welfare Consolidation Act 2005.
- 4.3 Their application failed on the second and third grounds but succeeded in part on the first ground, with MacEochaidh J finding that some aspects of the House Rules were unlawful.²³⁰ The Court also found that the complaints procedure required an independent layer. It is understood that the applicants have lodged an appeal to the Court of Appeal against all of the High Court’s findings with the exception of those relating to: the aspects of the House Rules which it found to be unlawful; and the absence of an independent complaints procedure. It is understood that the State has lodged a cross appeal in relation to these findings. It is these findings that are considered here.

229 CA & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

230 In relation to the second ground it failed on the facts of the case and in the way in which the case was presented. The Court left open the possibility that Direct Provision may breach ECHR rights.

B. SOME BASIC INFORMATION ON THE ACCOMMODATION STOCK, THE RESIDENTS AND THE REGIME

ACCOMMODATION STOCK

- 4.4 The accommodation stock currently comprises the Baleskin Reception Centre in Dublin, in which protection applicants who wish to avail of Direct Provision are accommodated for a number of weeks before being dispersed to one of 33 accommodation centres across 16 counties with a capacity of 5,107 bed spaces.²³¹ Two of the accommodation centres are self-catering and are used mainly to accommodate people deemed by RIA to be particularly unsuited to communal living.²³² Their capacity is 112 persons (just over 2% of the total capacity).²³³
- 4.5 The accommodation centres are, for the most part, mixed centres accommodating families and single people. There are, however, two family-only centres and six single-only centres (one of which is mixed, with the other five being for single men). RIA informed the Working Group that it has recently re-profiled a centre as a female-only centre and is in the process of identifying women who may wish to reside there and offering them transfers.²³⁴

ORIGIN OF THE STOCK

- 4.6 Only three of the centres were built with the purpose of accommodating protection applicants. They account for approximately 16% of capacity.²³⁵ The majority are buildings that were designed originally for different purposes, generally aimed at short-term living including hotels, hostels, boarding schools and holiday homes. Because of this, considerable variation occurs between centres in terms of the type of accommodation units allocated to residents – some are allocated self-contained units while others are allocated a bed in dormitory-style accommodation.

²³¹ Position as of 16 February 2015 as provided by RIA.

²³² These self-catering centres are essentially apartment blocks with residents doing their own shopping and cooking. As accommodation only is supplied, the Direct Provision allowance rate is increased in line with that of the appropriate personal/family rate of SWA, less a standard deduction of €32/€40 per week in respect of the person's contribution towards accommodation costs. These centres are exceptions within Direct Provision and are used as step-down facilities or to accommodate persons deemed by RIA to be particularly unsuited to communal living.

²³³ Position as of 16 February 2015 as provided by RIA.

²³⁴ RIA has informed NGOs that work with victims of domestic, sexual and gender-based violence of the opening of the centre to give them an opportunity to identify women who may wish to transfer to the centre.

²³⁵ Position as of 16 February 2015 as provided by RIA.

TYPES OF ACCOMMODATION UNITS

4.7 The units can be categorised into three broad types:

1. units comprising a bedroom (or, in some limited cases adjoining bedrooms) that are allocated to a family and either are en-suite or have access to a bathroom generally designated for the sole use of the family (e.g. hotels, hostels, former convents) – no separate private living space is available; instead recreational space is provided in communal rooms for use by all residents,
2. units comprising a bedroom (or in a small number of cases dormitory-style rooms) that are allocated to unrelated single residents (e.g. hotels, hostels, former convents) – these can either be en-suite or have access to communal bathrooms; recreational space is provided in communal rooms for use by all residents,
3. self-contained units (i.e. holiday homes, mobile homes) that are generally allocated to families. While these units may have cooking facilities, they are not in use for the most part due to the full board nature of Direct Provision and the limited finances available to residents.

4.8 Approximately 75% of the bed capacity of the centres is within units that are essentially bedrooms, or, in a limited number of cases, adjoining bedrooms created to accommodate larger families or families where the gender mix requires separate bedrooms.²³⁶ The balance of the capacity is in self-contained units. Due to the nature of the stock, the majority of families are accommodated in bedrooms while the majority of unrelated adults are accommodated in multi-occupancy rooms.

4.9 The Working Group notes that due to the falling application numbers RIA has, in recent years, been able to improve standards for families by, for example, ensuring that two families (two single parents and their children) are not required to share a bedroom, and by ensuring that families have either an en-suite or access to a bathroom designated for family use only. These positive developments are not, however, embedded as minimum standards and are at risk of being undone by increasing application numbers.

OWNERSHIP AND CONTRACTUAL OBLIGATIONS

4.10 The stock is in the main privately owned, with seven centres in State ownership. In the case of the privately owned centres, RIA contracts-in from commercial entities all the services required including accommodation, catering, housekeeping, etc. for a fixed period of time, generally no longer than 18 months. A similar approach is applied in relation to the State-owned centres. See Appendix 8 for details of the ownership of the each centre, its contracted capacity and the length of time that it has been in use as an accommodation centre.

4.11 The contractual obligations on the operators of the accommodation centres relate for the most part to the provision of accommodation, housekeeping services and food,

²³⁶ Based on analysis of the capacity of the different types of centres as set out in the 2013 Annual Report.

including compliance with all relevant statutory provisions such as fire safety, other building regulations and food hygiene regulations. Other obligations of note include the obligation to ensure that members of staff adhere to RIA's code of practice for persons working in centres;²³⁷ that a child protection policy is in place and enforced; and that all staff are subject to Garda vetting. See Appendix 9 for a sample of the contract entered into between accommodation providers and the Minister for Justice and Equality.

- 4.12 A striking aspect of the Irish arrangements for the reception of applicants is that not-for-profit organisations do not operate any of the accommodation centres. This contrasts with other European countries, where not-for-profits play a significant role in the provision of such facilities on behalf of the State. The potential benefit of the not-for-profit model is that profits are reinvested in the facility rather than paid out to shareholders. It is of course open to such organisations, when the opportunity arises, to submit a tender to operate a centre.

FINANCIAL COST OF DIRECT PROVISION

- 4.13 The cost of Direct Provision for 2014, with 4,364 residents at year end and 5,097 beds, was €53.217m, continuing the very noticeable downward trend in the cost of the system in recent years. In 2008, with the number of residents at year end at 7,002, the cost was €91.47m. Table 4.1 breaks down the 2014 costs by reference to the type of centre.

Table 4.1: 2014 costs by reference to the type of centre

Type	Explanation	Spend	No. of beds
Commercial	25 centres commercially owned	€43.684m	3,835
State-owned	Seven centres owned by the State	€6.901m	1,150
Self-catering	Two non-Direct Provision commercially owned centres	€0.486m	112
Pre-school	Payments for wages, consumables, etc. in two pre-schools	€0.101m	
Additional costs (including gas, electricity, oil, phone, water, waste, sewerage, OPW, etc.)	Direct spending by RIA on additional costs in State-owned centres	€1.972m	
Transport ²³⁸	Direct spending by RIA on transport of protection seekers on dispersals around country.	€0.046m	
Miscellaneous	Payments for nappies and miscellaneous costs.	€0.027m	
Total		€53.217m	5,097

237 RIA (2005), 'Code of Practice for Persons Working in Accommodation Centres', www.ria.gov.ie

238 This represents direct spending by RIA on costs in relation to transport to reception centres and onwards on dispersal, to accommodation centres. Individual centres also provide transport (e.g. into local town or city) for resident protection seekers but this cost is subsumed into the overall contract price.

THE RESIDENTS²³⁹

- 4.14 As of 16 February 2015 there were 4,286 residents (including 679 with some form of status) accommodated in the 34 centres. They are a diverse group in terms of nationality, gender, age and family status, as detailed below. They also, of course, come from different cultural, religious and educational backgrounds, and have different interests and health needs. The most striking statistics relate to the length of time that many have spent in Direct Provision; 43% of the residents have lived in the Direct Provision for more than five years.

NATIONALITY

- 4.15 Over 90 nationalities are represented in Direct Provision. As of 16 February 2015 the top five nationalities were as given in Table 4.2.

Table 4.2: Top five nationalities		
	Nationality	% of Direct Provision population
1.	Nigeria	24%
2.	Pakistan	9%
3.	DR Congo	8%
4.	Zimbabwe	7%
5.	South Africa	4%

GENDER AND FAMILY STATUS

- 4.16 As of 16 February 2015, adult males accounted for 38% of the residents with adult females accounting for 28% and children accounting for 34%. Of the children, some 594 are recorded as having been born in the State.
- 4.17 There were 814 family units. All children in accommodation centres are legally in the care of their parent or guardian. While there are no separated children living in the centres, there are some age-disputed minors, but no statistics are readily available.²⁴⁰

LENGTH OF TIME

- 4.18 As of 16 February 2015 the length of time that the residents had been in the system was as given in Table 4.3.

²³⁹ Statistics provided by RIA as of 16 February 2015.

²⁴⁰ "Age-disputed minor" refers to a protection applicant who claims to be under 18 years but who has been assessed as being an adult in accordance with the relevant statutory provisions.

Table 4.3: Length of time of residents in the system

Less than 1 year	23%
1–2 years	9%
2–3 years	7%
3–4 years	8%
4–5 years	9.5%
5 years or more	43.5%

4.19 The median duration of stay from date of initial protection application is 51 months.

STAGE OF THE SYSTEM²⁴¹

4.20 Of those living in accommodation centres the majority, 2,140 residents, are applicants in the protection process. There are, however, 890 residents at the leave to remain stage, 577 residents who had been served with deportation orders, and 679 residents who had been granted some form of status. The last number is explained by the inability of recent status residents to find accommodation outside the centres reflecting the experience of many people in the general population at the present time. In addition, there are 154 children in respect of whom applications for protection or applications to have them included in an existing family application have not been made at any stage by their parent(s) or guardian(s). Ireland is somewhat unusual in continuing to permit those who are subject to deportation orders to avail of its reception arrangements for protection applicants.

MAIN FEATURES OF REGIME IN ACCOMMODATION CENTRES

OPEN CENTRES

4.21 The accommodation centres are open centres in the sense that residents are not in detention. They are free to come and go as they wish subject to rules relating to notifying management of intended overnight absences.²⁴² Unexplained absences may result in a resident's bed space being reallocated and the withdrawal of their weekly allowance.

DISPERSAL DECISIONS

4.22 As mentioned above, protection applicants who take up the offer of Direct Provision are accommodated in the Baleskin Reception Centre in Dublin initially, after which

²⁴¹ Position as of 16 February as provided by INIS.

²⁴² These rules have been found to be unlawful in *C.A. & anor. v The Minister for Justice and Equality & Ors.* [2014] IEHC 532.

time they are dispersed to an accommodation centre. The dispersal location is a matter for RIA, and the Working Group has been informed that the decision is made largely on the basis of family composition and available bed spaces. Protection applicants do not have any input as such into the decision-making process.

HOUSE RULES

- 4.23 While residing in accommodation centres, residents are subject to House Rules intended to ensure the safety of all residents.²⁴³ As mentioned above, aspects of these Rules have been found to be unlawful.²⁴⁴ This is discussed later in this chapter.
- 4.24 Centre managers are responsible for ensuring compliance with the Rules. The most recent iteration of the Rules dates from 2009 and is the outcome of a review process involving various stakeholders including accommodation providers and NGOs.²⁴⁵ They are available in 11 languages, reflecting the main nationalities of residents. Given the importance of the Rules to the daily experience of those living in the centres, it is useful to identify the key provisions here relating to the services that residents can expect and the regulations that apply.

Services that a resident can expect

- 4.25 According to the Rules, a resident can expect:
- respectful treatment;
 - clean, safe, hospitable accommodation that may be monitored by security cameras in the interests of safety;
 - a varied and nutritious breakfast, lunch and dinner with ethnic food preferences catered for where possible and practical;
 - medical dietary needs catered for;
 - 24 hour refreshments in the form of tea-and coffee-making facilities and drinking water;
 - babies' cots and bedding and infant formula and baby foods for infants;
 - information on local schools and help to get school places; healthy lunches that are varied and nutritious for school-going children;
 - washing and showering facilities, laundry and ironing facilities;
 - adequate heating in bedrooms and communal rooms;
 - bedding and towels, supplies of toiletries;
 - information on leisure facilities provided at reception, and in so far as any facilities are provided within centres they are to be free of charge.

²⁴³ Available from www.ria.gov.ie.

²⁴⁴ C.A. & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

²⁴⁵ Two NGO participants submitted reservations on the final text.

Obligations on residents

4.26 The obligations placed on residents are to:

- treat others with respect and obey the law;
- comply with the centre manager's instructions in relation to occupying/vacating the room (residents may be required to move rooms in order to ensure full use is made of available bed spaces);
- keep the room clean, tidy and aired;
- comply with prohibitions on noise after certain times, pets, alcohol, smoking, illegal drugs, storing food in the room, cooking in the room, using electrical appliances in the room without permission;
- cooperate with room inspections, which may be unannounced;²⁴⁶
- comply with visiting times and the prohibition on visitors in areas other than designated areas;²⁴⁷
- notify the centre manager of any planned overnight absence (in the event of persistent absence the room may be reallocated by RIA and the centre manager is required to notify the community welfare service as the entitlement to the Direct Provision allowance may be affected).²⁴⁸

Rules relating to children

4.27 Although all children in the centres are legally in the care of their parent(s) or guardian(s), the Rules contain extensive provisions in relation to the care of children. For example, the Rules inform parents and guardians that:

- it is forbidden to leave a child under the age of 14 years alone or unattended in the centre or when they go out for whatever reason;
- children under 14 years cannot be left in charge of younger children;
- children under 18 years must not be left without a parent or guardian between the hours of 11pm and 8am;
- the parent/guardian must let the centre known in advance when he/she has made arrangements for children to be taken care of by another responsible adult.

4.28 These rules relating to the supervision of children are particular to Direct Provision. There is no statutory or child protection guidance for the general population regarding the age at which children can be left alone or unattended. Parents in the general population are expected to make individual judgements regarding the maturity of the

²⁴⁶ This aspect of the Rules has been found to be unlawful; C.A. & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

²⁴⁷ The ban on visitors in private quarters has been found to be unlawful; C.A. & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

²⁴⁸ The requirement to provide advance notice of overnight absences has been found to be unlawful; C.A. & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

child and the circumstances, e.g. going next door or going into town; the length of time that the child would remain unattended is also a relevant factor.

- 4.29 The Rules contain warnings to parents or guardians that if the centre management sees that a child is not being adequately cared for they will tell the relevant authorities, will keep a record of it and will send a copy to RIA. The RIA Child Protection Policy is referenced in the Rules.²⁴⁹

Issues of concern that may give rise to a report to the authorities being made under the terms of that Policy include leaving children under the age of 14 years unsupervised or neglect or abuse including emotional abuse, physical abuse and sexual abuse.

- 4.30 A further provision of note is the warning to parents and guardians that they must tell the centre manager in advance if their child is going to stay overnight somewhere other than the centre. The name and address of the person with whom the child will stay must be given to the manager and also the expected date of return. According to the Rules, failure to do this may lead to the child being reported as a missing person. This requirement links to RIA's Child Protection Policy, which identifies some possible issues of concern in relation to children in accommodation centres that fall outside the normal definition of "abuse". A child missing from the centre is identified as one such issue of concern. According to the Policy, where there is a suspicion that a child is away from their parents/guardian and no reasonable explanation is offered, a referral to the Gardaí and Tusla - the Child and Family Agency should be made immediately.

Complaints procedure

- 4.31 The Rules also set out the complaints procedure for use by residents and management. The procedure allocates the role of final arbiter to RIA. The High Court in "CA and TA" has held that residents are entitled to an independent complaints mechanism and that RIA, in view of its commercial relationship with the accommodation provider and as author of the House Rules, cannot be said to have the necessary independence.²⁵⁰ The judgment is under appeal to the Court of Appeal.

²⁴⁹ Reception and Integration Agency (October 2008); Child Protection and Welfare Policy and Practice Document for the Reception and Integration Agency (RIA) and Centres under Contract to RIA.

²⁵⁰ CA & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

C. ISSUES OF CONCERN RELATING TO LIVING CONDITIONS AND POTENTIAL SOLUTIONS

IDENTIFICATION OF ISSUES OF CONCERN AND PROPOSALS IN CONTEXT

- 4.32 The Working Group has identified a range of issues of concern relating to the conditions in which residents in Direct Provision accommodation centres live having regard to a range of sources including the residents themselves, and makes a series of recommendations for practical improvements aimed at showing greater respect for their dignity and improving their quality of life. The issues of concern are identified in the context of the Government's commitment to introduce a single procedure, the intended effect of which is to greatly reduce the length of the protection determination process and, as a consequence, the length of stay in accommodation centres. The Department of Justice and Equality expects that the single procedure will lead to a final determination in 12 months once the procedure is up and running efficiently. This expected time frame is subject to application numbers. The prospect of the conclusion of cases within this period is very welcome although it does mean that many protection applicants will continue to reside in accommodation centres well beyond the intended duration of stay when Direct Provision was first established. It is also likely that some cases due, for example, to their complexity may not be concluded within 12 months. Moreover, a year in an accommodation centre is a disproportionately long time in the life of a child protection applicant. It should also be noted that a significant number of existing residents will not benefit from the single procedure.
- 4.33 The issues of concern and recommendations are also identified in the context of solutions identified in chapter 3 for persons who are a long time in the system:
- persons awaiting decisions who have been in the system for five years or more from the date of initial application should be granted some form of status as soon as possible and within a maximum of six months from the implementation start date subject to certain conditions, and
 - persons with a deportation order who have been in the system for five years or more from the date of initial application should have their deportation order revoked as soon as possible and within a maximum of six months from the implementation start date subject to certain conditions.
- 4.34 Implementation of these solutions has the potential to affect 1,480 residents in accommodation centres. It has to be remembered, however, that a significant proportion of current residents who fall outside the time threshold for these solutions

have also spent lengthy periods in Direct Provision and are without any immediate prospect of a resolution of their situation.

- 4.35 The implementation of the single procedure and a solution for those in the process for five years or more has the potential to free up space within accommodation centres and allow for some improvement of the conditions of those remaining and also for new arrivals. Two emerging issues outside the remit of the Working Group may militate against this. They are (i) the increase in the number of protection applications and (ii) the acute shortage of affordable accommodation in the State.
- 4.36 As noted in chapter 1, a total of 1,448 applications were received in 2014 as compared with 946 for 2013, equating to a 53% increase. This trend has continued into 2015, and as of 16 February 2015 applications were 138% ahead of the same period in 2014. It is estimated that Ireland will receive approximately 3,000 applications by the end of 2015.
- 4.37 Applications have continued to trend upwards in 2015, with a further significant increase reported in January compared with the same period last year.
- 4.38 The current shortage of accommodation across the State, but particularly in Dublin and in other cities, affecting the general population is also affecting residents within accommodation centres who have been granted some form of status. Although entitled to access mainstream housing supports, it is proving very difficult for them to source accommodation in the community. As noted above (at para. 4.20), 679 residents with status, in many cases for several months, continue to live in centres. The issue of how persons with status might be assisted in making the transition from Direct Provision to the community is considered in chapter 5.
- 4.39 These issues have the potential to put pressure on the availability of spaces within accommodation centres and may require RIA to source new providers to ensure that it can meet its responsibility to provide accommodation to any protection applicant who seeks it.
- 4.40 Although the demand for “an end to Direct Provision” was outside our terms of reference, there is no doubt but that if it were abolished now the challenge of finding suitable and affordable accommodation for the current population in Direct Provision (and for future applicants) would indeed be daunting given the acute shortage of such in the State at present.

CONCERNS ARISING FROM LENGTH OF STAY IN ACCOMMODATION CENTRES

- 4.41 As noted in chapter 2, length of time has been identified by residents as the key concern – it causes or exacerbates all other concerns around life in an accommodation centre.
- 4.42 This message from residents was echoed by the accommodation providers who made oral submissions to the Working Group. All emphasised the importance of addressing the length of time issue, identifying it as the major source of frustration and despair

on the part of residents. One provider described life within centres as “a hellish existence” for those in the system for a lengthy period of time. Another referred to the great expectations of people on arrival giving way to despair due to the length of time they have to wait for a final decision.

- 4.43 Those who work with residents, including health and social care personnel and social workers, have voiced similar concerns that Direct Provision is not a healthy environment for children to grow up in and is not conducive to normal family life, particularly when used for protracted periods of time.²⁵¹ Such concerns are shared by the Irish Human Rights and Equality Commission and others including the Special Rapporteur on Child Protection, as noted in chapter 1.²⁵²

Emerging solutions

- 4.44 For future applicants the solution to the length of time problem lies in the early enactment of the International Protection Bill and the implementation of an adequately resourced single procedure as quickly as possible thereafter.
- 4.45 For existing applicants the implementation of the solutions identified at paras. 3.128 and 3.134 aimed at ensuring that those in the system for a lengthy period receive a decision on their status within a defined period is critical.

CONSIDERATION OF GRADUATED APPROACH

- 4.46 As noted above, notwithstanding the two initiatives mentioned, some applicants will continue to spend significant periods of their lives in Direct Provision. With this in mind the Working Group considered whether a graduated approach should be developed whereby those in Direct Provision for longer would have the opportunity to benefit from better physical conditions that would show greater respect for their dignity and improve the quality of their life. It noted that such a graduated approach could also be applicable to the progressive attainment of supports (e.g. access to the labour market, education opportunities) by protection applicants.
- 4.47 In the case of single persons a graduated approach could mean being offered a single room after a certain period, e.g. 12 months. In the case of families it could mean being offered family quarters with access to a communal kitchen or a self-contained unit with cooking facilities after a certain period, e.g. six or 12 months. This thinking informs some of the recommendations that appear later in this chapter concerning, for example, living arrangements for single people. In the case of families the Working Group identified some practical obstacles to structuring Direct Provision along these lines. In particular, the mix of stock at present and the dispersed location of centres

251 HSE consultation feedback to Review Group on Protection System (24 February 2015); Submission received from Ms Maeve Foreman, Assistant Professor in Social Work, School of Social Work and Social Policy, Trinity College Dublin and Dr Muireann Ní Raghallaigh, Lecturer in Social Work, School of Applied Social Science, University College Dublin and endorsed by the Irish Association of Social Workers.

252 Irish Human Rights and Equality Commission's Policy Statement on the System of Direct Provision 2014; [http://www.ihrec.ie/Seventh Report of the Special Rapporteur on Child Protection](http://www.ihrec.ie/Seventh%20Report%20of%20the%20Special%20Rapporteur%20on%20Child%20Protection), a report submitted to the Oireachtas, Dr Geoffrey Shannon; <http://www.ihrec.ie/>

could, for example, very likely mean that families would be offered a better unit in another region of the country and would be faced with the choice of uprooting children who may have settled in their new school, or forgoing the better accommodation. The Working Group took the view that suitable alternatives are, therefore, not available within the current stock for families to genuinely benefit from a graduated approach. These considerations inform the recommendations that appear later in this chapter in relation to families and children, which centre on working towards ensuring that all families have access to cooking facilities and private living space aimed at allowing them to lead as normal a family life as possible in the circumstances in which they find themselves.

CAP ON LENGTH OF TIME SPENT IN DIRECT PROVISION

- 4.48 The Working Group considered the question of whether a cap should be placed on the length of time a person may spend in Direct Provision. With the length of stay in Direct Provision being a direct consequence of the length of time that a person spends in the system awaiting final resolution of their case, it concluded that the solution lies in the implementation of the recommendations aimed at reducing long stays in the system now and into the future (paras. 3.128, 3.134, 3.163 and 3.166). Those recommendations are based on the principle that no person should spend five years or more in the system.

PHYSICAL CONDITIONS

Physical space for exclusive occupation by residents

- 4.49 Members who visited centres invariably described the accommodation units, in particular those that are in essence bedrooms or adjoining bedrooms, as cramped and very cluttered with inadequate storage and some of unsuitable design, e.g. with low eaves with beds placed beneath. Members noted rooms that were unsuited to the number of current occupants, but that were officially considered to have space for additional occupants.
- 4.50 It was noted that RIA when procuring accommodation focuses on procuring bed spaces and calculates the capacity of individual accommodation units in accordance with the statutory definition of overcrowding. Under that definition a bedroom is deemed to be overcrowded if:
- each occupant of a bedroom has less than 11 cubic metres (4.65 m²), or
 - two persons aged 10 or more of the opposite sex are sleeping in the same room (excluding couples).²⁵³
- 4.51 RIA informed the Working Group that it does not include en-suites when calculating the number of beds permitted in a unit. It also informed the Working Group that ceilings are required to be at least 2.44 m (8 ft) and that where a ceiling is higher than 2.44 m, no account is taken of the space above. This is of importance as some of the old centres, e.g. former convents, have high ceilings which were maintained when converted to Direct Provision use.

²⁵³ Section 63 of the Housing Act 1966.

4.52 While on its face the minimum space allowance compares favourably with other EU Member States that accommodate protection applicants in communal facilities, the value of such comparisons is limited in the absence of a comparison of the length of time that protection applicants remain in such facilities.²⁵⁴ The application of the statutory definition of overcrowding means that the norm within accommodation units is for unrelated single residents to share bedrooms, and for parents and their children to share bedrooms (subject to the rule relating to mixed genders).

4.53 The use of this definition is of concern as it relates to bedrooms only and fails to take account of the multipurpose nature of the room allocated to residents. In many instances the occupants have no other space beyond the bedroom – no private living space, homework/study space or storage space. In the words of one contributor to the consultation process,

“RIA buys bed spaces – bed spaces are for hospital patients – asylum seekers need living spaces.”

4.54 The terms of the contract with accommodation providers reinforce this focus on bed spaces rather than living spaces, requiring the contractor to ensure that each unit contains, at a minimum, *“furniture, fittings and equipment of good quality condition, for sleeping [emphasis added] and for storage, including hanging of clothing”*.²⁵⁵ No reference is made to other basic items such as a chair, table, desk or personal locker. This last is of particular concern. As emerged in the course of the consultation session with young LGBT protection applicants who may be basing their protection claim on their sexual orientation, the lack of an individual locker for the storage of personal items including papers relating to their claim is a cause of real anxiety.²⁵⁶ In the case of family units the lack of a locker to hold medication and other items that might be a danger to children is problematic.

4.55 The space allowance used by RIA contrasts with the Department of Environment, Community and Local Government guidelines for quality housing. Those Guidelines advocate a minimum of 7.1 m² for single bedrooms and 11.4 m² for double bedrooms.²⁵⁷ Further guidance is provided in relation to the size of living spaces and storage areas. In terms of space requirements and room sizes generally, a number of considerations are identified:

- each room should facilitate the range of activities likely to be carried out in that room,
- adequate floor areas and room sizes are important but do not necessarily create good-quality living spaces,
- bedroom spaces should be well proportioned in terms of floor shapes and ceiling heights so as to provide good-quality living environments for occupants,

254 European Migration Network Study (2014), ‘The Organisation of Reception Facilities for Asylum Seekers in Different Member States’.

255 Para. 3.5 and Appendix II of the sample contract with accommodation providers at Appendix 9.

256 Report of Consultation with young LGBT Asylum Seekers and Refugees, 24 February 2015.

257 ‘Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes Sustaining Communities’ (2007); pp. 48–49.

- space provision should be adequate to accommodate appropriate furniture and equipment in each room while allowing free circulation within that area.

4.56 In addition to these concerns around the cramped physical conditions, the multipurpose and multi-occupancy nature of the accommodation units raises concerns around privacy, mental health, family life and child protection and welfare. These are addressed later in this chapter.

4.57 Accommodation providers are required under the terms of their contract to ensure maximisation of capacity in each accommodation unit at all times.²⁵⁸

Recommendations

4.58 The Working Group recommends that:

- In the short term RIA should identify spare capacity within accommodation centres and, subject to contractual obligations, seek to bring it on stream so that the situation of those sharing in cramped conditions can be alleviated.
- RIA should without delay develop a set of criteria for assessing the bed capacity of accommodation units that takes account of the considerations identified in the Department of the Environment, Community and Local Government Guidelines, viz.:
 - each room should facilitate the range of activities likely to be carried out in that room,
 - adequate floor areas and room sizes,
 - spaces should be well proportioned in terms of floor shapes and ceiling heights so as to provide good-quality living environments for occupants,
 - space provision should be adequate to accommodate appropriate furniture and equipment while allowing free circulation within that area.
- Once the revised set of criteria has been developed, RIA should conduct a review of accommodation units with a view to ensuring that their capacity is aligned with the revised criteria in so far as contractual obligations permit.
- RIA should without delay review the minimum requirements in terms of furniture for such multipurpose rooms so that they include furniture suited to sleeping and living, e.g. chair, desk, and adequate storage.
- All single residents sharing rooms and all family units should be provided with an individual locker for the storage of personal items. This should be acted on without delay.
- All centres should, in so far as practicable, provide a secure storage facility for bulky items (e.g. suitcases).

²⁵⁸ Para. 1.2.2.2 of the sample of contract with accommodation providers at Appendix 9.

- The revised set of criteria developed for assessing bed capacity should be incorporated in requests for tender for accommodation centres.

Implications including costs

- 4.59 Increased physical space and appropriately furnished rooms would address the cramped conditions that some residents are living in. Of itself, of course, it would not address the privacy and other issues arising from single adults sharing with other adults or parents with their children. These concerns are discussed and recommendations in respect thereof are identified later in this chapter.
- 4.60 Applying a revised set of criteria for determining the capacity of accommodation units would reduce capacity and increase the per diem rate payable by RIA to accommodation providers. In order to compensate for the loss of capacity, RIA might also need to procure additional accommodation which would be cost increasing. RIA has informed the Working Group that procuring additional stock by way of a full tender would, in its experience, take approximately two years. It must be noted, however, that the introduction of the single procedure and the implementation of the recommendations aimed at resolving the situation of those in the system for five years or more have the potential to free up capacity that could be used to provide increased space to remaining residents. A sudden upsurge in applications numbers could require the revised criteria to be temporarily applied in more limited circumstances in order for the obligation to accommodate all protection applicants who seek to avail of Direct Provision. The question of costs in relation to increased living space for residents is addressed at chapter 6.

Family life and children

- 4.61 A strong theme throughout the consultation sessions with residents was that the living conditions are a substantial impediment to normal family life and parenting. In the words of contributors to the written consultation process undertaken by the Working Group:

“... family has little control over decision making regarding family life.”

“Neither the parents or the children can enjoy privacy. It is also desirable to offer families a minimum of two rooms.”

“It is not normal for children to grow up in a situation where they have not seen their parents cook or where they are not sharing a meal in private.”

“When you have children, it is not easy to instil your own cultural values on them as they end up learning things from other residents.”

“Children don’t have anywhere to play – they play in the four corners of the room.”

“Direct Provision militates against children leading a life integrated in their schools and wider community – difficult to have their friends over to play.”

- 4.62 Similar themes emerged in the consultation session undertaken with healthcare professionals and in the submission endorsed by the Irish Association of Social Workers.²⁵⁹ The Special Rapporteur on Child Protection has said that Direct Provision could not be described as creating a normal family life.²⁶⁰
- 4.63 The Working Group considers that the cramped physical conditions and parents' lack of choice and autonomy in Direct Provision inhibit normal family activities and parenting. Preparing, cooking and eating together are the basic activities of family life but the opportunities to do these activities are very limited; communal cooking facilities have been installed in a small number of centres, but long queuing times are reported; in some other centres there is the possibility of making school lunches with deli counters being set up in the mornings with a selection of fillings etc.; and in one centre (with self-contained units) residents can collect their weekly supplies for breakfast and lunch from an on-site kiosk and prepare those meals in their own homes. The Working Group heard that some residents use their weekly allowance to buy food to cook and supplement the meals provided by the centre. For the most part, however, parents do not have access to cooking facilities, leaving them without the means to maintain culinary traditions or control their family's diet.
- 4.64 As noted earlier in the chapter, the majority of families are accommodated in single or, in some limited cases, adjoining bedrooms without a private living space. This gives rise to parents sharing with their children where the children are under 10 years and single parents sharing with teenagers of the same gender (and in some exceptional cases with teenagers of the opposite gender). No one enjoys privacy. In addition, concerns were expressed during the consultations with residents about the lack of appropriate space to facilitate privacy and intimacy, creating a risk of children becoming sexualised too early.
- 4.65 The Working Group was informed by RIA and Members also observed in the course of visits to centres that there is some statutory "overcrowding" due to the nature of the available accommodation. The current stock of accommodation means that it is not always possible to offer families suitable alternative accommodation when their children reach the age of 10 (and in breach of the gender rule) or when their family grows. In some instances the alternative accommodation offered to meet the family's needs may require the family to relocate to a different town or region. As a consequence families may be faced with making the unenviable choice between accepting better accommodation and sparing their children the trauma of changing schools. As of 17 December 2014, RIA reported that eight centres had over-10s of the opposite gender sharing. A total of 18 family units were involved.
- 4.66 For families the lack of a separate living space, in combination with the House Rules which forbid parents from leaving their children who are under the age of 14 years alone or unattended in the centre, has the effect of prohibiting normal child

259 HSE consultation feedback to Review Group on Protection System (24 February 2015); Submission received from Ms Maeve Foreman, Assistant Professor in Social Work, School of Social Work and Social Policy, Trinity College Dublin and Dr Muireann Ní Raghallaigh, Lecturer in Social Work, School of Applied Social Science, University College Dublin and endorsed by the Irish Association of Social Workers.

260 Fifth Report of the Special Rapporteur on Child Protection, a report submitted to the Oireachtas, Geoffrey Shannon; <http://www.ihrec.ie/>

development and disempowering parents. Normal development requires that adult supervision can occur in an unobtrusive way in the case of children in their middle years (six to 12 years). Such children need periods of privacy and opportunities to play with peers and to manage situations without adult supervision. In the case of teenagers, the development of the need for periods and opportunities to be self-directed becomes stronger and more evident. Behavioural challenges may emerge through frustration at the lack of opportunities for normal development. Placing an obligation on parents to be with their children at all times prevents parents from exercising their own judgement as to their child's maturity and is unreasonable in what is intended to be their home environment. This Rule is considered further at paras. 4.189-4.190.

- 4.67 In terms of specific play, recreational and homework spaces for children and teenagers, the position is mixed. While some centres have playrooms, these tend to be open for limited periods only. As regards homework facilities, just over half of the family centres operate homework clubs while the remainder offer homework rooms. Bearing in mind the prohibition mentioned above on children up to the age of 14 years being unattended in a centre, the use of these rooms is not necessarily practical, with the result that children end up doing their homework in the bedroom shared with their parents and other children, possibly on the floor in the absence of a desk or table.
- 4.68 A further issue of concern arising from the absence of private living space and the cramped conditions is that children do frequent communal areas where adult residents may be socialising, with the consequence that their parents have very little control over other adults with whom they come in contact.
- 4.69 Outdoor facilities for children are dependent on the actual site, with some centres having no on-site outdoor facilities. As noted by some visiting Members, the absence of outdoor recreational facilities is, in some instances, compensated for by parks, beaches and other community facilities close by.
- 4.70 The cramped physical conditions can create additional difficulties for families coping with physical and mental illness or with intellectual difficulties. The case of a child with autism finding the limited space and communal setting very difficult was cited.²⁶¹
- 4.71 A further challenge to normal family life arises in the case of relationship breakdown. In such cases one parent may no longer reside in the centre but may only meet their children in the communal areas of the centre due to the restrictions of guests in private quarters. The Working Group notes that this issue may be addressed to some extent by the State's response to the "CA and TA" judgment referred to at paras. 4.157-4.173.
- 4.72 The cumulative effect of these living conditions, together with the frustrations arising from the lack of opportunity to be a role model and provider through access to employment, can impact the mental and emotional well-being of the parents and have a disempowering effect. It can lead to tensions and a dilution of confidence

261 HSE consultation feedback to Review Group on Protection System (24 February 2015).

and motivation on the part of parents.²⁶² There is also a risk that its effects will be intergenerational with parenting difficulties transferring from one generation to the next.²⁶³

- 4.73 The Working Group considers that it is imperative that steps be taken to ensure that conditions within accommodation centres are more conducive to normal family life. Having regard to the range of concerns identified above, the Working Group considers that self-contained units (including cooking facilities) are most appropriate for families. The Working Group takes the view that the aim must be to improve the mix of stock so that there is sufficient accommodation appropriate to the needs of families. The Working Group makes the recommendations below with this aim in mind.
- 4.74 As some of the recommendations below are aimed at enabling families to cook for themselves, the question of how food supplies could be provided was considered. The Working Group was informed of the system in operation in the Mosney Accommodation Centre at present whereby the management makes supplies for breakfast and lunch available to residents. Taking account of the terms of reference of the Working Group, which are limited to improvements to Direct Provision and the nominal amount of the weekly allowance paid to residents, it is considered that the “Mosney model” could be replicated in other centres and expanded to include supplies for all meals. In order to ensure that the arrangements put in place meet the needs of residents and affords them as much autonomy as possible, the Working Group considers that residents should be consulted by centre management on the arrangements to be implemented for the provision of supplies, and on the range of supplies to be made available. It noted that the management would be able to benefit from economies of scale.

Recommendations

- 4.75 The Working Group recommends that:
- All families should have access to cooking facilities (whether in a self-contained unit or through use of a communal kitchen) and their own private living space in so far as practicable. In order to achieve this:
 - Existing centres comprising units with cooking facilities should implement, in so far as practicable and subject to any contractual obligations, arrangements to facilitate residents cooking for themselves within 12 months of the completion of the final report of the Working Group.
 - Where residents have the option of cooking for themselves, arrangements must be implemented by centre management, in consultation with residents, for the provision of supplies. The option to cook for themselves should run in parallel with a catering option, as not all residents may wish to cater for themselves.

²⁶² HSE consultation feedback to Review Group on Protection System (24 February 2015).

²⁶³ Submission received from Ms Maeve Foreman, Assistant Professor in Social Work, School of Social Work and Social Policy, Trinity College Dublin and Dr Muireann Ní Raghallaigh, Lecturer in Social Work, School of Applied Social Science, University College Dublin and endorsed by the Irish Association of Social Workers.

- Existing centres which do not have units with cooking facilities should implement arrangements within six months of the final report, subject to any contractual obligations, to facilitate parents in making their children’s school lunches or to allow older children to make their own – this could be done by setting up a sandwich-making facility and providing a selection of yoghurts, juices and fruit, etc. at breakfast time in the canteen as is done in some centres.
- A sufficient number of centres should be reconfigured to allow all families use of communal kitchens by end 2016 in so far as practicable, having regard to contractual obligations.
- A sufficient number of centres should be reconfigured to allow all families use of their own private living space by end 2016 in so far as practicable having regard to contractual obligations.
- All requests for tender should specify the requirement for self-contained units (with cooking facilities) and/or family quarters together with communal kitchens.
- All existing centres that host families should install appropriate play, recreation and study facilities in so far as practicable and should ensure access to an on-site or off-site crèche/pre-school.
- All existing centres that host families should enter into partnership agreements with local leisure centres and sports clubs by end of 2015.
- All requests for tender should specify the requirement for adequate recreational space (indoor and outdoor) for children and young people. A requirement to consult with the children and young people who are resident in the centre should be built into the specifications.
- Notwithstanding references to “as far as practicable” in the above, the facilities must be in line with the standards to be agreed under the recommendations at para. 4.226.

Implications including costs

- 4.76 The implementation of these recommendations would allow the State to provide accommodation and facilities that are in the best interests of children and that recognise and protect family life. They would reduce the likelihood of child protection risks. A further positive effect would be that the move towards more units with private living space would make it easier to facilitate visits by guests to private quarters and avoid the difficulties associated with current accommodation types.
- 4.77 The move to communal kitchens in existing centres may encounter some practical challenges including planning issues. Reconfiguring centres to provide communal kitchens and private living spaces would in some cases involve a fundamental reconfiguration of RIA’s accommodation portfolio. It would reduce capacity and

increase the per diem rate payable by RIA to accommodation providers. In order to compensate for the loss of capacity, RIA might need to procure additional accommodation, which would be cost-increasing. It may also encounter planning, fire safety and other issues and require residents to be moved out while the work is being done. RIA informed the Working Group that it was not clear at the time of writing whether all centres would be structurally in a position to effect the proposed changes.

- 4.78 RIA also informed the Working Group that a full tender competition can take upwards of two years and that in view of the considerable competition in the market for self-contained units, the response to a request for tender with such specifications could be limited. A number of accommodation providers who made oral submissions to the Working Group said that they had made some changes to their centres (e.g. installing en-suite bathrooms) and had not encountered any particular difficulties in the planning process.
- 4.79 The question of costs for cooking facilities and private living space for families is addressed at chapter 6.

Living conditions for single people

- 4.80 In the case of single people, 80% are in shared bedrooms of between two and eight people, with 28% in shared rooms of more than two people.²⁶⁴ The proportion sharing with four or more people in dormitory style-rooms that were in some cases designed for teenage boarders is at 2%.²⁶⁵

- 4.81 The challenges of sharing a bedroom for a prolonged period of time are obvious – sharing prevents privacy and creates a barrier to the enjoyment of companionship. These issues were raised consistently in the course of the consultation process. In the words of contributors to the process:

“I live a lonely life here in Direct Provision, I can’t have female or male visitors and I can’t cultivate a relationship.”

“There is no privacy.”

“I have been sharing with four to six people for the past five years.”

- 4.82 In addition, residents have no control over the persons with whom they share; people of different nationality, ethnicity, sexual orientation or religious beliefs may well be required to share. The centre management makes those decisions. Again as noted by contributors:

“There is no choice of who we end up living with.”

“It is a hard way to live, trying to manage with different people of different cultures and background.”

- 4.83 There may be an assumption that people from the same country may be

²⁶⁴ Provided by RIA – position as of 10 February 2015.

²⁶⁵ Provided by RIA – position as of 10 February 2015.

accommodated together when, in fact, in cases of war, for example, these protection applicants may have been in opposing groups or factions in their home countries. This can cause immense tension. Tension may arise where, for example, one resident wishes to set out their prayer mat while another wishes to watch TV. While there are communal spaces in the centres, many residents seem to spend most of their time in their bedrooms. Possible reasons for this that emerged during the visits by Members are that the communal rooms are not inviting and are not always heated.

- 4.84 Sharing can also lead to or exacerbate mental health difficulties. The Working Group heard that residents with particular vulnerabilities, for example those experiencing the effects of trauma including victims of torture, sexual violence or trafficking, find sharing particularly challenging. The needs of vulnerable persons are considered further later in this chapter.
- 4.85 As is the case with families as described above, single people do not for the most part have an opportunity to cook for themselves.
- 4.86 The Working Group is of the view that while such living conditions may be tolerable for a short period of time, single residents should, if in Direct Provision for a lengthy period, be offered improved accommodation in terms of privacy. The Working Group also considers that single people should have the opportunity to cook for themselves if they wish to do so as is proposed for families at para. 4.75.

Recommendations

4.87 The Working Group recommends that:

- In the short term, and subject to contractual obligations, RIA should ensure that available capacity within existing accommodation is brought on stream to reduce the number of single people sharing rooms.
- Single people should be given the right to apply for a single room after nine months and it should be ensured, in so far as practicable, that they are offered a single room within 15 months.
- Existing centres for single people should be reconfigured to provide communal kitchens by end 2016 in so far as practicable, having regard to contractual obligations. The option to cook for themselves should run in parallel with a catering option, as not all residents may wish to cater for themselves. Single people in mixed centres should have the same opportunities as families to cook for themselves.
- All requests for tender for centres for single people should specify the requirement for communal kitchens.

Implications including costs

- 4.88 The provision of private rooms would afford greater respect for the dignity of residents and negate some of the negative physical, emotional and mental health impacts associated with institutional living. It is acknowledged that the practical benefits of this to residents may be limited as the offer of a single room may be in a centre at a considerable distance from their existing location and they may not wish to uproot themselves. The existence of milestones that attract better facilities may have the effect of focusing decision-makers and speed up the determination process.
- 4.89 The provision of private rooms after a defined period of time would, however, be likely to require a fundamental reconfiguration of RIA's accommodation portfolio. It would reduce capacity and increase the per diem rate payable by RIA to accommodation providers. In order to compensate for the loss of capacity, RIA might need to procure additional accommodation, which would be cost-increasing. The move to communal kitchens may encounter planning, fire safety and other issues and require residents to be moved out while the work is being done. RIA informed the Working Group that it was not clear at the time of writing whether all centres would be structurally in a position to effect the proposed changes. RIA also informed the Working Group that a full tender competition can take upwards of two years. A number of accommodation providers who made oral submissions to the Working Group said that they had made some changes to their centres (e.g. installing en-suite bathrooms) and had not encountered any particular difficulties in the planning process. The question of costs is addressed at chapter 6.

Food

- 4.90 The contractual obligations on accommodation providers include a list of obligations in relation to the provision of food, including an obligation:
- to have a qualified chef,
 - to provide nutritious food,
 - to comply with food hygiene regulations,
 - to provide a 28 day menu cycle that reflects the reasonable needs of different ethnic groups, and
 - to meet the reasonable prescribed dietary needs of any person accommodated in the centre.²⁶⁶
- 4.91 They also require cognisance to be taken of Ramadan if the hours of fasting fall outside normal meal times.
- 4.92 The Working Group heard a range of concerns relating to the food provided within centres:

“Most people complain about [the food] after a year in the system.”

²⁶⁶ See sample of contract with accommodation providers at Appendix 9.

“There are many rules and regulations surrounding consumption of food. Residents are not allowed cook or exercise choice. Management will naturally prioritise value for money foods over nutritional value.”

- 4.93 In the course of the consultation sessions some children complained of hunger and said that they were not given enough food. The Working Group noted that kitchen opening times are not necessarily tailored to cater for children returning from school. In one centre, for example, food was provided at 1pm and 6.15pm. As a consequence children were either given reheated food on their return from school or had to wait for the evening meal. This was not the practice in all centres – one centre visited by Members kept the kitchen open during the day, which facilitated children having hot meals on their arrival from school rather than snacks.
- 4.94 Parents of young children cited a lack of control of over when they can wean their babies onto solid food.
- 4.95 Some residents voiced concerns around the lack of healthy food choices and also the suitability of the food for particular medical conditions such as diabetes.
- 4.96 Other concerns related to the food being monotonous, inadequate attention paid to ethnic tastes and a lack of consultation with residents in relation to menu planning. Some residents also raised concerns around hygiene standards.
- 4.97 The Working Group heard that some residents use their weekly allowance to supplement the food provided in the centres.
- 4.98 Inspection reports published by RIA indicate that inspecting compliance with the contractual obligations relating to food is a key component of the inspection regime, with reports containing extensive sections on food hygiene and nutrition, and including specific questions around the appropriateness of the food available for children and infants etc.²⁶⁷ The qualifications of the inspectors to assess these matters, in particular the nutritional value of the food, is not known. In addition, some residents complained to visiting Members that inspectors never sought their views about the menus and food.
- 4.99 The Working Group, noting the commitment contained in the Government’s National Policy Framework for Children and Young People 2014 to 2020 – Better Outcomes, Brighter Futures to “Support Children, young people and their parents to make healthier choices through education, addressing food poverty and ensuring that educational and State institutions providing food and drink to children, whether directly or through franchised services on-site , have a Healthy Foods Policy and provide food that meets basic nutritional standards”, considers that a nutritional audit by a suitably qualified person is required to be carried out to assess food provision.²⁶⁸
- 4.100 In relation to concerns around monotony and menus not suiting ethnic tastes, the Working Group considers that they may arise from the length of time that residents remain in centres and from the large number of nationalities and ethnic groups

267 <http://www.ria-inspections.gov.ie> last accessed 18 March 2015

268 <http://www.dcy.gov.ie>

represented. It would be impossible for any chef to suit the tastes of such a diverse population. Nevertheless, there would be benefit in residents having an opportunity to input to the menu planning – at present the contract does not require residents to be consulted, although this is reported to happen in some centres.

- 4.101 The implementation of the recommendations at paras. 4.75 and 4.87 aimed at allowing residents the option to cook for themselves has the potential to make a significant contribution to resolving the concerns above. In the meantime, however, the Working Group considers that some initiatives should be taken to address these concerns.

Recommendations

- 4.102 The Working Group recommends:

- RIA should engage a suitably qualified person to conduct a nutrition audit to ensure that the food served meets the required standards including for children, pregnant and breastfeeding women, and the needs of those with medical conditions affected by food, such as diabetes.
- Include an obligation in new contracts to consult with residents when planning the 28 day menu cycle.

Implications including costs

- 4.103 The implementation of the recommendation in relation to a nutrition audit would assist in ensuring that children's development needs are met and in improving the general well-being and health of the residents. Inputting to the menu planning would give residents more of a say in a key aspect of their daily lives. In view, however, of the ethnic diversity of the residents it is unlikely that this potential solution will address all concerns. The costs arising from these recommendations would not be significant in the context of the overall cost of the protection system.

Location of some accommodation centres

- 4.104 Some centres are located in rural settings at a distance of several kilometres from a local village and a considerable distance from the nearest large town. Examples include Mount Trenchard (8.5 km from Foynes and 42 km from Limerick city; and Milstreet (2.8 km from Milstreet and 48 km from Cork city).
- 4.105 Public transport links are limited and the bus services provided by some centres (outside of their contractual obligations) operate fixed schedules and may not be available in the evenings or at weekends. In conjunction with the lack of disposable income and the absence of the kind of extended family supports that would be available to most members of the local community, such locations can act as a barrier to residents' participation in activities in the area and access to legal, medical and other supports.

- 4.106 The barrier to participation adds to the boredom and isolation already experienced by residents due to their lack of access to employment and the limited opportunities open to them to gain new skills, and can have negative impacts in terms of their mental and emotional well-being. It can also exacerbate the challenges of living in a communal setting for a lengthy period of time and heighten incidents that might otherwise be capable of being shrugged off as minor irritations. In the case of children, remote locations can act as a barrier to their taking part in after-school activities and the normal leisure activities of their friends and peers including trips to the cinema, playing on the local sports team, etc. Such participation is important for normal child development.
- 4.107 For residents with physical or mental health difficulties, engaging with the kind of specialist services that they require can be difficult and this may discourage or prevent them from continuing with their treatment.
- 4.108 Some contributors to the consultation process said that the isolated location of centres has a stigmatising effect that remains with residents even after they have been granted some form of status and begin to look for a home in the local area.
- 4.109 The Working Group acknowledges that the potential negative impacts of a remote location can be offset somewhat if the physical conditions and the regime within a centre facilitate greater personal autonomy and control. For example, the Mosney Accommodation Centre is 12 km from the nearest sizeable town but transfers to it are much sought after because it offers self-contained family units and is reputed to have a sympathetic management style.
- 4.110 Subject to the Government's dispersal policy, the solution to these issues lies in more centrally located centres with easy access to recreational, educational, medical and other services. Where this is not feasible, contractual obligations on providers should include a requirement to draw up a transport plan specific to the location to meet the reasonable needs of residents (including participation in after-school activities) free of charge – the plan should be drawn up following consultation with residents on their needs and reviewed from time to time. Such an obligation would provide services additional to those falling within the remit of the School Transport Service, the HSE or other transport that would fall to be funded under the Community Welfare Service.

Recommendations

4.111 The Working Group recommends that:

- In the case of existing providers that provide a transport service for residents, the plan should be reviewed to ensure that it meets the reasonable needs of residents.
- In the case of existing providers who do not already provide a transport service, an obligation should be included in new contracts to draw up a transport plan specific to the location to meet the reasonable needs of residents (including participation in after-school activities) free of charge – the plan should be drawn up following consultation with residents on their transport needs and reviewed from time to time.

- It should be ensured that future requests for tender for accommodation specify that centres are sought in locations with easy access to recreational, educational, medical and other services, or in the alternative it should be specified that a transport plan specific to the location must be drawn up to meet the reasonable needs of residents (including participation in after-school activities) free of charge – the plan should be drawn up following consultation with residents on their transport needs and reviewed from time to time.
- Compliance with these contractual obligations should be monitored as part of an expanded inspection process referred to at para. 4.226.

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Implications and costs

- 4.112 The proposed solutions would remove a barrier to residents’ participation in local activities and access to support services and, in the case of children, access to after-school activities, with potential benefits for their well-being and for the atmosphere within centres.
- 4.113 RIA informed the Working Group that in its experience, however, the number of providers who wish to enter this market is limited. As a consequence more centrally located centres may not be offered in response to any request for tenders. The alternative specification of a tailored transport plan would go some way towards addressing the issues associated with some remote locations. Some accommodation providers already, of course, provide such a service and those who made oral submissions to the Working Group indicated an openness to making such provision.
- 4.114 Dispersal of protection applicants is current Government policy and means that applicants must be dispersed as evenly as possible throughout the country to avoid undue pressure of health and education services in specific major conurbations. This can also mean dispersal to rural areas. Moving to a more centralised policy would need advance consideration of the risk of critical service provision for protection applicants and the broader community.
- 4.115 In relation to the recommendation for more centrally located centres, RIA has informed the Working Group that it appears reasonable to assume (based on the acute shortage of affordable accommodation in the State) that there would be additional costs if it were competing in this type of volatile marketplace. RIA believes that it would not be possible to accurately quantify the total costs of moving wholly to providing accommodation in larger urban areas. A number of factors would have to be determined by the market place, viz.:
- the ready availability of suitable premises,
 - the extent of the capital works required,
 - the flexibility of the Department to accept or reject urban accommodation.
- 4.116 The question of costs in relation to the provision of transport is addressed at chapter 6.

Security arrangements

- 4.117 Some issues of concern relating to the security arrangements were raised during the course of the consultation process. Some contributors commented on the extent of CCTV in public areas and the feeling of always being monitored. With guests (including separated parents, social workers, legal representatives and other advocates) prohibited from visiting residents in their private quarters, confidentiality and privacy are not guaranteed. Some residents voiced concerns around inadequate CCTV coverage.
- 4.118 A security barrier and attendant security guard were noted in one centre visited by Members and it was suggested that this added to the sense of isolation despite it being located on the outskirts of a large town.
- 4.119 Instances of harassment of visitors by security guards and a lack of awareness on the part of security guards of cultural diversity issues were also raised.
- 4.120 The Working Group acknowledges that security arrangements play a necessary role in ensuring the safety of residents and also staff working in the centres but believes that they must be proportionate to the risks that have been identified. The centres are home to the residents and it is essential that they do not feel that they are under surveillance as they go about their daily lives.
- 4.121 The Working Group has identified a number of specific solutions below in relation to these issues of concern, but more broadly the recommendation in relation to the development of a standards-based approach to accommodation centres (discussed at paras. 4.212-4.227) including in relation to the qualifications and expertise required on the part of staff and others working in centres will be important in ensuring that these concerns are addressed.

Recommendations

4.122 The Working Group recommends:

- RIA to conduct a review of the security arrangements across the accommodation stock to ensure that the arrangements (including physical barriers and gates, use of security guards, use of CCTV) are proportionate to the security risks that have been identified.
- Include in all new contracts an obligation to ensure that security arrangements (including CCTV, security barriers and gates, use of security guards) are proportionate to the security risks that have been identified.
- Include within new contracts an obligation that security personnel must have undergone awareness training in equality and diversity issues before they come on-site.
- Ensure that rooms without CCTV are available for receiving visitors, social workers, legal representatives and other advocates. It is noted that the response to the

finding of the High Court in CA and TA that the outright ban on visitors in private quarters may go some way towards addressing this issue.

- Compliance with these contractual obligations should be monitored as part of an expanded inspection process referred to at para. 4.226.

Implications including costs

- 4.123 The implementation of these recommendations would ensure that the appropriate balance is achieved between the need to ensure the safety of residents and to respect their privacy. Requiring security personnel to undergo equality and diversity training would ensure that they have a better understanding of residents and are better equipped to prevent or resolve tensions. The costs arising from these recommendations are not significant in the context of the overall cost of the protection system.

OPERATIONAL AND MANAGEMENT ISSUES

Complaints procedure including implications of “CA and TA” High Court judgment

“Residents are fearful that there will be adverse consequences if they complain.”

- 4.124 This statement by a contributor to the consultation process reflects frequently-voiced concerns by residents that if they complain they will not be heard and will put themselves at risk of being regarded as difficult and transferred involuntarily to another centre.
- 4.125 As mentioned at para. 4.31, the House Rules set out the complaints procedure for use by residents where they think that the centre manager is not providing the expected services and for use by the centre manager where they think that a resident is not complying with the Rules. The procedure is described in the Rules as a graduated one that encourages resolution at centre level in the first instance through informal contact between the parties. Where this is unsuccessful, the next stage is the making of a formal complaint in writing (in the resident’s own language if they wish) at local level. If the complainant is not satisfied with how their formal complaint is handled they may make a complaint to RIA, in which case the complaint will be assigned by the Operations Manager to “an appropriate person” and all parties will be given an opportunity to make submissions. Under the procedure, RIA’s decision is stated to be binding on all parties with no further avenue of appeal available. The Court in “CA and TA” found this aspect of the procedure to be unlawful. It found that the Applicants (therefore all residents) must be entitled to an independent complaints procedure.²⁶⁹ It stated that RIA, in view of its commercial relationship with the accommodation provider and as author of the House Rules, could not be the final arbiter in a dispute between the residents and the commercial accommodation provider.

²⁶⁹ CA & anor. v The Minister for Justice and Equality & Ors. [2014] IEHC 532.

- 4.126 Information in relation to the number and outcome of formal complaints to RIA are set out in its Annual Report. According to its 2013 Report, six complaints from residents to centre managers were made, with four upheld.²⁷⁰ The low number of recorded complaints has been identified by some NGOs as evidence of a lack of confidence on the part of residents in the complaints procedure, and RIA itself, has acknowledged that it does not regard the low number as indicative of a high level of satisfaction.
- 4.127 The Working Group considered how RIA's internal complaints procedure could be improved in order to boost residents' confidence in it. The Working Group noted that the key to addressing concerns around a lack of impartiality and fears of adverse consequences arising from making a complaint is the relationship on the ground between residents and management; what is required is a management culture that is open to listening to residents and well equipped to prevent or resolve the tensions that inevitably arise in a communal setting. Ensuring that residents understand their rights and obligations under the Houses Rules is also important, as is ensuring that the complaints procedure is accessible for those who may not speak English fluently or cannot write in English, and to children and young people. Also important is that the person handling the complaint within RIA is perceived as impartial. This requires that the officer be someone who is not involved in operational matters.
- 4.128 The Working Group was briefed by officials from RIA on the changes that it intended to introduce to address the Court judgment in relation to the absence of an independent complaints mechanism. RIA proposed two alterations to its existing complaints procedure:
- (1) the addition of a further stage providing for a formal appeal to an independent appeals officer appointed by the Minister for Justice and Equality – the officer will be required to consider all the papers relating to the complaint concerned and his/her decision will be binding on all parties,
 - (2) the provision of a final appeal against the transfer of a resident following a breach of the Rules to be made to the independent appeals officer – this appeal would not have suspensive effect where RIA believes that there is an imminent threat to the safety and security of a centre.

Proposal to extend the remit of the Ombudsman and Office of the Ombudsman for Children

- 4.129 The Working Group also had the benefit of a number of submissions including a joint submission from the Office of the Ombudsman and the Office of the Ombudsman for Children advocating that the jurisdiction of both Offices be extended to include complaints from residents in relation to the services provided in accommodation centres.
- 4.130 Both Offices have called for their remit to be extended to encompass complaints from protection applicants for many years. Neither is seeking to have a role in the adjudication of status determinations. The case made by the two Offices themselves

²⁷⁰ RIA Annual Report for 2013, p. 47.

for extending their remit is that protection applicants would have access to statutory complaints-handling mechanisms that:

- are free, independent and impartial;
- are experienced, pragmatic and proportionate;
- can provide expert advice on internal complaints-handling to staff within Direct Provision;
- can provide independent oversight and can assure all concerned that there will be an effective avenue of redress for grievances that may arise;
- can ensure that processes and procedures leading up to decisions on immigration and asylum are fair, thorough and not contrary to fair and sound administration;
- can drive improvements within the Direct Provision;
- are cost-effective and have an established, credible record;
- do not duplicate the work of other statutory bodies and would provide a coherent complaints-handling framework; and
- are in keeping with international best practice and Ireland's international legal obligations.

4.131 While the case made by the two Offices was for their remit to be extended not only to the services provided in Direct Provision but also to the processes and procedures leading up to decisions on immigration and asylum, the Working Group confined its consideration to complaints relating to services provided in the context of Direct Provision.

4.132 The Working Group, while accepting that RIA's proposals could meet the requirement of the judgment and would strengthen its complaints procedure, considered that:

- they are insufficient to generate the necessary confidence in the complaints procedure – while the independent appeals officers would no doubt be impartial, they might not be perceived to be so in view of their appointment by the Minister,
- they mean that the child-friendly approach and experience from the Ombudsman for Children in addressing complaints by children would be lost.

4.133 With these concerns in mind, the Working Group considers that complainants should have the option of recourse to the Office of the Ombudsman or the Office of the Ombudsman for Children, as the case may be, where they are dissatisfied with a decision of the independent appeals officer.

4.134 The Working Group also considers that recourse to the two Offices should be available in relation to a decision by the independent appeals officer on an appeal by a resident against a transfer for a breach of the House Rules. Such recourse would not have suspensive effect on the transfer decision. Noting that RIA's policy is to transfer residents only where necessary, e.g. due to the planned closure of a centre or serious breaches of the House Rules, the Working Group considers that the addition of this

additional layer would assist in addressing residents' lack of confidence in the fairness of transfer decisions. It is acknowledged that dispersal decisions are an inherent part of Direct Provision and should not come within the remit of the complaints procedure including recourse to the two Offices.

Recommendations

4.135 The Working Group recommends that:

- The remit of the Office of the Ombudsman and the Office of the Ombudsman for Children should be extended to include complaints relating to:
 - services provided to residents of Direct Provision accommodation centres, and
 - transfer decisions following a breach of the House Rules.
- Recourse to the two Offices should be available to a complainant who is dissatisfied with the final outcome of the RIA complaints procedure.
- In relation to its internal complaint procedure, RIA should:
 - appoint a designated officer who is not involved in operational matters to handle complaints that are referred to it or are submitted to it directly,
 - review the complaints procedure to ensure that it is accessible to residents including children and young people,
 - engage in renewed efforts to build confidence and trust in the complaints procedures, including by ensuring that residents understand the House Rules, are aware of the complaints procedures and how to use it, and understand that it is impartial and that they will not be adversely affected by making a complaint,
 - engage in efforts to ensure that centre management buy into the importance of ensuring an open culture that is conducive to residents making complaints.

Implications including costs

4.136 The implementation of these recommendations would assist in building confidence in the complaints procedures. The introduction of a robust complaints mechanism would reduce the risk of maladministration, increase fairness in decisions and improve the overall service provided by RIA and its providers. The recommendation to extend the remit of the two Offices would require legislative amendment. In relation to the independent complaints mechanism and the recommendation to extend the remit of the two Offices, each would require an additional Investigator post. The Offices noted in their joint submission that the additional resources would be deployed to deal with additional cases, but also in outreach and process improvement work with accommodation centres. The Offices propose a review after two years, with a subsequent reduction in their budgets if the posts are no longer needed at that stage.

Management of difficulties – transfers and expulsions

- 4.137 The mechanisms available to RIA to deal with residents who present a serious threat to other residents and staff and the orderly running of the centre are involuntary transfer to another centre or expulsion from Direct Provision with the possibility of return subject to undertaking to comply with the House Rules. The Working Group acknowledged that these mechanisms are necessary measures of last resort.

Involuntary transfer

- 4.138 Officials from RIA informed the Working Group that involuntary transfers arise for the most part after a series of formal warnings relating to continuing serious breaches of the Houses Rules. RIA can, however, issue an instruction to transfer a resident with immediate effect. The use of this option is limited to very serious cases, e.g. a violent assault or a substantial risk to the health and safety of other residents and staff. In such instances, the resident is entitled to request a review of the decision by RIA, but may only do so from their new accommodation centre. RIA's complaints procedure has not been available as a means of challenging transfer decisions. As set out at para. 4.128, however, RIA intends to provide that a final appeal against the transfer of a resident following a breach of the Rules may be made to an independent appeals officer. This appeal would not have suspensive effect where RIA believes that there is an imminent threat to the safety and security of a centre.
- 4.139 Officials from RIA informed the Working Group that it has introduced a policy of giving detailed written reasons for involuntary transfers. This is a welcome development. It does not maintain records of the numbers of involuntary transfers.
- 4.140 The Working Group heard some concerns that residents suffering the effects of trauma from events in their lives before coming to Ireland and who may display aggressive behaviours, or indeed residents who have developed difficulties since entering Direct Provision, may be transferred to particular centres in remote locations with the consequence that those with challenging behaviour (e.g. aggressive behaviour, substance misuse, antisocial actions) arising from the effects of trauma and mental health issues are concentrated in particular centres. In addition, as noted at para. 4.124, a common thread through the consultation process is that residents are fearful that if they complain they will be regarded as troublesome and may be transferred to a centre in a remote location.
- 4.141 The Working Group considered whether the solution to dealing with residents with challenging behaviour might lie in a different direction – the provision of the supports that they need in the centre in which they are already living. It was noted that the provision of mental health supports is a matter for the HSE, with all protection applicants having the same entitlements as Irish citizens in this respect. In this regard the HSE's commitment to exploring how linkages between Direct Provision centres and mental health services could be strengthened was welcomed. It is important to note that officials from RIA emphasised that there is no policy as such of using particular centres for challenging residents; rather it is simply the case that the majority of those with challenging behaviour are single men and there are a limited number of single male centres. The Working Group also questioned whether accommodating this cohort of residents in shared rooms has the effect of exacerbating their conditions.

Expulsion

4.142 As expulsion effectively renders the person concerned destitute, it is a step that RIA takes only where there is no other possible course of action. According to officials from RIA, expulsion cases usually involve instances of extreme violence and assault, threats of extreme violence (e.g. threats to burn down a centre) or alcohol or substance abuse leading to an unacceptably high risk to the safety of others. These circumstances are similar to those that would lead to the expulsion of persons from hostels for the homeless. Expulsion is rare, with 49 instances recorded by RIA between 2004 and 2014.²⁷¹

Potential solutions

- 4.143 To address these concerns, the Working Group considers that the key is an individual needs assessment to inform dispersal, room allocation and transfer decisions as proposed at para. 4.210. Such a needs assessment would allow for the early identification of trauma and any additional supports required to be recommended.
- 4.144 An individual needs assessment would give protection applicants an opportunity to identify their needs at an early stage and facilitate the allocation of the most appropriate accommodation available within Direct Provision. It would be necessary for RIA to retain the option of involuntary transfer and expulsion as options of last resort in order to ensure the safety of other residents and staff.
- 4.145 The recommendations to enhance the complaints procedure set out at para. 4.135 will go some way towards addressing residents' fears in relation to an unwanted transfer being used as a punishment for making a complaint.

Recommendations

4.146 The Working Group recommends that:

- RIA should continue its policy of providing detailed written reasons for involuntary transfers.
- RIA should define what constitutes an involuntary transfer and record voluntary and involuntary transfers and include details in its Annual Report.

Implications including costs

4.147 The recommendations above would make the involuntary transfer procedure more transparent and assist in countering the perception that it is used as a form of punishment for making a complaint. The costs arising from these recommendations would not be significant in the context of the overall cost of the protection system.

²⁷¹ Statistics provided by RIA.

Management role and culture

- 4.148 The consultation process returned mixed reports about the management and staff of the centres. Some contributors referred to centre management and staff in very positive terms. Other contributors referred to managers and staff as lacking sensitivity to the plight of residents, having no understanding of different cultures and being disrespectful and verbally abusive. Contributions from the written consultation process include:

“The system should try to disallow racism/racists from top down to bottom staff, demonstrate a good attitude towards them, although some staff are extremely good.”

“Some of the centres are run at best like military camps and at worst like prisons, while other treat residents fairly well.”

“Children are growing up in fear because of the rules and regulations imposed by the hostel management.”

- 4.149 At one consultation session staff were described as “acting like we are dogs ...”
- 4.150 Members who visited centres reported mixed impressions of the managers that they met. Members acknowledged the very broad nature of the role of the centre manager and the wide range of skills required. There was some evidence that the relationship between management and residents had deteriorated as a result of the protests by residents at some centres over the past year.
- 4.151 In the course of their submission to the Working Group the accommodation providers described the role of the centre manager as “vocational in nature” due to the vulnerabilities of the residents, and emphasised how the managers and staff go “above and beyond” the contractual obligations. It emerged, however, in the course of submissions that centres do not provide training for managers or staff in equality and diversity issues.
- 4.152 It was noted that the contract with providers did not specify any particular requirements for the manager other than that staff be of good character and be Garda vetted. It was also noted that there did not seem to be opportunities for managers to come together and share their experiences and learning.
- 4.153 The centre manager occupies a pivotal role in determining the atmosphere within a centre. In view of the broad nature of the role, however, there is no specific qualification as such that would equip a person to fill it; what would seem to be required is an understanding of and interest in working with people from diverse cultures, an empathetic and compassionate nature together with strong communication and conflict resolution skills, and a value-based management style. The Working Group considers that the contract with providers should include specific provision in relation to the skills and experience that are required on the part of a manager and should also specify requirements in relation to staff training in equality and diversity issues.
- 4.154 The Working Group identified the Irish Human Rights and Equality Commission as having the potential to play an important role in supporting RIA in developing

equality and diversity policies, including providing training and support. Section 10(2) of the Irish Human Rights and Equality Commission Act 2014 outlines what types of activities the Commission may carry out in the furtherance of its functions. Of particular relevance is subsection (2)(k), which states that the Commission can “provide or assist in the provision of education and training on human rights and equality issues”. The Working Group noted that the Commission has a substantial budget (€6.8 million in 2015) that could be drawn on to good effect.

Recommendations

4.155 The Working Group recommends that:

- The contract with providers should include additional requirements in relation to the qualities required of a centre manager. The Working Group considers that ideally a manager should have: substantial experience of working cross-culturally and working with protection applicants and refugees; have an understanding of basic mental health issues, medical and social welfare systems; have strong communication skills; and have a compassionate and empathetic style. To inform further work on the qualities required by a centre manager, RIA should commission a short piece of academic research to identify best practice by centre managers. That work should also feed into the development of standards for accommodation centres as recommended at para. 4.226.
- RIA should arrange seminars on a regular basis for managers to allow for the sharing of experiences and the dissemination of best practice.
- RIA should ensure that managers and staff members have undergone training in equality and diversity issues – this should be included as a requirement in the contracts with providers, and would assist in ensuring that misunderstandings as potential sources of conflict are avoided. RIA should consider working with The Irish Human Rights and Equality Commission to develop equality and diversity training for centre management and staff. This training should be aimed at ensuring that centre managers and staff working directly with protection applicants are aware of their equality legal obligations towards protection applicants. It should also tackle any underlying prejudices and support centre staff to deliver a high-quality service. This training and support should be evaluated to track learnings and outcomes.
- Encouraging and facilitating the setting up of residents’ committees should be included within the manager’s role and within the contract with providers. Regular meetings between the committee and management should provide a forum for any issues of concern to be raised and solutions identified. They should also provide a forum for residents to be consulted on issues relevant to them including, for example, how self-catering might be organised. This should not replace consultation by managers with individual residents.

Implications including costs

- 4.156 The implementation of these recommendations would assist in ensuring a positive atmosphere within centres that is conducive to greater respect for the dignity of all concerned. The costs arising from these recommendations would not be significant in the context of the overall cost of the protection system.

Restrictions on residents – implications of “CA and TA”

- 4.157 As noted at para. 4.3, some of the House Rules referred to earlier in this chapter have been found to be unlawful by the High Court in its judgment in “CA and TA” delivered on 14 November 2015.²⁷² The Rules relate to unannounced inspections, the requirement to notify management of intended overnight absences, and restrictions on guests in private quarters. These Rules have been identified by residents in the course of the consultation process as examples of how they are disempowered on a daily basis.

Unannounced room inspections

- 4.158 The Court held that while RIA is entitled to inspect rooms, unannounced inspections conducted without the consent of the occupant and in circumstances where they might be absent go beyond what is necessary to reduce risks to persons living in the communal environment. Accordingly, the Court concluded that such inspections constitute a disproportionate interference with constitutional and ECHR rights to privacy and to respect for private life.

Daily sign-in

- 4.159 While the Court found that the objective of having daily sign-in so as to ensure capacity management in the centres is lawful, it held that it could be achieved in a less restrictive manner. Requiring somebody to sign-in to what is described as their home on a daily basis is disproportionate.
- 4.160 It was noted, contrary to the Court’s finding, that there is no rule requiring daily sign-in as such; rather it is the means by which some centres monitor capacity. A variety of methods are adopted by centres, e.g. electronic key card systems or head counts at meal times.

Requirement to notify intended absences

- 4.161 The Court noted that the justification for this rule was also the need to ensure proper use of the facilities and that it was disproportionate for the same reason as the daily sign-in and an unjustified and disproportionate invasion of privacy.

Prohibition on guests in private quarters

- 4.162 The Court noted the objectives of this, i.e. the need to ensure that the centre is only used by those entitled to live there and the desire to monitor safety issues. It

²⁷² One Member of the Working Group was of the view that it was for the State to respond to the findings of unlawfulness in relation to the House Rules and therefore not appropriate to the Working Group.

found, however, that the outright ban on guests in private rooms was unjustified and disproportionate on the ground that the room is their home and is protected by Article 40.5 of the Constitution and Article 8 ECHR.

4.163 Officials from RIA briefed the Working Group on the amendments it proposed to the House Rules to address the Court findings.

Unannounced room inspections

4.164 The amendments proposed by RIA will:

- require occupants to be given advance warning of inspections,
- warn occupants that if their cooperation is not forthcoming on three successive occasions, they will be given a formal notice of inspection specifying a date and time and the inspection will take place at that time irrespective of whether the occupant consents,
- tell residents that the manager reserves the right to hold unannounced inspections if they reasonably believe that there is an imminent danger to health and safety in the centre,
- tell residents that in the case of inspections by RIA or inspection bodies contracted to RIA neither residents nor centre management will be informed of the date on which centre inspections are taking place. All occupants of rooms that will be subject to inspection will be informed on the day of the inspection that their room will be inspected later that day and that it may take place in their absence.

Daily sign-in

4.165 RIA advised that it has directed centres to desist from what is a practice rather than a rule and to monitor occupancy levels by other means.

Requirement to notify intended absences

4.166 The proposed amendment will remove the obligation to notify intended overnight absences and replace it with a request to let the centre manager know in advance. It will also tell residents that, where they do not let the centre manager know in advance and the manager becomes aware (e.g. from reports from staff that a resident has not been seen by staff members, has not been availing of food provision or has not been seen by other residents) that a resident has been absent for more than three nights, the manager may serve a notice requesting an explanation for the absence. In the event that no reasonable explanation is provided, the room may be reallocated.

Prohibition on guests in private quarters

4.167 Officials from RIA informed the Working Group that the extent to which residents can be facilitated to receive visitors is determined largely by the physical configuration of the centre itself and by the accommodation arrangements involved, e.g. families or single persons sharing rooms. The Court's suggestion that a simple signing-in rule for guests would achieve the objectives identified at para. 4.162 is impractical. RIA proposes amendments to the Rules that are tailored to the nature of the three types of centres.

- 4.168 **Type A accommodation:** In relation to centres composed of individual accommodation units which are not located within a communal area (mobile homes, houses and self-catering apartments), under the proposed amendments visits to individual rooms would be permitted subject to certain conditions: the visitor must be invited by the resident and accompanied throughout by the adult resident concerned, who would be responsible for ensuring that the visitor obeys the House Rules including ensuring that the visitor respects the right of other residents to peaceful enjoyment of the centre.
- 4.169 **Type B accommodation:** In relation to centres where the accommodation units are in communal areas, e.g. hotels, boarding houses and convents which have communal landings and corridors and bathrooms that may not be en-suite, RIA informed the Working Group that it was concerned that allowing “strangers” access to such an environment would increase the vulnerability of residents, particularly children. In view of this RIA proposes to continue the prohibition of guests in private quarters for safety and security reasons but will ensure that visits can be facilitated in a designated visiting room elsewhere in the centre. Such rooms can be booked in advance.
- 4.170 **Type C accommodation:** In relation to centres where single persons reside largely in shared rooms with unrelated residents, RIA proposes to continue the prohibition on visitors in order to respect the privacy of the other residents. Visits will be facilitated in a designated area.
- 4.171 The Working Group is concerned that RIA’s proposed course of action in relation to the question of guests in private quarters in Type B centres (private rooms in communal centres), the type of unit that was at issue in the legal proceedings, may be disproportionate in individual cases. The practical consequences of RIA’s proposed course of action would be that a teenager could not have friend to their home to watch TV; a parent could not have a friend visit to show off new clothes or could not have a private conversation with a visiting social worker. While the justification behind RIA’s proposal is a concern to limit the risk to children and vulnerable adults, the Working Group is concerned that the approach may be overly institutionalised and runs the risk of penalising all residents in case something happens somewhere. The Working Group considers that the solution may lie in allowing the centre manager to determine if such visits should be allowed on a case-by-case basis taking account of a range of factors, e.g. past behaviour of the resident or visitor, time of day or night, concerns or suspicions of any abuse or risk to vulnerable adults or a child.
- 4.172 The Working Group notes that its recommendations at paras. 4.75 and 4.87 in relation to moving towards reception conditions that ensure greater respect for privacy and family life including family quarters or self-contained units and more single rooms will allow residents more freedom to receive visitors.

Recommendation

- RIA should review its proposal in relation to guests in private quarters in terms of its proportionality.

Implications including costs

- 4.173 The implementation of this recommendation would ensure that any necessary restrictions on visitors in private quarters are proportionate. This recommendation has no material cost implications.

SAFEGUARDS AND STANDARDS

Child welfare and protection

- 4.174 The need for children to have opportunities for normal child and family experiences when living in Direct Provision for long periods is referred to at paras. 4.61-4.79. Separately the Working Group was told of heightened risks to child welfare and child protection in Direct Provision and the steps taken by RIA and local management to manage this risk.
- 4.175 All managers and staff undergo Garda vetting. Staff in key areas in each centre have undergone Children First Training. Each centre has at least one Designated Liaison Person who has taken part in the Children First Designated Liaison Person Training. All centre staff are made aware of RIA's Child Protection and Welfare Policy and Practice Document at induction.²⁷³ This policy was revised in 2014 and RIA has informed the Working Group that briefing sessions on the revised policy are underway, with 165 employees in the centres having attended the sessions so far.
- 4.176 Under Children First all concerns of a child welfare and protection nature should be referred to Tusla - Child and Family Agency for assessment. In accordance with RIA's policy, the centre Designated Liaison Person(s) can seek guidance about these matters on a day-to-day basis from RIA's Child and Family Services Unit. The Unit is managed by a person seconded from the HSE with expertise in the area of child health and welfare and who acts as the key liaison person with Tusla. RIA publishes information regarding child welfare and protection in its Annual Reports.
- 4.177 RIA's 2013 Annual Report cites that 182 child protection and child welfare incidents were reported to RIA's Child and Family Services Unit in 2013. 158 of these incidents were reported by the relevant centre Designated Liaison Person, while the remaining 24 were third-party referrals (i.e. relevant HSE personnel, teachers and RIA officers visiting centres). Of the 182 reported incidents, 148 were notified to the HSE as Child Protection Referrals. These cases include welfare issues. The remaining 34 cases were not deemed appropriate for referral. There may be other referrals made independently of RIA to Tusla; however as Tusla does not collect national data on Direct Provision as a referrals source, this is not known.
- 4.178 An inspection in respect of the child protection and welfare services provided to children living in Direct Provision accommodation under the National Standards for the Protection and Welfare of Children, and section 8(1)(c) of the Health Act 2007 was recently undertaken by the Health Information and Quality Authority (HIQA).

²⁷³ <http://www.ria.gov.ie>

The report was published on 25 May 2015. The Working Group did not have time to consider the contents of the report in detail in advance of its final Plenary Session held on 14 May 2015. The Working Group, however, welcomes the report and its findings as follows:

- The referral rate of child protection and child welfare concerns was significantly higher for the population of children in Direct Provision when compared with the referral rate for the general child population.
- The majority of children referred to Tusla received timely responses and interventions and social workers engaged positively with parents and involved families in early intervention.
- Good quality inter-agency cooperation was evident in all areas and should be enhanced to ensure decisions consider the best interests of children.
- Children and families within Direct Provision are recognised as a vulnerable group and strategic planning should take place. Further an inter-cultural strategy should be developed to inform the provision of social services to ethnic minority children and families.

4.179 The report also found that living in Direct Provision accommodation was the cause of some of the welfare concerns and it is acknowledged that it is a challenging environment which was not designed for children to live in long-term.

4.180 Tusla informed the Working Group that it is engaging with RIA in relation to the findings of the report and that both Agencies are committed to working together to improve services for children and families in Direct Provision. An action plan has been prepared in response to the recommendations set out in the report. The Working Group considers that the learning from this report should inform the implementation of the recommendations of the Working Group in relation to child protection and welfare.

The impact on child welfare of living in Direct Provision

4.181 An issue impacting on child welfare that was referenced by all stakeholders was where parents, particularly mothers, suffered mental health problems, including depression. The impact of past trauma and separation from friends and family are factors to be taken into account in understanding mental health problems. However, the length of time spent in Direct Provision, in communal living without knowing when the situation would end, was cited as being a major contributing factor in the mental health problems experienced by many. Residents said that many of them were on prescribed medication, and others spoke of just wanting to sleep during the day.

4.182 Children need parents who are emotionally and mentally available to them. The hospitalisation of a parent has an additional impact on a child's welfare. In such situations children can find themselves acting as their parent's carer, and taking on additional responsibilities with younger children.

4.183 Children in Direct Provision are more likely to bear direct witness to domestic violence where this occurs within their own families or among other residents due to the proximity of living conditions. Exposure to violence or the threat of violence has an

adverse impact on children's welfare and emotional well-being, and in some instances can become a child protection issue.

- 4.184 The Working Group was informed by consultations with HSE healthcare professionals and research conducted by Foreman and Ní Raghallaigh with social workers in mental health and children's services on their experience of working with protection applicants.²⁷⁴ The concerns outlined include:
- children may be exposed to adult sexuality inappropriately due to the proximity of adult and child sleeping conditions. RIA attempts to offer separate bedroom accommodation to children over 10 where they are sharing with an adult of the opposite gender; however, this is not always accepted where it may mean moving to a completely different location;
 - parents are under stress associated with living in often cramped conditions and isolation from the wider community. This stress makes it difficult to deal with day-to-day matters and leads to inappropriate, and sometimes harmful, ways of managing children's behaviour;
 - children's development and self-esteem are impacted by a lack of opportunities for normal interaction. Children are not able to invite their friends over, they may not be able to attend birthday parties as they cannot reciprocate the invitation, they do not participate in all school activities due to the additional costs, and in some instances they are bullied by classmates due to their circumstances.
- 4.185 There are some services in place aimed at supporting parents in their parenting role. These are provided through Tusla and the HSE on the same basis as for the wider community. The supports include universal monitoring and supporting children and families through Public Health Nurse and General Practitioner services and targeted interventions by family support services, Social Work Teams and Mental Health Specialists. The Working Group was told of several instances where support services once provided on-site in Direct Provision were withdrawn to the community due to service demands.

Concerns regarding child protection

- 4.186 Residents and others told Members that the nature of Direct Provision could impact on child safety. Direct provision differs from apartment living in that children live in close proximity with adult strangers, in some instances where there is a high turnover of people. The physical layout of many of the buildings means that children could be out of sight of their parent/s going about a normal routine, for instance doing homework in a specified space, collecting or having meals in the communal dining room, going to the bathroom when this is not en-suite, and using shared spaces with adults for play and recreation.
- 4.187 A recent welcome development is that most families have access to a bathroom for

²⁷⁴ HSE consultation feedback to Review Group on Protection System (24 February 2015); Submission received from Ms Maeve Foreman, Assistant Professor in Social Work, School of Social Work and Social Policy, Trinity College Dublin and Dr Muireann Ní Raghallaigh, Lecturer in Social Work, School of Applied Social Science, University College Dublin and endorsed by the Irish Association of Social Workers.

their sole use.²⁷⁵ In many cases this is an en-suite but in some cases it is access to a designated bathroom. Some cause for concern remains. Visiting Members reported individual cases where, for example, a lone parent with two children, fearful of allowing one of her children to use the allocated bathroom alone during the night, felt the need to wake her other child and for the whole family to go to the bathroom.

- 4.188 Where parents and children share a bedroom as their only private space, it is inevitable that common spaces in the centre will be used by children and unrelated adult residents.
- 4.189 As a means of managing risk to children, RIA's House Rules state that children less than 14 years of age are subject to direct supervision, i.e. to be in sight of their parent/guardian at all times in all places. The Members heard from parents, some managers and NGOs that it was not possible to keep this level of supervision in place at all times, especially where there are older and younger siblings. There were some instances of children being referred to Tusla because the child was not under the supervision of their parent within the centre, and this was expressed as a child welfare concern. While in many instances the Working Group was aware of harmonious sharing of accommodation, Members was told and on their visits to centres, and witnessed in some centres, situations where children were exposed to unsuitable behaviour by adults whose activities may include cursing, threatening behaviour and fighting in shared spaces.
- 4.190 The Working Group is of the view that it is not reasonable to expect a parent to be able to keep all their children in sight in the centre at all times, and that this creates an undue burden on the parent and excessive supervision on older children. Moreover, the combination of the layout of buildings and the mix of people sharing common spaces mean that in some situations, children's welfare is compromised by such arrangements.
- 4.191 Children are aware of and sensitive to the worries of their parents, and where a parent appears depressed they are less likely to complain to them about abuse outside the family, or about their parent/relative to a staff member.
- 4.192 Concerns about child protection, in particular child sexual abuse, are related to the vulnerability of the children, their proximity to adult strangers within their living situation and their easily identified status externally in the communities in which they live. These factors make them vulnerable to "grooming" behaviours of unscrupulous and exploitative adults. Any such situation, when known to RIA, is referred to the Gardaí and the Child and Family Agency; however, the very nature of "grooming" is that it can be difficult to detect as children and at-risk adolescents often do not see the behaviour as exploitative.
- 4.193 Where Tusla receives referrals regarding concerns of child welfare and protection, in

²⁷⁵ The exceptions relate in the main to: Baleskin Reception centre where families, depending on their size, may have to share a bathroom with one other family; and two accommodation centres where again two family rooms have a bathroom between them. These bathrooms can be accessed and locked from either side. There are also some instances where a number of families may share a bathroom designated for family use only.

the first instance it attempts to support families and to help parents care well for their children. Where a child protection issue is detected they will intervene to ensure the child is protected, and attempt to identify any other child who may be at risk. The Foreman and Ní Raghallaigh paper (see above) identifies some challenges experienced by the social workers who participated in the study in working with protection applicants. They identify social workers as needing smaller caseloads when working with residents of Direct Provision due, in some instances, to language barriers and cultural differences.

Safeguarding children

4.194 Services that best support vulnerable clients to live in a safe and protected environment adopt what are commonly called good “safeguarding” habits. At a basic level such services, as well as having good recruitment and staff training policies, encourage the following in order to gain the trust of the residents. They:

- welcome discussion about practice,
- see complaints as a way to improve service and conditions,
- seek to engage residents in decision-making about routine rules and practice
- are open to change and flexible where at all possible,
- engage respectfully with residents as individuals with similar feelings and ambitions as those working in the institution,
- welcome contact with the local communities, and
- engage positively where the centre or institution is being monitored, seeing these exercises as opportunities to improve the service/care.

4.195 The Working Group was aware that many of the managers in Direct Provision centres, despite the limitations of the buildings, undertook their responsibilities in a way that supports safe environments for children. It was, however, evident that in other situations improvements to the general atmosphere or culture would lead to a safer service for children.

4.196 To conclude, due to the particular nature of Direct Provision as it is delivered, and the individual journey of the resident, including children, service providers need to have a heightened awareness of the risks to child welfare and protection.

Children First Legislation

4.197 The Working Group noted that the Children First Bill 2014 is before the Houses of the Oireachtas and welcomes its explicit application to Direct Provision accommodation centres.

Potential solutions

4.198 The Working Group considers that the solutions to these concerns lie partly in the recommendations in relation to: improved physical conditions that are more conducive to normal family life and child development (para. 4.75), creating a more

open management culture (para. 4.155), building confidence in the complaints procedure (para. 4.135), and the setting of minimum standards in conjunction with the establishment of an enhanced inspection regime (para. 4.226), but considers that some specific measures are required to address concerns around the impact of Direct Provision on children welfare and protection.

Recommendations

4.199 The Working Group makes the following recommendations.

- Tusla – Child and Family Agency should liaise with RIA to develop a welfare strategy within RIA, to advise on policy and practice matters and to liaise on individual cases as required.
- RIA, in conjunction with Tusla, should review its House Rules in so far as they require children under the age of 14 years to be attended at all times within the accommodation centre.
- Tusla, HSE and RIA should collaborate to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services.
- RIA should continue to have consideration for child safety when assigning different categories of residents to a Direct Provision centre.
- Tusla and HSE should identify a named social worker on their respective child protection, mental health and primary care teams to be the identified lead social worker for a Direct Provision centre in their area.
- Professional staff with the HSE and Tusla working with residents in Direct Provision should have access to cultural diversity training and interpreting services where not already available.

Implications including costs

4.200 The implementation of these recommendations would ensure greater protection for the welfare of children within Direct Provision and thereby minimise the risk of child protection issues arising. The costs arising from these recommendations would not be significant in the context of the overall cost of the protection system.

Vulnerable residents

4.201 The situation of vulnerable persons in the protection determination process was considered in chapter 3. As noted there, it also falls to be considered in the context of living conditions in Direct Provision accommodation centres. Decisions in relation to dispersal and room allocation have the potential to profoundly affect persons with vulnerabilities.

- 4.202 It was noted that the recast Reception Conditions Directive (to which Ireland has not opted-in) contains examples of who might require special consideration due to vulnerabilities. The examples listed are “minors, separated children, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation”.²⁷⁶
- 4.203 A large proportion of residents in Direct Provision would come within at least one of these categories – single-parent families, for example, make up over 31.5% of residents.²⁷⁷ The list of examples, somewhat surprisingly, does not include persons who are LGBT. LGBT protection applicants who participated in the consultation session conducted as part of the consultation process reported that safety and isolation were serious issues for them, especially due to shared bedrooms and shared bathrooms. They also reported serious issues of concern around disclosure of their sexual orientation and the response to those disclosures.
- 4.204 The Working Group was informed that during their time in the Baleskin Reception Centre protection applicants may avail of a voluntary health screening service offered by the HSE. In 2014, in the region of 80% did so.²⁷⁸ The service includes screening for hepatitis, TB, HIV, immunisation status and any other conditions that are identified. The Working Group noted that the results are confidential and cannot be communicated to RIA (or other agencies). As such they cannot form part of RIA’s consideration when making the dispersal decision. On occasion, however, the health screening team places a “medical hold” on a protection applicant. Where this arises RIA puts the dispersal decision on hold.
- 4.205 Other than in the case of medical holds, decisions relating to dispersal, allocation of rooms and involuntary transfers are not based on an individual needs assessment. As a consequence residents with particular vulnerabilities may not be identified and they may be accommodated in locations or in multi-occupancy rooms that are unsuited to their needs. The Working Group heard that victims of torture who have PTSD and experience paranoia may be required to share with others or may be dispersed to locations that make accessing specialist services very difficult.²⁷⁹ The Working Group heard that such persons may develop serious mental health issues on top of their existing condition due to the challenging living conditions that they face.
- 4.206 It also heard that victims of trafficking or sexual violence experience similar difficulties. Living in mixed centres can be a cause of particular anxiety for female victims.²⁸⁰ In relation to this last group of residents, the Working Group welcomes the decision by RIA to establish a women-only centre. Some Members, however, argued that victims of trafficking should be accommodated outside of Direct Provision,

276 Article 21.

277 Position as of 22 May 2015 as provided by RIA.

278 Provided by the HSE.

279 Between 2007 and 2013 an average of 14% of protection applicants were referred to SPIRASI, a specialist service for victims of torture.

280 At the end of January 2015 RIA was accommodating 65 persons who were identified as alleged victims of trafficking by the Garda Síochána. The majority were protection applicants.

questioning whether current practices met international obligations to provide safe and secure accommodation for trafficking victims.²⁸¹

- 4.207 The Working Group also heard that persons may be subject to involuntary transfer without consideration of how the transfer will impact on their access to the medical and other services with which they are linked.
- 4.208 For residents generally, the making of these decisions, which have such an impact on their lives, without any opportunity for them to have input has a disempowering effect.
- 4.209 To address these issues the Working Group considers that the existing voluntary health screening service should be reviewed and strengthened to provide a timely comprehensive multi-disciplinary needs assessment for applicants. The results of the assessment, subject to the consent of the applicant, should be used to inform decisions relating to accommodation, and the identification of any supports of a legal, medical or psychological nature required by the applicant to engage with the protection determination process and for their well-being.

Recommendations

4.210 The Working Group recommends that:

- The existing voluntary health screening service provided by the HSE at the Baleskin Reception Centre should be reviewed and strengthened so as to facilitate a multi-disciplinary assessment (including medical, psychological and social needs) of all protection applicants within 30 days of the lodging of an application for protection to identify and appropriately assist vulnerable applicants.
- The outcome of the assessment should be taken into account in the protection determination process.
- Follow-up and monitoring of persons who fall into the category of “vulnerable” should occur on an on-going and regular basis until such time as the applicant exits the protection system.
- The responsible unit should be enabled to communicate in a timely fashion with RIA, legal advisers for the protection applicant and other health care providers including and especially the primary carer.
- Efforts should be made by RIA, HSE, centre management and others to take steps to encourage applicants to avail of the assessment.

Implications including costs

- 4.211 An expanded multi-disciplinary assessment would give protection applicants an opportunity to identify their needs at an early stage and facilitate the allocation of the most appropriate accommodation available within Direct Provision and the identification of any supports that they may require, whether of a legal, medical or

²⁸¹ This reflects the recommendations in the Immigrant Council of Ireland’s submission on the accommodation needs of adult victims of sex trafficking in Ireland, December 2014.

psychological nature. An expanded service would need to be properly resourced to ensure its effectiveness. The question of costs in relation to the multi-disciplinary assessment is addressed at chapter 6.

Oversight and standards

- 4.212 A consistent theme that emerged from the consultation process is the variation in the quality of the physical conditions across the accommodation stock and in the quality of the services provided. This variation was very clearly evident to Members who visited centres and is evident from the preceding sections of this report.
- 4.213 The implication of these variations in the quality of accommodation and facilities is that the adverse effects of living in Direct Provision for a lengthy period – impacts on privacy, physical, emotional and mental well-being, normal family life and child development – are amplified for those required to live in centres at the lower end of the spectrum.
- 4.214 The Working Group considered the inspection regime operated by RIA. Since 2001 RIA has had an inspection regime of all accommodation centres. The purpose is to “record a ‘snapshot’ of the physical conditions of the centre on the day of the inspection”.²⁸² RIA aims, in so far as possible, to carry out three inspections annually; two by an in-house RIA inspectorate and a minimum of one by an independent assessor with expertise in fire and food safety. The inspections are unannounced. According to the RIA Annual Report for 2013, 100 inspections were carried out; 52 by the in-house RIA inspectorate and 48 by the independent assessor. At least three inspections were carried out in 29 centres. Two inspections were carried out in three centres, with one inspection being carried out in two centres, one of which was closed for refurbishment that year. With the exception of two centres (one being the centre closed for refurbishment), the independent assessor carried out at least one inspection in all centres. Since 1 October 2013 all completed inspection reports are required to be published.²⁸³
- 4.215 Some residents expressed a lack of confidence in the inspection regime in the course of the consultation process, perceiving centre management to have advance knowledge of inspection visits.
- 4.216 The Working Group noted that the inspection regime focused on compliance with the existing contractual obligations, which concern in the main obligations relating to accommodation and catering provision. While they contain some standards, e.g. relating to health and safety, fire safety and food preparation, there is an absence of standards across a number of qualitative areas, e.g. in relation to the qualities required by a centre manager, the training of staff in diversity issues, the provision of facilities for children, and ensuring that residents (including children) are heard.
- 4.217 The Working Group takes the view that the current inspection regime should be broadened to cover a wider range of areas than is currently inspected. The

²⁸² RIA Annual Report (2013), p. 36.

²⁸³ <http://www.ria.gov.ie/en/RIA/Pages/RIAIInspections>

development of a government inspection regime generally occurs within the following framework:

- government policy – what is to be achieved, in line with national and international legislation and budget considerations,
- standard development – making explicit what is required – mandatory and quality improvement – including the perspective and experience of service user,
- inspection activity – consistent or targeted – fair and proportionate – publicly available reports, and
- status of recommendations.

4.218 The Working Group identified the essential features for consideration to be the development of standards, agreed by the Minister for Justice and Equality, and a credible inspection regime that was likely to support achieving improvement across the services. It was agreed any standard development and inspection system should be developed within Government policy, budgetary consideration and service capacity in a demand-led area.

4.219 The Working Group heard that in the area of Government-funded services there is a growing movement towards the development of national standards as a way of clearly outlining Government policy in relation to the expressed functions of the service. In the area of Direct Provision, due to the length of time and dependent status (children) or people with particular vulnerabilities, there is a growing view that RIA's contract with providers should reflect some areas of additional responsibilities and that these could then be reflected in standards for Direct Provision. Indeed, some providers are already providing for specific recreational and care services within Direct Provision.

4.220 Inspection cannot occur in a vacuum. It is essential that there is an agreed understanding of what is expected of all stakeholders, and the threshold of evidence that underpins a finding. Standards should reflect Government policy. Where standards (against which inspection will occur) are initially introduced it is possible that there will be a graduated timetable for their introduction, especially those which require significant change including physical changes and/or staff training.

4.221 The development of standards will distinguish between mandatory and quality improvement standards. Mandatory standards will include areas underpinned by legislation; however, the standard-setting body can go beyond this if it thinks it appropriate to improve quality. It should be noted that some standards have a financial cost while other standards may involve organisational/cultural change within a modest financial outlay.

4.222 The purposes of inspection include the following:

- to provide public assurance and accountability by a robust, independent evaluation of the service;
- to drive improvement across the service;

- to identify services that do not meet required standards and set out a clear path for improvement or ceasing operations;
- to contribute towards value for money in public spending.

4.223 It is an important feature of inspectorates that they are independent, to ensure their work is without fear or favour and has public confidence. It is generally recognised that inspections can only be independent if they are conducted by persons who do not hold line management or commissioning responsibility for the services.

4.224 In the matter of Direct Provision, an independent inspectorate would, if in keeping with other inspectorates, report to the Minister for Justice and Equality. In this regard, it is likely that it would stand outside the line management of Direct Provision, either as a stand-alone organisation or a stand-alone unit of the Department, reporting to the Minister. Alternatively the functions of inspection of Direct Provision could, by way of legislative change, be integrated into another organisation.

4.225 It is important to recognise that the independence refers to how inspectors go about their work within the boundaries of the legislation, standards, agreed inspection methodology and reporting framework. The inspectorate generally does not set the standards, but inspects against them.

Recommendations

4.226 The Working Group recommends that:

- The Minister for Justice and Equality should establish a standard-setting committee to reflect fully government policy across all areas of service in Direct Provision. The committee should include relevant stakeholders and should recommend a set of standards to the Minister within three months of its establishment.
- The Minister for Justice and Equality should establish an inspectorate (or identify an existing body), independent of RIA, to carry out inspections in Direct Provision centres against the newly approved standards. As is the case with RIA's existing practice, inspection reports should be written in such a manner that there is no impediment to their being made available to the public.
- The Inspectorate, based on its overall findings, should separately make regular reports to the Minister on general matters relating to the welfare of residents in Direct Provision centres.

Implications including costs

4.227 The development of standards would provide a means of addressing the variation in the living conditions across the accommodation stock and drive improvements. The establishment of an independent inspectorate would ensure confidence in the

inspection regime. The cost implications in the short term would be minimal but future costs would depend on the standards agreed and their effect on the per diem rates and also the model of independent inspectorate selected. The costs of an independent inspectorate are addressed in chapter 6.

Chapter 5 – Suggested Improvements to Supports for Persons in the System

A. INTRODUCTION

- 5.1 This chapter continues the focus on the reception conditions for protection applicants in the State. It considers the supports available to those in the system, whether in Direct Provision or otherwise, and makes a series of recommendations for practical improvements aimed at showing greater respect for their dignity and improving the quality of their lives. The key concerns of those in the system include the financial supports available to supplement what is provided by Direct Provision, the prohibition against accessing the labour market, and barriers to education for adults. The effects on those in the system are examined and solutions identified. Other areas of concern that are the subject of recommendations include: health care supports and supports for persons who are LGBT; separated children, in particular those entering Direct Provision on reaching adulthood; linkages between Direct Provision accommodation centres and local communities, and the supports available to those granted status to assist them in moving into the community and getting on with their lives.

B. FINANCIAL SUPPORTS

BACKGROUND

- 5.2 As noted in chapter 1, protection applicants who avail of Direct Provision receive a weekly allowance of €19.10 per adult and €9.60 per child irrespective of their means. The rate is unchanged since it was first introduced in 2000. Protection applicants who do not avail of Direct Provision are ineligible for this allowance.
- 5.3 When introducing Direct Provision, the authorities recognised that protection applicants would continue to need a residual income payment to cover personal items.²⁸⁴ The existing “comfort payment” payable to persons in long-term institutional care (£15 per adult at that time) was identified as a suitable precedent. No reduced adult dependant rate was applied as the authorities took the view that it would not be appropriate (having regard to the purpose of the payment) to pay a couple less than twice the rate for a single person. A decision was made to make a half payment to children.
- 5.4 The weekly allowance is an administrative scheme with payments made by Designated Persons²⁸⁵ based in the Community Welfare Service within the Department of Social Protection. Expenditure on the allowance is, of course, directly related to the number and family composition of residents in Direct Provision and in 2014 came to some €3.58m for 4,363 residents.²⁸⁶

284 E-mail between Department of Social, Community and Family Affairs officials and Eastern Health Board official, 10 December 1999.

285 Formerly Community Welfare Officers in the HSE.

286 Source: Department of Social Protection.

- 5.5 Apart from the weekly allowance, residents are not eligible to apply for other social protection supports with the exception of Exceptional Needs Payments (ENPs) and the Back to School Clothing and Footwear Allowance.²⁸⁷ Of note is that when the weekly allowance was first introduced, Child Benefit was payable to eligible protection applicants. This was discontinued in 2004.²⁸⁸
- 5.6 ENPs are payable for immediate, unforeseen and once-off needs. In 2014, some €1m was paid in total in respect of 14,365 individual payments to residents.²⁸⁹ The average payment was €73.89.²⁹⁰ The Working Group was informed that the majority of the payments were provided towards clothing costs (over 50%) and transport costs (30%). The maximum amounts payable towards clothing are €100 for adults and €50 for children, generally on a twice-yearly basis. In the case of the Back to School Clothing and Footwear Allowance, expenditure in 2014 amounted to €139,000 for 656 families.²⁹¹ The maximum amounts payable are €100 for primary school children and €200 for second-level students.²⁹²
- 5.7 The ENP Scheme is administered by the Community Welfare Service, which until recent times had offices in almost all Direct Provision accommodation centres to facilitate residents in accessing information and applying for supports. Following a restructuring of the services provided by the Department of Social Protection, some 430 Community Welfare offices have been closed or transferred to Intreo, which is intended to act as a single point of contact for all employment and income support services nationally. The restructuring affected a small number of Direct Provision accommodation centres. As a consequence residents in those centres are required to access the Community Welfare Service by either attending at the local Intreo office or writing to the Community Welfare Service, as is the case for all those in the local community. Alternative arrangements can be made including arranging a visit to a person's home where, for example, a person is ill.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.8 The inadequacy of the weekly allowance and other financial supports to meet the basic needs of residents featured strongly in the consultation process:

"We ask the working group to consider increasing our weekly payment as it does not meet our needs."

287 The exclusion of protection applicants from most social welfare entitlements is provided for in the Social Welfare and Pensions (No. 2) Act 2009, which prevents protection applicants from fulfilling the habitual residence requirement that is a prerequisite to receiving certain social welfare payments. The habitual residence condition first took effect from 1 May 2004 and affects all applicants or beneficiaries regardless of nationality. The habitual residency test does not apply to either the ENP Scheme or the Back to School Clothing and Footwear Allowance. As a result these schemes are available to persons in the system.

288 Ibid.

289 Source: Department of Social Protection.

290 Ibid.

291 Ibid.

292 Ibid.

- 5.9 It must be reiterated at this juncture that residents expressed a strong desire to be allowed to seek work so that they could support themselves and their families and not be reliant on financial supports. Permitting access to the labour market is examined later in this chapter.
- 5.10 On the question of the adequacy of financial supports, the submissions from residents emphasised that they spend their weekly allowance on essential items (as distinct from incidentals) that are not covered by Direct Provision or other supports and that the weekly allowance is wholly inadequate to cover those essential items. Examples of the types of expenditure referred to by residents are detailed below.

Healthcare

- 5.11 Residents are subject to the prescription charge of €2.50 per item that applies to all medical card holders. This must be paid from the weekly allowance. Residents with chronic diseases who require more medication are affected the most. In addition non-prescription medicines must be paid for from the weekly allowance. As noted at para. 5.91, the HSE has proposed that residents should be exempt from the prescription charge due to their limited means. The Working Group welcomes this proposal and recommends that this initiative be implemented as soon as possible (see para. 5.100).
- 5.12 Some residents (especially those in centres in more remote locations) with early morning medical appointments reported that if they require a taxi to travel to the bus station the cost is not covered, or not fully covered, by ENPs unless the person has a serious condition and the taxi has been pre-approved. In addition, individual circumstances such as the number of children accompanying the parent are not always taken into account by the Community Welfare Service.

Food

- 5.13 Some residents reported that they use their weekly allowance to supplement the food provided by the accommodation centre, in particular to meet special dietary requirements arising from medical conditions. Some parents reported that the school lunches provided by the centres are inadequate and that they use their allowance to supplement them. The question of food provision in accommodation centres is the subject of recommendations in chapter 4 (paras. 4.75, 4.87 and 4.102).

Clothing costs

- 5.14 Residents reported that the recommended maximum clothing allowance of €100 per adult and €50 per child is not enough. In particular, in the case of children, residents reported that it is not enough to buy a durable pair of shoes and clothes and also that it takes no account of the greater needs of older children. Officials of the Department of Social Protection informed the Working Group that residents may have recourse to the ENP Scheme for further assistance in meeting clothing needs having regard to individual circumstances.

Education

- 5.15 The financial pressures of providing for school-going children were frequently raised. Costs not covered by the Back to School Clothing and Footwear Allowance must come from the Direct Provision weekly allowance, and many residents reported that the Back to School Clothing and Footwear Allowance is insufficient to cover anything beyond the uniform; for example, sports gear. There is no additional allowance for the cost of school books and not all schools offer a book rental scheme. The schools that do so charge on average €60.00 per annum, a sizeable sum when set against the weekly allowance.
- 5.16 School outings and extracurricular activities (including participating in homework and study clubs) have to be paid for from the weekly allowance. In many cases parents do not have the means to fund their children's participation, with the consequence that the children do not have the benefit of the same educational experiences as their classmates and are at risk of being stigmatised because of their circumstances. The question of access to homework and study clubs is considered in more detail later in this chapter in the context of the Working Group's examination of issues around access to education (para. 5.61).

Social inclusion

- 5.17 Residents reported that the allowance is insufficient to allow them to participate to a minimal degree in social, cultural and religious life in the local community or to maintain relationships with family members and others. Costs relating to celebrating birthdays and other special family and religious occasions must be drawn from the weekly allowance.
- 5.18 Some reported that the allowance is not sufficient to allow them to make telephone contact with legal advisers.
- 5.19 A further concern highlighted by residents related to the uneven application of the ENP Scheme across the country, with some Designated Persons approving discretionary payments for certain purposes and others refusing payments. Difficulties arising from the closure of some on-site Community Welfare Service offices were also raised. Affected residents reported finding it more difficult to access information and supports due, for example, to transport issues, particularly for those in more remote locations.
- 5.20 The Working Group concluded at a very early stage that there was a compelling case for an increase to the weekly allowance. The fact of the allowance remaining static since it was first introduced in 2000 was a key consideration in reaching this conclusion, particularly when set against other developments during the intervening years:
- the current weekly rate of the "comfort payment", the precedent on which the allowance was based, is €35;

- when introduced, the weekly allowance represented 20.83% of the Supplementary Welfare Allowance (SWA) rate of £72 as against 10.27% of the current SWA rate of €186;
 - the payment of Child Benefit to residents was discontinued in 2004 without any increase in the weekly allowance;
 - the prescription charge was introduced in 2013 without any increase in the weekly allowance.
- 5.21 The Working Group questioned the appropriateness of linking the rate of the weekly allowance to a payment intended for persons incapacitated in hospital.
- 5.22 The question of the size of the increase was the subject of very careful consideration. The Working Group was conscious that any proposed increase should be at a level that would enhance the dignity of residents and improve the quality of their lives. The Working Group was also conscious of the situation as it pertains in other EU Member States, and the situation of those in the general population who are in receipt of social protection payments and those on low incomes.
- 5.23 The Working Group noted that the current rate of the weekly allowance compares favourably, on the face of it, with rates payable in other EU Member States that accommodate protection applicants in communal centres at least for a period. Examples include Austria, €40 per person per month; Cyprus, €40 per person per month and €10 per dependent person per month; Luxembourg, €25 per adult per month and €12.50 per child per month; Spain €51.60 per adult per month plus a monthly travel card and €19.06 per child/per month; Sweden €67 per adult per month and €42.30 per child per month.²⁹³
- 5.24 Such comparisons, however, do not take account of the higher cost of living in Ireland and the fact that all other countries, with the exception of Lithuania, allow a right to work after a specified period and thus allow applicants the opportunity to self-support. The length of stay in the Irish system without the possibility of engaging in self-supporting economic activity distinguishes the Irish circumstances from those pertaining in other Member States. Indeed, the length of the determination process in Ireland and consequential length of stay in Direct Provision of itself distinguishes it from other Member States.
- 5.25 As regards those in the general population who are in receipt of social protection payments and those on low incomes, the Working Group considered the level of disposable income available to them after meeting the costs that are directly provided to persons in Direct Provision – accommodation, utilities, food, etc. It was noted that the rate at which Supplementary Welfare Allowance is payable has remained unchanged since 2011, having being reduced over a two-year period from €204.30 to the current rate of €186. It was also noted that the concerns expressed by residents in Direct Provision around the inadequacy of the Back to School Clothing and Footwear Allowance, the cost of school books, etc. were shared by this group. The Working

293 European Migration Network (2014), 'The Organisation of Reception Facilities for Protection Applicants in Different Member States', European Migration Network Study .

Group was conscious of the challenges in making comparisons between residents and those in the general population in receipt of social supports – Direct Provision does not allow residents any choice as regards where they live or an opportunity to manage their expenses and residents are prohibited from accessing the labour market. In addition, persons in the general population may have access to knowledge, extended family supports, and peer-support systems that are unavailable to residents.

- 5.26 The Working Group considered a number of options as regards the size of the increase required. It considered whether to increase the rate to match the 34% increase in the Consumer Price Index from 2000 to 2014. Under this option the adult rate would increase to €25.59 and the child rate to €12.86. This option was not recommended, as social protection payments are not generally based on the consumer price index. The possibility of doubling the weekly payments for both adults and children was considered, but also dispensed with after some reflection on the basis that it was not underpinned by any particular rationale. In addition, the justification for making a half payment to children is questionable. The Working Group noted that the needs of older children are greater than those of young children and are similar to those of adults.
- 5.27 The Working Group concluded that it would be appropriate in the case of adults to recommend an increase that would reinstate the original ratio between the weekly allowance and SWA. This would increase the adult rate to €38.74. In the case of children, the Working Group was influenced by the fact that Child Benefit is not payable in respect of children in Direct Provision and concluded that the weekly allowance payable in respect of children should be aligned with the increase for a qualified child currently payable under the SWA to children, i.e. €29.80.
- 5.28 Before reaching this conclusion, the Working Group examined comparisons provided by officials of the Department of Social Protection of this preferred solution with persons in receipt of maximum rates of social protection payments across a number of family types. In the case, for example, of a single person in receipt of Jobseeker's Allowance of €188 (and factoring in their contribution to their accommodation costs of €32²⁹⁴), the proposed increased payment to adult residents would equate to 25% of the net disposable income available to such a person. In the case of a one-parent family with two children (and again factoring in their contribution to accommodation costs and also Child Benefit payments), the proposed increased payments to adult and child residents would equate to 35% of the net disposable income. While it was noted that this percentage increased in the case of larger families, the Working Group concluded that the payment would in all cases be substantially less than the net weekly income available to equivalent-sized families in the general population.
- 5.29 As regards the concern expressed by residents in relation to the closure of some Community Welfare Offices, the Working Group took the view that those offices should be reinstated in order to address the challenges that residents face in understanding the supports that are available and in accessing those supports. The Working Group also considered that the Department of Social Protection should continue to make

294 Refers to the minimum contribution payable under the Rent Supplement Scheme by a single person in receipt of the maximum rate of Jobseekers Allowance.

every effort to ensure that Designated Persons in the Community Welfare Service exercise their discretion when administering the ENP Scheme in relation to protection applicants in a consistent manner throughout the country.

Recommendations

5.30 The Working Group recommends that:

- The Direct Provision weekly allowance for adults should be increased from €19.10 to €38.74 for adults and from €9.60 to €29.80 for children.
- The Department of Social Protection should reinstate on-site Community Welfare Services to residents in Direct Provision accommodation centres.
- The Department of Social Protection should continue to make every effort to ensure that Designated Persons in the Community Welfare Service strive towards consistency when administering the Exceptional Needs Payment Scheme in relation to persons in the system throughout the country.

Implications including costs

- 5.31 The implementation of the proposed increase to the weekly allowance would bring tangible benefits to residents in their daily lives that would allow them to live with greater dignity. In addition to facilitating residents in meeting the needs of themselves and their families, it would provide a greater degree of control and decision-making power. The implementation of the proposed increase will lead to a reduction in the number of applications for ENPs.
- 5.32 The implementation of the recommended increase carries some risk that protection applicants who are outside Direct Provision will seek to enter it. At present they are not entitled to any weekly social protection payments. A significant number of such applicants seeking to avail of Direct Provision could increase the cost of the recommendation and put pressure on bed capacity, leading to a reduction in the quality of life across accommodation centres. The introduction of the single procedure together with the implementation of the recommendations aimed at resolving the situation of those who have been in the system for lengthy periods and avoiding a reoccurrence of the problem may mitigate these risks by speeding up processing and freeing up space within centres (paras. 3.128, 3.134, 3.163 and 3.166).
- 5.33 The reinstatement of Community Welfare Offices in accommodation centres would contribute to residents' understanding of the social protection supports that are available and facilitate easier access to them.
- 5.34 The proposed increase to the allowance has cost implications, as does the reinstatement of Community Welfare Offices. These are addressed in chapter 6.

C. ACCESS TO THE LABOUR MARKET

BACKGROUND

- 5.35 Protection applicants are not permitted to seek or enter employment or set up a business in the State.²⁹⁵ Lithuania is the only other EU Member State that maintains such an outright ban.²⁹⁶ EU minimum standards as set out in the Recast Reception Conditions Directive²⁹⁷ require Member States to allow protection applicants access to the labour market where they have not received a first instance decision on their protection claim within nine months and the delay cannot be attributed to the applicant. The nine month rule is strict; however, the Member States are entitled to attach conditions to the right of access,²⁹⁸ which many do, while others have allowed more generous access to the labour market than required, e.g. from three months onwards.²⁹⁹
- 5.36 The current Government (continuing the policy of previous Governments) has identified access to the labour market as an obstacle to the State opting-in to the Recast Reception Conditions Directive. Its concerns centre on fears that removing the ban “would almost certainly have a profoundly negative impact on application numbers”.³⁰⁰ The Government noted in 2014 that any change in public policy in this area “would have to have regard to the very large numbers of people unemployed in this country”.³⁰¹ The General Scheme of the International Protection Bill continues this policy.³⁰²

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.37 In the course of the consultation process participants raised again and again their strong desire to work to support themselves and their children and recounted the profoundly negative effects of not being allowed to work on their sense of self-worth, their health and their future prospects and those of their children. A small sample of those contributions is included here to give voice to their frustration:

295 Section 9(4)(b) of the Refugee Act 1996.

296 European Migration Network (2014), ‘The Organisation of Reception Facilities for Asylum Seekers in Different Member States’.

297 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

298 Article 15 of the Recast Directive.

299 European Migration Network (2014), ‘The Organisation of Reception Facilities for Asylum Seekers in Different Member States’.

300 In reply to Parliamentary Question 15729/13 of 27 March 2013, the Minister for Justice and Equality referred to the increase in applications that was experienced in the aftermath of the July 1999 decision to allow access to a cohort of Protection applicants. The immediate effect of that measure was a threefold increase in the average number of applications per month, leading to a figure of 1,217 applications in December 1999 compared with an average of 364 per month for the period January to July 1999.

301 Reply to Parliamentary Question of 30 April 2014, the Minister for Justice and Equality.

302 Head 15.

“Work offers dignity and the best means of integration and reduces the cost to the State.”

“We that has stayed for a long time, had our children in Ireland who grow up here should be allowed stay and work to contribute to our economy.”

“I don’t need any help from anyone just want at least to allow us work for Gods sake.”

“These wasted years doing nothing – after leaving the system you are faced with a dilemma of where to start from and where to go from here – what would I put on my resume for these years?”

- 5.38 Residents who participated in the consultation process reported that they live lives of enforced idleness. They articulated concerns around the loss of previously acquired skills and competencies, and the lack of opportunities for integration due to a lack of financial means. Parents spoke of the effects of the prohibition against work on their capacity to lead a normal family life, to be role models for their children by providing for them, to make decisions to improve their welfare and to ensure that they can participate in activities taken for granted by their peers, including after-school activities.
- 5.39 Participants in the consultation process said they wanted to be seen as potential net contributors to society and not as dependants. They suggested that it was not only those in the system who were losing out as a result of the prohibition, but also the State in terms of tax revenues and a skilled labour force. They feared that the indirect result of not permitting them to access the labour market would be to create a dependent group of people who would remain in need of State support long after their departure from the system.
- 5.40 The Working Group was informed that some applicants work in the “black market” where they are at risk of being exploited. Some residents when asked about this said that what was most important to them was being able to work.
- 5.41 The Working Group noted that the prohibition against accessing the labour market also affects access to further education and training, as eligibility for many courses is linked to eligibility to enter the workforce.
- 5.42 The prohibition on access to the labour market is a barrier to living with dignity as it has the potential to undermine a person’s sense of value and worth. It can also prevent the realisation of physical, emotional and mental integrity and denies a person autonomy and effective control over their lives.
- 5.43 Many of the human costs associated with the ban on access to employment are similar to the negative impacts of living long-term in Direct Provision. These include: boredom, isolation and social exclusion; obsolescence of skills and creation of dependency; negative impacts on physical, emotional and mental health.
- 5.44 The Working Group was very conscious of the sensitivities around this issue, and in making its recommendations has sought to identify a solution that is capable of benefiting applicants who do not receive a timely first instance decision while taking account of wider considerations.

- 5.45 It acknowledges the long-standing Government policy and statutory provision relating to the prohibition on protection applicants seeking or entering employment and the rationale for that policy as explained by officials. The Working Group also notes the intention under the recently published General Scheme of the International Protection Bill to retain that prohibition.
- 5.46 It recognises the significance attached by persons in the system to a right to work and is acutely aware of the expectation on the ground that a strong recommendation will be forthcoming in this area. After length of time in the system, a right to work was the issue of most concern raised by Direct Provision residents in submissions during the consultation process. The right to work has also been a priority focus of commentators, academics and NGOs, given that Ireland's position is out of line with the policy of the majority of EU Member States on this matter, including the United Kingdom.
- 5.47 The Working Group notes that persons five years or more in the system would have access to the labour market under the solution recommended by the Working Group at paras. 3.128 and 3.134. Similar access to the labour market would be extended to persons reaching the five year mark in the future under the solution recommended for future cases once the new single procedure is in place (see para. 3.166).
- 5.48 The Working Group notes that, in the normal course, the right to work issue (as per the Reception Conditions Directive) is understood to apply to persons who are awaiting a first instance decision for nine months or more after submitting their application for protection.

Recommendations

- 5.49 Having regard to the foregoing, the Working Group recommends:
- Provision for access to the labour market for protection applicants who are awaiting a first instance decision for nine months or more and who have co-operated with the protection process (under the relevant statutory provisions), should be included in the International Protection Bill and should be commenced when the single procedure is operating efficiently. This recommendation takes account of the fact that, under the current statutory arrangements, first instance decisions in respect of refugee status and subsidiary protection do not (in the normal course) issue within nine months at present.
 - Any permission given to access the labour market should continue until the final determination of the protection claim.
 - A protection applicant who has the right to access the labour market and is successful in finding employment, and who wishes to remain in Direct Provision, should be subject to a means test to determine an appropriate contribution to his/her accommodation and the other services provided to him/her.

Implications including costs

- 5.50 The implementation of the main recommendation would benefit those in the system who have not received a first instance decision under the single procedure within nine months through no fault of their own. It would bring the State into line with most other EU Member States.
- 5.51 The framing of the main recommendation in the context of an efficiently operating single procedure is intended to address concerns on the part of the authorities that allowing access to the labour market in circumstances where first instance decisions (i.e. decisions on refugee status and subsidiary protection status) are not normally issued within nine months would affect application numbers. Once the single procedure is operating efficiently the authorities expect that the majority of applicants will receive a first instance decision well within nine months. As a consequence, the number of applicants who would potentially benefit from the recommendation may be small. The existence of the nine month time limit could also act as an additional incentive to the authorities to ensure that the process is operating as efficiently as possible.
- 5.52 In practical terms, implementation would mean that those coming within this group would request some form of written authorisation from the appropriate authorities allowing them to work. It would also mean that applicants who are successful in finding employment and who choose to remain in an accommodation centre would be subject to a means test to determine their contribution to their accommodation etc. Any protection applicant who secures work would, of course, pay PRSI, USC, income tax, etc. in the same manner as the general population. Equally, persons would be entitled to relevant social protection schemes on the same basis as the general population, including Family Income Supplement and Illness Benefit. It must be noted, however, that eligibility for Jobseeker's Benefit and other supports requires at least two years' contributions, with the consequence that the potential impacts are limited. Access to the labour market would bring with it eligibility for certain education courses on the same basis as the general population. These potential costs need to be viewed against the savings to other arms of the State due to improved mental health etc. of applicants.

D. ACCESS TO EDUCATION

BACKGROUND

- 5.53 The ease with which protection applicants can access education varies considerably depending on the stage they are at in the education cycle.
- 5.54 In line with long-standing Government policy, children in the system are entitled to access pre-school, primary and second-level education in a manner similar to Irish nationals. This includes access to the free year of early childhood education and to all ancillary services available to primary and second-level students such as school transport and additional teaching resources (including English as an Additional Language resources and special educational needs resources etc.). As noted at para. 5.5, parents in Direct Provision are also entitled to apply for the Back to School Clothing and Footwear Allowance Scheme.
- 5.55 Those who exit the Irish school system with a Leaving Certificate can access further and higher education courses subject to satisfying the academic and other entry requirements laid down by the relevant educational institutions, including competence in the language of instruction. They are not, however, eligible to apply for student supports. In addition, they may be categorised as “international students” by the institutions and charged the higher rate of fees payable by students coming from outside the EU/EEA. Notwithstanding these financial barriers, the Working Group heard that many protection applicants do access further and higher education courses, some with the assistance of charitable or philanthropic organisations and churches. In the case of separated children who have reached 18 years, RIA works with The One Foundation to facilitate their access to education beyond the Leaving Certificate.
- 5.56 Those who leave the school system with a qualification other than the Leaving Certificate, or perhaps no qualification at all, have very limited opportunities. Many further education and training courses that might be suitable for this group are designed as job activation measures and are limited to persons who are entitled to work and are on the live register.
- 5.57 Protection applicants who enter the protection process as adults face the financial and other barriers identified above to accessing further and higher education. They are entitled to access adult literacy supports, including English for Speakers of other Languages (ESOL) only, free of charge. These supports are provided by the Education and Training Board sector and are widely available, and protection applicants are identified as a priority target group. These courses provide basic literacy skills only.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.58 Barriers to education featured strongly in the concerns identified by residents who participated in the consultation process. Their concerns were in many cases reflective of the length of time that they have spent in the system, as illustrated by the following extracts from submissions received:

“There should be some way to ensure Protection applicants do not lose their skills whilst in asylum.”

“There is a major de-skilling going on. Any professional who stops practice for a period of eight years would have found out that things cannot usually go back to the same work and be effective.”

“Even when they achieve high points in the Leaving certificate, asylum seekers can only enter third level education as overseas students – pay exorbitant fees, excluding them from higher education.”

- 5.59 It is expected that the introduction of the single procedure will prevent a reoccurrence of the current situation where persons find themselves in the system for lengthy periods with all the attendant ill effects identified in this report. For existing applicants who have been in the system for five years or more the proposed solutions at paras. 3.128 and 3.134, if implemented, will resolve their cases.

SCHOOL-GOING CHILDREN

- 5.60 Bearing in mind that primary and second level education is available, the issues of concern focused on obstacles to the children’s full participation in school life and extracurricular activities due to the limited financial means of their parents and, in the case of some centres, transport difficulties. The Working Group takes the view that the implementation of its recommendations aimed at addressing the inadequacy of the Direct Provision weekly allowance (para. 5.30), and also the location of some centres (para. 4.111) will go some way towards alleviating these concerns.
- 5.61 As noted at para. 4.67, just over half of the family centres operate homework clubs while the remainder offer homework rooms. Having regard to the particular challenges that children in the system experience (language barriers, their parents not being familiar with the school curriculum, etc.), the Working Group considers that access to a full-time serviced after-school homework or study club, whether on-site in the accommodation centre or in the local school, has the potential to be of significant benefit to this group of children and should be included as a requirement in the contract with accommodation providers.
- 5.62 Additionally the Working Group would welcome an initiative to raise awareness among the principals and Boards of Management of the schools servicing the Direct Provision accommodation centres of the need to be sensitive to the particular difficulties faced by this group of children due to the nature of their living conditions and, in particular, the small allowances available to their parents. The Working Group notes that if the Education (Admissions to School) Bill 2013 is enacted in its present form, Boards of

Management will be explicitly prohibited from charging fees or contributions as part of the school admission process (with certain exceptions in the case of fee-charging schools).

Recommendations

5.63 The Working Group recommends:

- All Direct Provision accommodation centres that host families should be required to provide or facilitate (i.e. through an NGO or local organisation), as part of their contract, a full-time serviced after-school homework or study club, or transport to and from school-based homework or study clubs, throughout the school year. The on-site clubs should be age-appropriate, attractive, well-heated, appropriately supervised and equipped with Wi-Fi and sufficient numbers of computers.
- An awareness initiative should be rolled out to ensure that Boards of Management and school principals are familiar with the financial and other challenges facing children in Direct Provision and their families.

SCHOOL LEAVERS

5.64 As noted above, school leavers face financial and other obstacles in accessing further and higher education. The Working Group heard that school leavers who cannot proceed with their peers experience huge frustration and distress, which results in “a sense of hopelessness and leaves young people with endless hours and days with nothing to do”, putting them “at risk of social isolation and subject to the vulnerabilities and complications that may arise for their age group i.e. experiences of racism, exclusion, poor mental health, low self-esteem, [and] de-motivation, [and] may lead to possible involvement in anti-social activities”.³⁰³

5.65 Officials of the Department of Education and Skills informed the Working Group that, based on data provided by RIA, the number of older children in Direct Provision who might aspire to advance to further and higher education is relatively small:

- Approximately 60 students aged 15–18 are currently at secondary level and might be expected to sit their Leaving Certificate over the next three to four years;
- Approximately 100 young people have obtained a Leaving Certificate in the past five years and remain in Direct Provision, of whom 21 young people sat the Leaving Certificate in 2014;
- 22 are scheduled to sit the examination in 2015.

5.66 The number of children in the system outside of Direct Provision who might have similar aspirations is not known, but the Working Group noted that any proposal to

303 HSE consultation feedback to Review Group on Protection System (24 February 2015).

address the concerns of school leavers could not discriminate between those in Direct Provision and those outside.

- 5.67 The Working Group identified school leavers in the system, other than those at the deportation order stage, who have spent a minimum of five years in the Irish school system and who have obtained their Leaving Cert as a priority group for any proposal in relation to easing access to further and higher education for those who satisfy the academic and other relevant requirements for entry.
- 5.68 The Working Group took cognisance of the approach adopted by other EU Member States in relation to access to further and higher education for persons in the system and that granting more generous access to such persons than elsewhere, notably in the United Kingdom, could significantly affect the cost of the protection system. Approaches vary across EU Member States and within individual countries where local education authorities have discretion in relation to the level and cost of access. The United Kingdom and Belgium take a similar approach to Ireland and charge fees for access to both further and higher education courses, with rates for international students applying in relation to higher education courses. A further group (France, the Netherlands, Spain) allow access to both further and higher education with some access to grants and other supports to facilitate access. Access to further education and training courses that are labour market related is generally linked to the right to work, as it is in Ireland. As noted at para. 5.35, Ireland is one of only two Member States that prohibit access to the labour market.
- 5.69 On balance the Working Group concluded that this priority group deserves attention and that student supports available for higher education (including Post Leaving Certificate courses) should be extended to them. The Working Group welcomes the recent commitment by the Minister of Education and Skills to work to extend student supports to this group in time to benefit 2015 Leaving certificate students.³⁰⁴

Recommendation

5.70 The Working Group recommends:

- The extension of student supports for third-level and Post Leaving Certificate courses to persons who are protection applicants or are at the leave to remain stage, have been in the Irish school system for five years or more, and satisfy the relevant academic and other eligibility criteria. The Working Group welcomes the public commitment by the Minister for Education and Skills in this regard.

³⁰⁴ Minister of Education and Skills, Jan O'Sullivan TD, address to the Teachers' Union of Ireland Congress on 8 April 2015; <http://www.education.ie/en/Press-Events/Speeches/2015-Speeches/SP2015-04-08.html>

ADULTS – NEW ARRIVALS

- 5.71 On their arrival in Ireland, many protection applicants have little knowledge of Ireland and speak no English. As a result they can experience difficulties when seeking to access services. Until recent years a programme aimed at increasing the capacity of protection applicants to make informed decisions about their own health care, and which included information on accessing other supports and services, was located at the Baleskin Reception Centre.³⁰⁵ The Working Group considers that an initiative of this type, providing information not only on accessing services but also on life in Ireland, should be resourced and made available to protection applicants within the first month of their arrival, and also rolled out as necessary to applicants who were dispersed before having an opportunity to avail of it.
- 5.72 The Working Group heard that the provision of English language and adult literacy for ESOL training is not consistent across the country and that the courses are not of sufficient duration to ensure that an adequate level of fluency is achieved. The Working Group considers that the early provision of language supports (i.e. within one month) to new arrivals is essential and further considers that the courses provided should be resourced and of a sufficient duration to ensure language competency and fluency.
- 5.73 In view of the range of education provision at different levels there would be benefit in putting in place a system to provide information to protection applicants who have spent six months or more in the system on their eligibility for further education or other courses.

Recommendations

- 5.74 The Working Group recommends:
- Orientation classes, e.g. about life in Ireland, should be available to all protection applicants within the first month after lodging their application. These could be provided by a non-profit organisation based at the initial reception centre and form part of an early assessment of vulnerability. For those who are dispersed without having an opportunity to take up such classes, classes should be provided in accommodation centres as required.
 - Access to English language classes and adult literacy for ESOL (English for Speakers of Other Languages) classes within a month of their application for protection being submitted should be made available. Those classes should be for at least the equivalent of one day a week, for a period of up to six months, and be available at a location that is accessible easily and without cost to the protection applicant.

³⁰⁵ The programme was setup in 2002 by SPIRASI in partnership with the HSE. The overall objective was to increase the capacity of minority ethnic communities to make informed decisions about their own health care and the programme included information on accessing other supports and services. This was delivered from a peer-led and multilingual methodology using specifically designed tools and information resources.

ADULTS – ACCESS TO FURTHER AND HIGHER EDUCATION

- 5.75 As noted above, adults face financial and other barriers to accessing further and higher education courses.
- 5.76 As regards the financial barriers, and in particular the fact that fees are charged at the rate for international students, the Working Group noted that the higher education institutions are autonomous bodies. Accordingly, the criteria governing the level of tuition fees to be charged in cases where undergraduate students do not qualify for the “free fees” scheme are a matter to be determined by those institutions. The Working Group would welcome an initiative by the institutions to apply the EU/EEA rate of fees payable to persons in the protection process or at the leave to remain stage for five years or more. Five years is proposed having regard to the approaches adopted by other EU Member States, notably the United Kingdom, and a concern that a more generous approach in Ireland would risk increased costs to the protection system. In addition, the Working Group was mindful that at any one time there are c. 35,000 non-EEA students attending educational institutions in Ireland, who are paying fees at the international rate.
- 5.77 The Working Group is conscious that adults who do secure a place on a Post Leaving Certificate or third-level course face other practical issues, particularly in relation to accommodation as their institution of choice may be located at a distance from their accommodation centre.
- 5.78 In the course of the consultation process residents sought to be allowed to apply for further education and vocational training courses above level 4 on the National Framework of Qualifications. There were many references to a “cap” on access to such courses for persons in the system. Officials of the Department of Education and Skills clarified that there is no “cap” as such; rather it is the case that many of the level 5 and 6 courses that come within “further education and vocational training” are labour force activation measures aimed at the long-term unemployed, for which the eligibility criteria include being registered as unemployed with the Department of Social Protection for a certain period. Residents may access programmes at levels 5 and 6 under the Post Leaving Certificate Programme but must pay the fees applicable to non-EU/EEA nationals.
- 5.79 The Working Group considers that protection applicants and those at the leave to remain stage who have been in the system for two years or more should be eligible to apply for further education and training courses beyond level 4 subject to meeting the qualifying criteria, i.e. if a course is offered under an employment activation initiative and requires applicants to be a certain duration on the live register, then this requirement would still obtain. Having regard to the strong focus of Government policy on the long-term unemployed and the limited number of places on activation courses/programmes currently, the Working Group does not make any recommendation in relation to the easing of the requirement to be on the live register for those in the protection process or at the leave to remain stage. The Working Group notes that if its recommendation at para. 5.49 on access to the labour market is implemented, future applicants who are permitted to seek employment may be eligible to access such courses.

- 5.80 A further difficulty reported by those who participated in the consultation process is that the prohibition against access to the labour market means that if a person overcomes the financial and other hurdles and obtains a place on a course, they may not be able to take it up if it has a work experience element (e.g. nursing). The Working Group considers that steps should be taken to ensure that work experience components in educational courses do not act as a bar to protection applicants, or persons at the leave to remain stage, accessing such courses.
- 5.81 Opportunities for this cohort to undertake internships and apprenticeships to develop their skills, or to undertake professional development to ensure that they can keep their existing expertise up to date, would be desirable. In this regard the Working Group considers that fora of professional recognition bodies and trade associations, trade unions and the community and voluntary sector should be convened to devise appropriate schemes to facilitate this.

Recommendations

5.82 The Working Group recommends:

- An initiative to apply the EU fee rate for higher education courses to persons in the system five years or more and who are protection applicants or who are at the leave to remain stage, where fees are payable.
- After six months in the protection process, whether their application has been determined at first instance or not, adult protection applicants should be provided with information in relation to their eligibility to access further education or other courses.
- Notwithstanding any restriction on access to the labour market, work experience components in educational courses should not act as a bar to protection applicants or persons at the leave to remain stage from accessing such courses.
- Persons who are in the system for two years or more and who are protection applicants or who are at the leave to remain stage should be eligible to apply for access to further education and vocational training courses where they satisfy the relevant course entry requirements.
- Remuneration received during a work placement undertaken as part of a further or higher education course of study should be allowed for the duration of the placement in lieu of the Direct Provision allowance, or alternatively a proportion could be returned as a contribution towards the accommodation and subsistence, for the temporary duration of the placement. It could also be used to support residents placed on courses in locations away from their centre. In other circumstances the stipend could be deemed not applicable to residents in order to allow them access to work placements as a result of academic study.
- A forum or fora of professional recognition bodies and trade associations, trade unions and the community and voluntary sector should be convened to devise

a scheme to allow access to internships, apprenticeships and professional development opportunities for protection applicants or persons at the leave to remain stage.

Implications of recommendations including costs

- 5.83 Material costs relating to the provision of additional ESOL supports, orientation classes and student supports for school leavers are identified in chapter 6. In the event that the Working Group's proposed solution for those in the system for five years or more is implemented, the proposal to extend student supports to certain school leavers will become largely redundant.

E. HEALTH CARE SUPPORTS

BACKGROUND

- 5.84 Persons in the system have access to mainstream health and social care services. Those who reside in Direct Provision are provided with a medical card and those who reside outside Direct Provision and fall within the relevant income thresholds are also entitled to a medical card.³⁰⁶
- 5.85 Health and social care services are delivered either directly by the HSE or through funding provided by the HSE to a range of voluntary and community organisations.³⁰⁷ In-reach services in many Direct Provision accommodation centres include e.g. specialist psychology services, Public Health Nursing, General Practitioner Clinics, HSE Early Childhood/Play Therapy Services, Speech and Language Therapy, Sexual Health Promotion, etc.
- 5.86 As noted elsewhere in this report, protection applicants who avail of Direct Provision are offered a voluntary health screening assessment by medical personnel during their stay at the Baleskin Reception Centre. Figures for 2014 show a take-up rate of 80%.³⁰⁸ The less than 100% take-up rate may be explained by the fact that some protection applicants need time and space before they feel ready to engage with services on health issues. On completion of the screening, and where necessary, a referral is made to a General Practitioner for chronic health/medication management or follow-up. Specific referrals are made to consultant specialists in infectious diseases, where required.

³⁰⁶ Persons who are ordinarily in the State and who fulfil a means test are entitled to a medical card under the Health Act 1970. The means test is dispensed with in the case of protection applicants in Direct Provision as they are assumed to be destitute.

³⁰⁷ For example, Dublin Aids Alliance; Cross Care; ISPC; BeLongTo; Jesuit Refugee Service; Community Mothers Programme; Rape Crisis Centres; SPIRASI, Tralee International Resource Centre; Integration & Support Unit Waterford, Doras Luimní.

³⁰⁸ Provided by the HSE.

- 5.87 The HSE participates in the inter-agency group comprising officials from the Department of Justice and Equality (RIA) and other Government Departments and Agencies aimed at ensuring an integrated approach to the provision of services to residents in Direct Provision.³⁰⁹ The inter-agency group meets at local and regional levels.
- 5.88 The HSE's National Intercultural Health Strategy provides the framework within which the health and support needs of people from diverse ethnic and cultural backgrounds are being addressed by the HSE. Those in the system and those granted status form a significant element of this group of service users. The Strategy is under review this year with a view to updating.
- 5.89 The HSE's National Service Plan 2015 contains as a high-level priority the commitment to "improve health outcomes for vulnerable groups", with particular emphasis on, inter alia, protection applicants, and includes a specific commitment to deliver on any recommendations coming from the Working Group.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.90 Health-related issues featured strongly in the consultation process undertaken with residents. A sample of the contributions follows:
- "Prescription is really unaffordable because there are times when you have more than one item and you don't have enough money to collect them. We appreciate if the €2.50 charge is dropped ..."*
- "Mental health risk for adults and children: Depression, behavioural issues with children, post natal depression, separation anxiety, post traumatic stress disorder are all very common for residents of Direct Provision."*
- "Health wise the government has gone out of its way to help. The HSE has been very effective. We can all see our GPs and that is good. Teeth problems are blamed on lack of necessary nutrients in the food."*
- 5.91 Officials from the HSE informed the Working Group at an early meeting that it had taken the decision that residents in Direct Provision should not have to pay the prescription charge at €2.50 per item. Due to their limited means the charge places a particular burden on residents and acts as a significant barrier to their obtaining their prescribed medication and maintaining their health and well-being. The HSE has developed an implementation plan for the roll-out of this decision once the necessary ministerial order is signed. The Working Group unanimously welcomes this initiative and recommends its implementation as soon as possible.
- 5.92 Mental health issues featured prominently in the consultation process. Some residents may be suffering the effects of trauma from events in their lives before coming to Ireland while others may have developed difficulties since entering Direct Provision. As

³⁰⁹ Other participants include the Department of Social Protection; Department of Education and Skills; Department of the Environment, Community and Local Government; and Tusla.

noted elsewhere in this report, the length of time that residents spend in the system has been identified as a contributory factor to mental health issues. The Working Group heard that it may result in applicants disengaging from health services over time. Despondency may also result in serious negative impacts, including high use of prescription drugs.

- 5.93 The importance of early identification of persons with vulnerabilities including persons with mental disorders, and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of FGM, is discussed in chapters 3 and 4 and is the subject of specific recommendations aimed at improving their experience in the determination process and in Direct Provision (see paras. 3.299 and 4.210). Those recommendations are aimed at ensuring that the existing voluntary health screening service is reviewed and strengthened so as to facilitate a timely multi-disciplinary assessment (including medical, psychological and social needs) of all protection applicants to identify their needs and appropriately assist them. It is important that when this assessment identifies mental health issues or, if issues arise, at a later stage that appropriate services are available to the person concerned. The Working Group heard that there is a perception of long waiting lists to access some mental health services. It was noted that not all mental health issues require psychiatric/medical mental health services. Where necessary, however, these should be easily accessible to residents who require them.
- 5.94 The Working Group welcomes the commitment from the HSE to nominate a senior manager from its Mental Health Division to join the inter-agency group referred to above. This will assist in ensuring a better coordinated response to the mental health needs of those in Direct Provision. The Working Group also welcomes the HSE commitment to put in place a programme of mental health awareness training for staff in Direct Provision. This training should enable the recognition of mental health issues by staff so that they can alert appropriate services, while ensuring the safety and well-being of the individual and all those who work and live in the centre.
- 5.95 In order to further assist vulnerable persons, the Working Group considers that sensitivity training on issues that affect such persons should also be provided to all relevant Direct Provision staff. Steps should be taken in accommodation centres to make the environment more conducive to encouraging vulnerable residents to access services. Such steps should include visible “safety, dignity and free from harassment statements” and the availability of up-to-date information in a variety of forms targeted at vulnerable persons. Possible subjects include for example FGM, torture, HIV, mental health, LGBT, disability, religion, domestic violence, human trafficking, exploitation, prostitution and older people’s needs.
- 5.96 The Working Group was informed that RIA has developed a Sexual and Gender-based Violence Policy with the aim of ensuring that any disclosures of domestic, sexual and gender based violence and harassment made to accommodation centre or RIA staff are dealt with appropriately. This includes the provision of information to ensure that appropriate professional services can be accessed. An awareness poster in a number of languages has been developed to accompany the roll-out of the policy. The Working Group welcomes this initiative. It should be rolled out as soon as possible in tandem with an awareness-raising and training plan.

- 5.97 The Working Group was informed by a written submission from the Irish Family Planning Association (IFPA) that women and girls living in Direct Provision have difficulties accessing sexual and reproductive health services including information and supports relating to a crisis pregnancy.³¹⁰ As noted by the IFPA, many women and girls live in Direct Provision centres during some of the most critical years of their reproductive lives and it is important that they have access to information and services to protect themselves against unplanned pregnancy and sexually transmitted diseases and to control their fertility and plan their family. The Working Group makes two specific recommendations to address these concerns.
- 5.98 Having regard to the challenges that residents face including language barriers, the Working Group considers that specific health promotion initiatives should be undertaken to alert them to public health initiatives that are available free of charge, including breast and cervical screening etc. In addition, as identified elsewhere in this report, quality interpreting services are essential to ensure that residents are facilitated in disclosing their health needs to service providers including their General Practitioner. Again sensitivity training for such interpreters would be important. General Practitioners and others providing care should be encouraged to engage interpreting services where required.
- 5.99 Delays in receiving medical cards were identified by some participants in the consultation process. The Working Group heard that the Primary Care Reimbursement System had provided a dedicated telephone number to be used to follow up any medical card issues in relation to protection applicants. A protocol has also been implemented to provide a medical card within 24 hours to a protection applicant with a serious medical condition in need of urgent/on-going medical care.

Recommendations

5.100 The Working Group:

- Recommends that the HSE initiative to exempt residents from prescription charges, which the Working Group welcomes, be implemented as soon as possible.
- Recommends that a health promotion initiative be targeted at residents of Direct Provision centres to inform them about access to breast screening, cervical checks, and bowel and diabetic screening services free of charge.
- Strongly urges that a review by the relevant organisations of services for persons in the system experiencing a crisis pregnancy be undertaken immediately with a view to a protocol being agreed to guide State agencies and NGOs supporting such persons. Particular attention should be paid to addressing the needs of the individual in the context of the legislative framework. Issues relating to travel documents, financial assistance, confidentiality, and access to information and support services should be addressed.

³¹⁰ Irish Family Planning Association, submission to the Working Group on the Protection Process, March 2015.

- Welcomes the development by RIA of a Sexual and Gender-based Violence Policy and recommends that it be rolled out as soon as possible and accompanied by an awareness-raising and training plan.
- Recommends that an initiative be put in train to facilitate access by persons in the system to information and services concerning sexual and reproductive health and family planning.
- Recommends that an adequately trained and resourced interpreting service be put in place where demand exists. Interpreters dealing with persons in the system should be sensitivity trained, especially when interpreting the disclosure of needs, experiences and values of vulnerable groups. General Practitioners should be encouraged to offer interpreting services to this client group.
- Notes the actions identified in the HSE's Mental Health Division's Operational Plan. To address the overriding need to provide health-related targeted education and training to staff working in Direct Provision accommodation centres, all centre staff should be provided with mental health awareness training by the HSE or designated NGOs. This training should cater for recognition of mental health issues and assist staff in alerting appropriate services, while ensuring the safety and well-being of the individual and all those who work and live in the centre.
- Recommends that sensitivity training on issues that impact on vulnerable groups should be provided to all relevant Direct Provision staff. Each centre should have a strong visible presence of a safety, dignity and free from harassment statement, reminding both residents and staff of their requirement to ensure a safe and respectful living environment. Such visible messages may facilitate disclosure by vulnerable groups, which must result in immediate contact with relevant services.
- Recommends that information leaflets, posters, talks and confidential contact details be provided in every centre and kept up to date to target vulnerable groups and promote dignity. Issues to be identified include e.g. FGM, torture, HIV, mental health, LGBT, disability, religion, domestic violence, human trafficking, exploitation, prostitution and older people's needs.
- Recommends that residents be able to access appropriate transport provision or financial assistance to ensure attendance at medical appointments and safe return to the centre.
- Recommends that the HSE National Operational Plan should include an account of progress on the implementation of the health-related recommendations made by the Working Group that are adopted by Government.

Implications including costs

- 5.101 The implementation of this set of recommendations would assist in encouraging persons in the system to disclose their health needs and to receive information and services appropriate to their needs. The costs of implementing these recommendations are not likely to be significant but some allowance is made for them in the costing exercise conducted by the Working Group. See chapter 6.

F. SUPPORTS FOR PERSONS WHO ARE LGBT

BACKGROUND

- 5.102 Protection applicants who are LGBT and who participated in the consultation session reported that safety and isolation were serious issues for them in Direct Provision accommodation. They also reported serious issues of concern around the disclosure of their sexual orientation to the decision-making bodies, service providers and other residents, and the response to those disclosures.
- 5.103 The importance of putting in place systems to more proactively ensure that vulnerable applicants, including those who are LGBT, are identified early in the protection process and that appropriate responses are taken to such cases is the subject of recommendations in chapters 3 and 4 (paras. 3.299 and 4.210). The measures proposed include the introduction of vulnerability screening accompanied by a formal mechanism of referral in the case of disclosed vulnerabilities to ensure that such persons are identified at an early stage and are provided with appropriate information, health or psychological services, procedural supports and accommodation. Measures are also recommended to ensure that decision-makers and other front-line staff have a better understanding of the vulnerabilities and needs of applicants. Other recommendations that will be of benefit to this group include those relating to the provision of early legal advice and of quality interpreting services (see paras. 3.255 and 3.275). The recommended improvements to living conditions in Direct Provision will also of course assist, for example, the recommendations in relation to ensuring more privacy for single persons (para. 4.87).
- 5.104 Some further concerns articulated by those who participated in the consultation process, in particular relating to negative attitudes from some other residents and a lack of understanding on the part of service providers, and not already addressed by recommendations in chapters 3 and 4 are identified below.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.105 Many protection applicants are from countries where homosexual acts are criminalised, with penalties on conviction extending to the death penalty. As a consequence, protection applicants who are members of the LGBT community find themselves living with other residents who may express negative attitudes towards them.
- 5.106 Participants in the consultation process felt that if they disclosed their sexual orientation within the accommodation centre they would experience discrimination by people from their own countries of origin or experience the same negative attitudes that led them to seek international protection. Some reported that they had been “outed” by other residents and as a result have experienced isolation, harassment and

threats of assault. They reported feeling further stigmatised and isolated because of being told to stay away from other people, particularly children, and finding themselves at tables on their own at meal times.

- 5.107 One participant reported being sexually harassed and receiving unwanted sexual advances from other residents, and said that he had not reported the incidents to management as he feared an unsympathetic hearing and that he would be targeted as a result. Other participants reported having experienced physical assault while in the centres. One person reported such an assault and felt it was addressed appropriately by management. Others, however, said that there is “no point” in reporting such incidents and felt that they would have to “come out” if they were to make a complaint. They feel that they would be unsafe if they did “come out”.
- 5.108 Some participants said that they did not realise that they can report incidents of physical assault or sexual harassment to the Gardaí. Some have had very traumatic experiences with the police in their countries of origin, as a result of which they are fearful of reporting incidents related to sexual orientation and gender identity to the authorities in Ireland.
- 5.109 Some participants reported that they had come out to service providers who were seen as supportive, e.g. medical staff and some staff in centres. It was noted that while some front-line workers are knowledgeable about LGBT issues, they do not always appreciate the difficulties for protection applicants coming from a country where LGBT people are at risk of criminal sanctions.
- 5.110 The Working Group heard that those who are accommodated outside of Dublin have difficulty in accessing supports related to sexual orientation or gender identity. Some residents said that they had been refused financial assistance by the Community Welfare Service of the Department of Social Protection to cover travel costs relating to accessing supports in Dublin. LGBT supports, especially in rural and small towns, may not exist or can often be ad hoc social groups that may not be able to provide the sustained support that an LGBT protection applicant may require.
- 5.111 All participants identified the mental health supports available to protection applicants as being rather poor in the sense that the waiting lists are long and the demand great. Those who had accessed supports reported that they found them “quite beneficial”. The issue of mental health services is addressed in the context of the section of this chapter looking at healthcare.
- 5.112 The Working Group considers that potential solutions to address the real fears and experiences of protection applicants who are LGBT must focus on tackling the unacceptable behaviour rather than segregating LGBT applicants from other residents. Measures are required to raise awareness among protection applicants that the laws and attitudes in Ireland are different to those in their countries of origin and to reassure persons who disclose their sexual orientation or are the subject of verbal or physical abuse that they can expect protection and support from relevant authorities.

Recommendations

5.113 The Working Group:

- Recommends that organisations that provide services relevant to persons in the system should consider training staff in LGBT issues to sensitively deal with queries and build trust so as to encourage disclosure. Where possible, a trained staff member should be identified as a point of contact and their details made available in centres. This is important to ensure that appropriate services are extended to members of the LGBT community in the system.
- Recommends that Designated Persons in the Community Welfare Service should exercise discretion in administering the Exceptional Needs Payment scheme to support LGBT people in the system to access appropriate supports and services.
- Recommends that information by way of posters, pamphlets, contact numbers and visits by relevant NGOs, Garda LGBT Liaison Officers, and Sexual Health Promotion Officers should be available in all centres.
- Notes that RIA has a safety statement and recommends that all Direct Provision centres should have safety statements and dignity and respect policies incorporating the rights of LGBT people prominently displayed.

Implications including costs

5.114 The implementation of this set of recommendations in conjunction with other recommendations in the report in relation to vulnerable applicants would assist in ensuring that protection applicants who are LGBT would be reassured that if they disclose their sexual orientation they will be protected and supported. The costs of implementing these recommendations are not likely to be significant but some allowance is made for them in the costing exercise conducted by the Working Group. See chapter 6.

G. SUPPORTS FOR SEPARATED CHILDREN

BACKGROUND

- 5.115 A separated child is a child under 18 years of age who is outside their country of origin and separated from both parents or their previous legal/customary primary caregiver. Separated children are a vulnerable group and the State is duty bound by international and national law to protect and provide for them in the same way as for children normally resident in the State. It is under the Refugee Act 1996 and the Child Care Act 1991 that the responsibilities of the State are set out in relation to the care needs of separated children. Separated children who arrive in this jurisdiction are placed in the care of the State, i.e. with Tusla – the Child and Family Agency, following referral by the immigration officer at the port of entry or by the Office of the Refugee Applications Commissioner.³¹¹
- 5.116 In 2014, 97 referrals were made to Tusla’s dedicated social work team for separated children, down from 120 in 2013. The peak year for applications was 2001, when there were 1,085 referrals to the service. The majority of separated children are 16 or 17 years old on arrival in the State.
- 5.117 Tusla accommodates separated children in one of three short-term intake residential centres for a number of weeks while a social work needs assessment is carried out. After assessment, children are placed in the most appropriate placement – supported lodgings, fostering or a longer term residential centre. The majority of separated children are placed in fostering placements around the country, with children who cannot be placed in foster homes for various reasons, or who need to be near certain Dublin hospitals, being accommodated in the longer term residential centre.
- 5.118 Each separated child is allocated a social worker who is responsible for the development and implementation of an individualised statutory care plan for the child. They also supervise the standard of the child’s placement and provide services and support to meet the child’s needs. If the social work assessment indicates that making a protection application is in the child’s best interest, the social worker assists with the application.³¹²
- 5.119 The Working Group heard that the standard of care for separated children has improved greatly in recent years with the introduction of an “equity of care” principle in 2010 which requires that the same standard of care is provided to separated children vis-à-vis other children in State care. Tusla ensures that this principle is

311 Section 8(5)(a) of the Refugee Act 1996 places a statutory duty on an authorised officer or immigration officer where it appears to that officer that a child (i) is under the age of 18, and (ii) is unaccompanied to refer that child to Tusla – the Child and Family Agency. It is a matter for Tusla to determine if it is in the minor’s best interest to make a protection application and, if so, to assist the minor throughout the protection process.

312 Ibid.

maintained and that there is no differentiation of care provision, care practices, care priorities, standards or protocols. Both foster care organisations and residential centres are inspected against national standards.

- 5.120 While procedures are in place for age determination, the process is not infallible and there can be difficulties in establishing an applicant's true age. Procedures are in place to safeguard against young adults over 18 being inappropriately placed in children's centres or foster care, and conversely to safeguard against separated children being inappropriately accommodated in Direct Provision centres.
- 5.121 Currently separated children in care are entitled to an aftercare plan. An aftercare worker is available to support young people who were previously separated children, irrespective of their status. The Working Group welcomes the forthcoming Aftercare Bill³¹³ which will place a statutory obligation on Tusla to prepare an aftercare plan for children who meet the eligibility criteria regarding the length of time they have spent in care. Tusla may also develop aftercare plans for separated children who may not meet the eligibility criteria as set out in the current General Scheme of the Aftercare Bill.
- 5.122 The authorities reported that as of early 2015 there were 82 separated children who had reached 18 years and were receiving aftercare support, as follows:
- 32 had been granted some form of status (e.g. refugee status or subsidiary protection) before reaching 18 and were continuing according to their aftercare plan (which may include further education, training, and Tusla aftercare support).
 - 25 were awaiting a decision on their status and, in line with Government policy for the reception of adult protection applicants (and children in the company of their parents/guardians), are required to transfer from care to a Direct Provision accommodation centre. Various aftercare support services are offered to this group.
 - A further 25 went from care to Direct Provision, following which they were granted some form of status, and moved on to independent accommodation. Uninterrupted aftercare support is available to this group.
- 5.123 Where Tusla identifies a separated child who reaches 18 as exceptionally vulnerable, they may be allowed to remain temporarily in a Tusla care placement. There are no numbers available on this category.
- 5.124 Where a separated child has not received a decision on their status and is nearing 18 years and may require Direct Provision accommodation, RIA and Tusla jointly prepare a plan for them. Officials of the two Agencies informed the Working Group that they take account of the needs and circumstances of the individual concerned, such as medical, welfare and educational needs, and maintaining relationships with communities. A Direct Provision accommodation centre is identified by RIA, in partnership with Tusla, as being suitable for these young people. The Working Group heard that the level of aftercare support provided to this group varies across the country. They experience the same lack of purpose as other residents, with no access to work, and limited access

313 The General Scheme of the Aftercare Bill 2014 was approved by Government on 25 February 2014.

to further education and training. In recent years The One Foundation has offered a limited number of scholarships to enable these young people to access courses.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.125 Separated children on reaching 18 who do not have a decision regarding their status move into Direct Provision. The figures above demonstrate that 50 of the 82 young people who were in the protection process moved to Direct Provision. This contrasts with the experience of other young people who are discharged from statutory care; they either remain with their foster carers or have on-going support from them if they move away for education, training or employment. A minority move to independent living or aftercare supported living.
- 5.126 The Working Group heard that moving from foster or residential care to Direct Provision accommodation is a daunting experience for many of these young people, for a variety of reasons:
- the young person who has been in the care of the State finds himself/herself living in a Direct Provision centre with reduced supports compared to those provided in foster or residential care;
 - the young person is likely to find themselves sharing a bedroom with up to three adult strangers;
 - the accommodation centre may not be geographically near to the young person's previous foster care placement, resulting in difficulties in maintaining links with the foster carers, school friends and local community.
 - the limited access to further education and training and lack of access to employment leads to feelings of depression and futility;
 - mental health issues were reported to be a reality for many of these young people;
 - with limited financial means, it is difficult to maintain a healthy social life through sports, pastimes, further education and interaction with peers;
 - the young person may lose supports previously provided by youth services, which do not cater for youths over 18 years. Some of the young people in this cohort rely on volunteering opportunities and ad hoc avenues of support; and
 - some are at risk of drug abuse, prostitution and crime.
- 5.127 One solution to these concerns would seem to be the making of the protection application (or application for some form of immigration status where there is no protection claim) in a timely manner so that the decision on status issues before the child reaches 18. The Working Group, however, heard differing views on the appropriate time to make an application.
- 5.128 As noted earlier, a child cannot make an application on his/her own and the Tusla-appointed social worker, acting in loco parentis, decides, in consultation with the child, when is the best time to apply. Usually delays are due to the child's

comprehension of the process or other situational factors relating to the individual child's needs. Social workers working with separated children may not initiate an application on behalf of the child until it is deemed clinically appropriate to do so. The norm is for an application to be made on behalf of a separated child before their 18th birthday.

- 5.129 While the policy of the Department of Justice and Equality is not to deport separated children, the Working Group heard that it could be clinically unsound for a child to receive a negative decision regarding their status with the implication of being deported following their 18th birthday. It was suggested that this could lead to them going underground, leaving school or engaging in self-destructive behaviours.
- 5.130 The Working Group heard from other advocates for children that it was important that the application process was initiated as soon as possible so that it could be concluded in time to allow a separated child at 18 years to know his/her status and be able to proceed with their peers to education, training or employment, or to leave the country, voluntarily or by way of deportation. No positive view was expressed about a separated child transferring to Direct Provision on reaching 18 years.
- 5.131 The Working Group heard that social workers, outside of the dedicated team for separated children based in Dublin, may lack the expertise to decide which route to pursue for separated children. They require support from the dedicated team and from the Tusla legal team. The Working Group did not come to any firm view on this matter, as reflected in its recommendation at para. 3.199, which is to the effect that further "work should be undertaken to clarify the position with regard to access to protection process" by separated children. The Working Group notes that the introduction of the single procedure should assist in reducing the number of separated children entering Direct Provision on reaching adulthood.
- 5.132 As regards care and aftercare supports available to separated children, the Working Group was alerted to the City of Dublin Education and Training Board Separated Children's Service, which has been working with separated children and young adults between the ages of 12 and 23 since 2001. This was described as a useful model for consideration and for implementation on a wider scale. It includes:
- a drop-in and outreach support service;
 - homework clubs; and
 - afterschool activities clubs, including intercultural groups.
- 5.133 It has been recommended by advocacy groups that separated children who have turned 18 and are awaiting a decision on their status should be eligible to apply for student supports in order to pursue higher education courses. The recommendation in relation to education at para. 5.70 may be of benefit to some separated children. The Working Group acknowledges, however, that as many separated children are in their late teens on arrival in the State they are unlikely to have spent the required number of years in the Irish school system to benefit from student supports.

Recommendations

5.134 The Working Group recommends that:

- Tusla – the Child and Family Agency should ensure that its Equity of Care principle is applied equally to separated children in aftercare planning and supports, irrespective of the child's status. All separated children over the age of 16 should have an aftercare plan.
- The aftercare plan for a separated child who is awaiting a decision regarding their status should, as far as is practicable and subject to their wishes, accommodate them in a Direct Provision centre located near their foster care or residential placement to facilitate on-going support.
- Training and support provided to foster carers of separated children should include a focus on independence and resilience, to ensure the young person has the life skills necessary to make the transition to a Direct Provision accommodation centre or independent living at 18.
- The Department of Children and Youth Affairs should convene a stakeholder group to consider the optimum supports for separated children while in care and aftercare, including support with the process of integration to Irish society.

Implications including costs

5.135 The implications of these recommendations are that care and aftercare provision would continue to be available to separated children on a par with other children in State care irrespective of their status; they would be better prepared for the transition to Direct Provision should that arise and the decision on the selected accommodation centre would take account of their wishes in so far as practicable, bearing in mind that the number of centres is limited. The convening of a stakeholder group to consider optimum supports for this group will ensure focused consideration of the needs of this group. The costs arising from these recommendations would not be material in view of the small numbers involved.

H. LINKAGES WITH LOCAL COMMUNITIES

BACKGROUND

- 5.136 The successful orientation and integration of protection applicants into a new country and a new locality can greatly enhance their well-being and quality of life. There are differing views on when measures to assist the integration process should begin – following their arrival in the host country or following the granting of refugee or some other form of status. Integration policy at a national level in Ireland is predicated on the appropriate starting point being when a protection applicant is granted status. Protection applicants are, accordingly, excluded from the remit of the Office for the Promotion of Migrant Integration (OPMI), the unit within the Department of Justice and Equality which has responsibility for coordinating integration policy in relation to legally resident migrants in the State.
- 5.137 At present the OPMI is overseeing a review of the national integration strategy. As part of this it has conducted a consultation process with stakeholders. The outcome of that consultation process, in so far as it concerned the protection process, was shared with the Working Group. Submissions urging that consideration be given to including protection applicants in the updated integration strategy featured strongly.
- 5.138 “Linkages with local communities” as used here is intended to refer to the contact points between residents of Direct Provision accommodation centres and local communities in which they are situated. Such linkages at local level are key to integrating protection applicants, particularly in view of the prohibition against access to the labour market and limited educational opportunities for adults.
- 5.139 Members of the Working Group, from their visits to centres, noted that engagement between centres and local communities seemed to vary. To assist in getting a clear nationwide picture, a questionnaire was issued to all centres. Nineteen responses were received. The questionnaire focused on getting a sense of: who (if any person or organisation) has responsibility for taking a lead role in developing linkages; the types of groups that are active in local communities; whether residents are involved in those groups and what steps are taken to encourage their involvement; how such efforts are funded; and any issues which may inhibit engagement between the residents of centres and local communities.
- 5.140 The replies confirmed that efforts are patchy across the country, with some centre management taking a lead and working hard with local organisations (local authorities, NGOs, community groups, sports clubs, etc.) to create and strengthen linkages around a diverse range of activities. Other centres appeared to have very little activity to report. Marked differences were evident not only between regions, but between centres in the same locality. One centre reported almost no linkages while a neighbouring centre reported a very full and varied supported programme.

- 5.141 Issues identified as inhibiting linkages included a shortage of money on the part of residents, transport difficulties, absence of child-minding, language barriers, an absence of funding for local organisations, and a “disinterest” in engaging on the part of residents. This is particularly noted in centres confined to single male occupancy.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.142 In the course of the consultation, residents identified a desire to be involved in the local community:

“Integration of an individual in the State can help the process, learn English and Irish and involve in community activities.”

“The notion of isolating Protection applicants into a particular group of people thereby creating social segregation is inhuman.”

- 5.143 It is noted that a number of the recommendations in this report, if implemented, will assist in the integration of residents in Direct Provision, most obviously those relating to access to the labour market (see para. 5.49), access to education (para. 5.82) and the Direct Provision weekly allowance (para. 5.30).
- 5.144 From the feedback to the questionnaire it is clear that there is no consistent approach to the matter of linkages between centres and local communities across the country. Efforts are for the most part ad hoc and result from the goodwill of the centre staff or outreach by community and voluntary groups. The input from local statutory services is variable.
- 5.145 The Working Group considers that the issue should be tackled at a national and local level. At the national level the Working Group would urge that consideration be given to including protection applicants in the national integration strategy.
- 5.146 At local level there would be benefit in identifying a responsible person to take the lead. The centre management is well placed to take on this role officially. As noted above, some already fill this role without having any contractual obligation to do so. Including it as a contractual obligation on accommodation providers along with a reporting requirement would allow RIA to monitor and evaluate the activities undertaken. To ensure that the initiative empowers residents and harnesses existing local resources, the centre manager should establish a “Friends of the Centre” group consisting of residents and representatives of local statutory services and community/voluntary groups including youth services. Children and young people should be consulted on their views.
- 5.147 It is noted that the recommendations at para. 4.155 in relation to the management culture in centres, including the further work recommended on identifying the qualities of an ideal centre manager, would assist in ensuring that managers engage in this role with enthusiasm. Opportunities for centre management to come together and share best practice in encouraging and maintaining links would be important. The regular seminars, also recommended at para. 4.155, to enable managers to share experiences and examples of best practice would provide such an opportunity.

- 5.148 There would be benefit in ensuring the reciprocity of linkages with the local community to address any perception that the centre is not a positive presence in the community. Centres may have facilities such as meeting rooms or grounds that could be shared with local community groups and clubs. As happens already in some centres, an annual “Open Day” could be held to bring the local community into the centre – invitations could be issued to all residents and local groups to set up information stalls and put on cross-cultural activities.
- 5.149 On the important question of funding, relevant Government Departments should make funding available for the purposes outlined here. In particular, existing community grant schemes should specifically encourage applications from those involved in developing linkages with protection applicants. Pobal and various local and national youth services have programmes that may be compatible with the objective of enhancing community linkages. These should be explored.
- 5.150 The Working Group heard that in the past, funding was available from the OPMI to facilitate Local Authorities in implementing strategies aimed at promoting integration and improving access to, and delivery of, services to migrant communities, including protection applicants. The restoration of this funding stream would be welcome.
- 5.151 As a business in their local community, accommodation providers could be proactive in local chambers of commerce and other employer organisations and encourage local business to provide sponsorship for events aimed at encouraging engagement between the centre and the local community.

Recommendations

5.152 The Working Group recommends that:

- The Government give consideration to including persons awaiting a decision on their protection or leave to remain case in its national integration strategy or co-ordinated plan for the integration of migrants.
- Relevant Government Departments should make funding available to assist the integration of persons awaiting a decision on their protection or leave to remain case; in particular the funding to facilitate the implementation of local integration strategies should be restored and existing community grant schemes should specifically encourage applications from those involved in developing linkages with protection applicants.
- Every Direct Provision accommodation centre should be contractually obliged to encourage and facilitate linkages with the local community. The centre management should facilitate the setting up a “Friends of the Centre” Group consisting of residents, local statutory services and community/voluntary groups. The centre management should be required to report to RIA every six months on activities in this regard.
- Work to develop community linkages should include a focus on developing reciprocal linkages with residents participating in activities in the local community

and vice versa. The centre management should consider making facilities in the centre, e.g. meeting rooms and grounds, available for meetings and other activities to create and should strengthen two-way links between residents and the local community.

Implications including costs

- 5.153 The implications of these recommendations would be to encourage a positive dynamic between the residents of the centre and the local community. They would be of benefit to the well-being of the residents and assist them in the future by easing the transition from the system to the local community if they are granted status. Implementation would enhance awareness in the local community of the lives of those in the system and of diversity issues. The costings exercise undertaken by the Working Group makes provision for funding of local integration strategies (see chapter 6).

I. TRANSITIONAL SUPPORTS FOR PERSONS GRANTED STATUS

BACKGROUND

- 5.154 Former protection applicants face a range of problems when they are granted status (refugee status, subsidiary protection status or leave to remain) and are free to establish themselves in mainstream living and integrate into society. Those who have been living in Direct Provision generally experience greater difficulties than those who have been living in the community during the course of the determination process. In the words of one contributor to the consultation process:

“In many cases the initial euphoria [of being granted status] is replaced by an overwhelming feeling of frustration and powerlessness ... finding somewhere to live, managing money, bills, catering, job interviews, etc.”

- 5.155 The Working Group heard that in recent times the challenges faced by residents of Direct Provision have become particularly acute due to the shortage of accommodation across the State, but particularly in Dublin and other cities. As noted elsewhere in this report, as of 16 February 2015 there were 679 persons with status residing in Direct Provision, equating to 15% of that population. In many cases the persons concerned had been granted status several months previously.
- 5.156 Former protection applicants have access to the services and supports available to the general population, including income and employment services, but there is very little in the way of targeted supports to assist them to make the transition to mainstream living. Some accommodation providers do, of their own accord, provide information packs for residents.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.157 Once persons are granted status, issues around accessing suitable accommodation, accessing mainstream services and supports, and finding employment greatly affect their capacity to rebuild their lives and integrate through mainstream social inclusion.³¹⁴
- 5.158 The Working Group considers that the residents of Direct Provision who may require transitional supports fall into two distinct groups: (i) the legacy group and (ii) future applicants whose applications will be determined under the single procedure. The legacy group includes those residents with status living in Direct Provision, and residents who may benefit from the proposed solutions for those who have been in the system for five years or more (estimated to be 1,480 – see para. 3.151). Future applicants who are processed under the single procedure are expected to have a final determination within 12 months.
- 5.159 While the two groups will experience similar challenges – accessing mainstream services and supports, finding suitable accommodation, and securing employment – their needs and the barriers to their making a successful transition to mainstream living differ in some significant respects. As discussed elsewhere in this report, those who have been in Direct Provision for lengthy periods of time experience an erosion of personal autonomy over the most basic aspects of their daily lives, and the development of a dependency mentality which is difficult to overcome. As a result of a loss of skills and becoming institutionalised, mental health issues also arise.
- 5.160 In the case of future applicants who benefit from quicker decisions under the single procedure and are granted some form of status there will be a decreased likelihood of dependency becoming an issue as they will exit the protection system sooner. They may, however, face language barriers, be unfamiliar with Irish society and have ongoing trauma associated with recent migration. It is important to note that the implementation of the recommendations in this report would assist in ensuring that they are better equipped to make the transition. In particular,
- access to employment from a specified stage would facilitate integration at an earlier stage and enable them to access private accommodation before receiving a final decision on their application (para. 5.49);
 - access to a wider range of educational courses may increase a person's prospects of obtaining employment and integrating better into society once granted status (para. 5.70, 5.82);
 - an increase in the Direct Provision weekly allowance might enable people to save towards moving expenses and travel for accommodation viewings or job interviews (para. 5.30);
 - improved linkages between residents and local communities as well as access to employment and education may assist people in forming social networks and, in

³¹⁴ UNHCR RICE Report, pp. 6–7.

particular, in finding the “Irish contact” that, it has been reported, can greatly assist in the transition stage (para. 5.152).³¹⁵

- 5.161 The implementation of the proposed solution for those in the system for five years or more would result in a large number of residents being granted status over a six month period. This adds an even greater urgency to ensure that supports are in place to assist them in securing suitable accommodation etc. In the absence of a consistent integration plan being devised for this group they are likely to remain in Direct Provision for some time, and ultimately to be at risk of becoming dependent on the State in the long term.
- 5.162 Particular challenges in relation to securing accommodation include the lack of affordable accommodation in suitable areas, i.e. with access to employment, schools, etc., a lack of knowledge of the housing market, difficulties around sourcing a deposit³¹⁶ and the first month’s rent, and difficulties with meeting landlord requests for references.
- 5.163 The supports required, particularly for the legacy group, cut across Government Departments and Agencies – in particular the Department of Environment, Community and Local Government and the Department of Social Protection.
- 5.164 Due to the breadth of the issues involved, the Working Group did not have sufficient time to address the topic in depth and considers that it requires the establishment of a taskforce of relevant stakeholders to focus on the issues and devise an appropriate transition plan. The taskforce should also examine the transitional support needs of future applicants and identify appropriate supports.
- 5.165 In addition to the issues around accessing suitable accommodation, accessing mainstream services and finding employment, the Working Group heard that former protection applicants experience a range of difficulties when seeking to register with the Garda National Immigration Bureau (GNIB). All protection applicants who are granted status are required, in the first instance, to register their permission with the GNIB in Dublin or, if outside Dublin, Garda District Headquarters. On completion, they are issued with a registration certificate – a “GNIB card”. This card is proof of the person’s registration under section 9 of the Immigration Act 2004 and is an important document relating to the person’s identity as accepted by the State. It provides evidence of the person’s right to seek and enter into employment and to apply for State services.
- 5.166 Obtaining the card can be problematic for a variety of reasons, particularly due to the difficulties that former protection applicants may have in providing verifiable documentary evidence of their identity. Delays in obtaining the card mean that former protection applicants may not be able to access essential services and rights. This issue should be examined by the proposed taskforce.

315 UNHCR (2014), ‘Towards a New Beginning: Refugee Integration in Ireland’, p. 6. Available at <http://www.refworld.org/docid/52ca8a6d4.html>

316 Rent deposits may be covered by the ENP scheme or by Local Authorities in respect of Rent Supplement and the Housing Assistance Payment.

- 5.167 A further specific issue that the Working Group wishes to highlight for the proposed taskforce relates to younger adults in Direct Provision who are granted status. Young people granted status are subject to the same “reduced rate” of social welfare allowances as other young recipients.³¹⁷ Age-related payment rates exist on both the Jobseeker’s Allowance and SWA schemes. The age-related rates are currently: €100 per week for persons aged under 25; €144 for those aged 25, with the maximum rate of €186 SWA/€188 Jobseeker’s Allowance for those aged 26 and over.³¹⁸
- 5.168 The reduced rates are intended to encourage young jobseekers to improve their skills and remain active in the labour market in order to avoid the risk of becoming long-term unemployed, and will help them to progress into sustainable employment. Where a person is in receipt of a reduced rate of Jobseeker’s Allowance and he/she participates in a course of education or training, a higher rate of €160 applies. Bearing in mind that young adults in Direct Provision are unlikely to have the family support that is generally available to young adults in the general population, the payment of a reduced rate can increase the challenge they face in resourcing their transition. This issue merits attention by the proposed taskforce.

Recommendation

5.169 The Working Group recommends that:

- The Minister of State for New Communities, Culture and Equality as a matter of high priority should convene a taskforce of cross-departmental representatives, State agencies and relevant NGOs to roll out a consistent integration plan for the legacy cohort in Direct Provision who have been, or will be, granted status, and also to address the transitional support needs of future applicants who will be processed under the proposed single procedure.

Implications including costs

- 5.170 The implementation of this recommendation is vital to ensuring that there is a focus on the needs of those who are granted status to enable them to make the transition to mainstream living. In the absence of a consistent plan for the legacy group, in particular, they may not be able to leave Direct Provision. This would negate many of the intended benefits of the proposed solution for the individual and also for the State. The costing exercise undertaken by the Working Group as outlined in chapter 6 makes some provision for costs arising from recommendations which may be made by the taskforce.

³¹⁷ Full rate supports are payable to young people leaving the care of Tusla.

³¹⁸ Source: Department of Social Protection.

J. TRAINING FOR ORGANISATIONS/ PERSONS

BACKGROUND

- 5.171 Specific training needs have been identified at various points in this report for decision-makers, accommodation providers and other service providers, and recommendations have been made to address those needs.
- 5.172 This section concerns the importance of public sector bodies taking steps to ensure that staff members are aware of their equality obligations and of diversity issues when providing services and supports to persons in the system. The measures taken by An Garda Síochána receive particular attention, as the importance of its members being sensitive to multicultural and diversity issues was raised in the Ministerial round table consultation which informed the terms of reference of the Working Group. The importance of front-line public servants having the practical skills to effectively engage with persons in the system is also considered.

ISSUES OF CONCERN AND POTENTIAL SOLUTIONS

- 5.173 In the course of the consultation process a lack of sensitivity to diversity issues on the part of service providers was identified by some participants.
- 5.174 Many public sector bodies already provide training on equality and diversity issues to their front-line staff as required, and undoubtedly many of those on the front-line bring sensitivity and understanding to their engagement with service users from diverse backgrounds. The Working Group heard, however, that there was no template or set of guiding principles at national level for the content of such training programmes. The Working Group considers that training in this regard should be aimed at ensuring that public servants working directly with persons in the system are aware of their legal obligations in relation to equality and of standards of good intercultural practice. The training should tackle any underlying prejudices and support public servants to deliver a high-quality function or service. In addition, this training should be part of a whole-organisation approach and be provided to public servants at all levels, including to top-level decision-makers. Such training should be evaluated to track learning and outcomes.
- 5.175 The Working Group identified the Irish Human Rights and Equality Commission (IHREC) as having the potential to play a significant role in the provision of education and training to public bodies on these issues. Section 10(2) of the Human Rights and Equality Commission Act 2014 outlines the types of activities the Commission may carry out in the furtherance of its functions. Of particular relevance is subsection (2)(k), which states that the Commission can “provide or assist in the provision of education and training on human rights and equality issues”. The Working Group

heard that the Commission is preparing its strategic plan at present and suggests that it may wish to consider including measures relating to education and training for public bodies engaged in the provision of services and supports to persons in the system.

- 5.176 The Working Group heard that public servants, for example healthcare professionals and social workers, may require particular skills in order to engage effectively with this group, many of whom may not speak English fluently. Effective engagement may require allowing longer appointment slots and working with interpreting services. The Working Group considers that tailored training programmes should be provided to front-line staff to ensure that they are aware of the particular needs of this group and acquire the necessary skills to engage effectively.
- 5.177 In relation to An Garda Síochána, the Working Group wrote to the Commissioner inviting her to set out the training and other measures that are in place in that organisation to ensure that its members are aware of diversity issues. Given that many protection applicants may be fearful of policing authorities due to their experiences in their countries of origin, it is particularly important that the members of An Garda Síochána understand, and are equipped to deal with, the needs of those in the system.
- 5.178 Having regard to the detailed response received, the Working Group notes that An Garda Síochána has a range of measures in place, as follows.
- 5.179 For trainee Gardaí, the BA in Applied Policing Programme introduces them to the concept of diversity, and to the organisation's Diversity Strategy and Implementation Plan. It also includes a module entitled "Policing with Communities", which aims to equip the trainees with the personal and professional expertise to proactively police a modern, diverse and bilingual community, while being responsive to the needs of its vulnerable members. Unit 3 of this module is entitled "Diversity" and covers areas such as identifying and analysing personal prejudices and biases; becoming familiar with different religious groups and minority groups such as LGBT, Travellers and people with disabilities; and the criminal law and Garda procedures in this area, including the Incitement to Hatred Act 1989. Trainees have to demonstrate their ability to engage with diverse issues prevalent in modern Irish society through skills-based behavioural competency assessments.
- 5.180 In relation to existing members, the Working Group heard that human rights and diversity issues are threaded through all training interventions facilitated by the Garda College but that no specific refresher training as such is provided to members.
- 5.181 The Garda National Immigration Bureau (GNIB) provides specific training to all personnel within An Garda Síochána who are appointed as Immigration Officers. The training course includes input from the Garda Racial, Intercultural & Diversity Office at the Garda Community Relations Bureau on multiculturalism and diversity matters.
- 5.182 GNIB engages with the UNHCR to ensure that all its officers are trained in human rights, and a "Train the Trainer" Programme was completed in 2009. The person concerned holds the rank of sergeant and delivers training to newly appointed immigration officers on human rights issues that affect the functions fulfilled by such officers.

- 5.183 GNIB is assigned particular responsibility regarding the investigation of human trafficking and, in conjunction with the International Organisation for Migration (IOM), has developed a training course titled “Tackling Trafficking in Human Beings: Prevention, Protection, Prosecution and Partnership”, which is delivered to members of An Garda Síochána at the Garda College. The training course includes input from the Garda Racial Intercultural and Diversity Office and also from relevant NGOs.
- 5.184 Ethnic Liaison Officers (ELOs) are trained and appointed in every Garda Division to liaise with representatives of the various minority communities, and to establish communication links with each of these communities. They also inform and assure the ethnic communities of Garda services. The response from the Commissioner’s Office emphasised that all members of An Garda Síochána and not just Ethnic Liaison Officers can deal with racist incidents that are reported to them. ELOs visit Direct Provision accommodation centres to ensure that residents are aware of Garda services and their specialist role.
- 5.185 The Working Group notes that An Garda Síochána’s Diversity Strategy and Implementation Plan 2009–2012 has not been brought up to date. It includes a range of actions including the establishment of a Diversity Strategy Board to be chaired by a senior officer appointed as “Diversity Champion” with overall responsibility for all aspects of diversity in An Garda Síochána. The Working Group considers that the appointment of a senior officer to take a lead on diversity issues would ensure that the strategy would be reinvigorated.

Recommendations

5.186 The Working Group:

- Recommends that the Irish Human Rights and Equality Commission (IHREC) should consider, in the preparation of its Strategic Plan, the inclusion of education and training on equality and diversity issues for public bodies engaged in the provision of supports to persons in the system.
- Recommends that
 - persons who provide health and other services to persons in the system should receive on-going training in cultural competency and sensitivity;
 - training should be provided for accredited interpreters and for staff working with interpreters, who provide interpreting services either in person or over the phone;
 - training should include skill development for dealing with people who do not have English as a first language;
 - these programmes should be evaluated to ensure relevance and effectiveness.
- Notes the various initiatives that An Garda Síochána has undertaken to address the needs of the protection-seeking community and urges it to continue to ensure the

effectiveness of its various initiatives by, inter alia, naming a “Diversity Champion” at a senior level, ensuring that the Garda Racial Integration and Diversity Office is adequately resourced, promoting awareness of its Ethnic and LGBT Liaison Officer Services among the protection-seeking community; and rolling out diversity training and cultural awareness programmes at all levels in an Garda Síochána.

Implications including costs

- 5.187 The implementation of these recommendations would assist in ensuring that those providing public services: are aware of their legal obligations under equality legislation; are sensitive to diversity issues and any underlying prejudices on their own part; and are equipped to communicate effectively with those in the system. It would improve the quality of the experience of those in the system when engaging with public services. The costs arising from the implementation of these recommendations would not be material.

Chapter 6 – Financial and Human Resource Implications of Recommendations

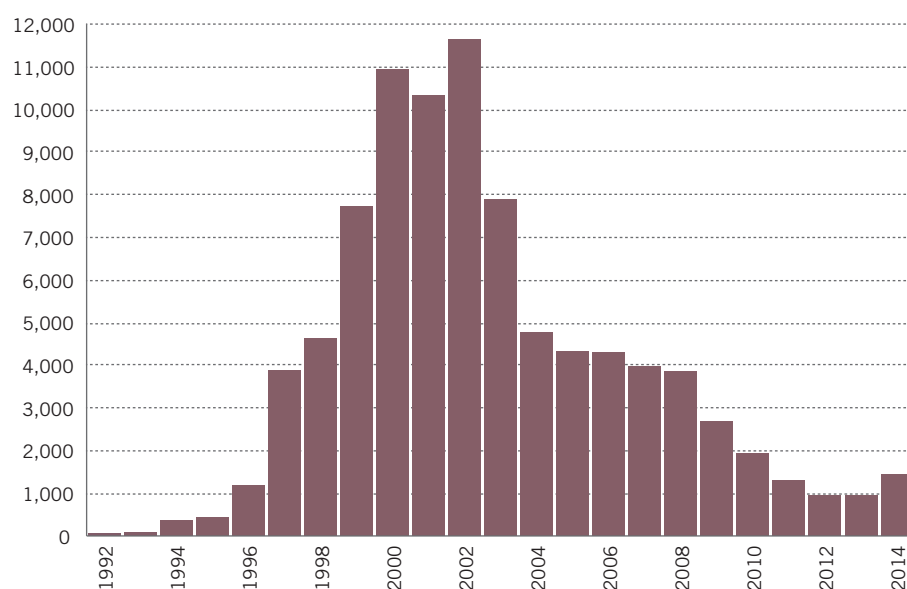
A. INTRODUCTION

- 6.1 The terms of reference direct the Working Group to “recommend to the Government what improvements should be made to the State’s existing Direct Provision and protection processes ... ensuring at the same time that, in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels ...”.
- 6.2 In light of this requirement the Working Group has identified and quantified the material financial and human resource implications of its recommendations for the protection system as defined for the purposes of this report. This chapter describes the approach adopted by the Working Group to this task and considers the outcome.

B. CONTEXT

APPLICATION NUMBERS

- 6.3 The cost of the system is directly related to the number of new protection applications lodged each year. Diagram 6.1 shows the number of applications each year since 1992.
- 6.4 In 2015 the number of new applications is up 127% year on year, with a best estimate of approximately 3,000 applications expected for the full year. Looking ahead, the determination bodies anticipate that this upward trend in the number of new applications will be sustained. Thus, the costs of the protection system are set to increase steeply in a “do nothing” scenario (i.e. if the Working Group did not exist) as applications will increase significantly in 2015, affecting the costs of case processing, accommodation and supports regardless of the impact of the Working Group’s recommendations.

Diagram 6.1: Number of New Applications 1992–2014

Year	Applications	Change on previous year (%)
1992	39	-
1993	91	133.3
1994	362	297.8
1995	424	17.1
1996	1,179	178.1
1997	3,883	229.3
1998	4,626	19.1
1999	7,724	67.0
2000	10,938	41.6
2001	10,325	-5.6
2002	11,634	12.7
2003	7,900	-32.1
2004	4,766	-39.7
2005	4,323	-9.3
2006	4,314	-0.2
2007	3,985	-7.6
2008	3,866	-3.0
2009	2,689	-30.4
2010	1,939	-27.9
2011	1,290	-33.5
2012	956	-25.9
2013	946	-1.0
2014	1,448	53.1
Total	89,647	

- 6.5 A consequence of the trends in Diagram 6.1 is that costs are at a historic low, reflecting both the steep fall in the number of protection applications since 2002 and a corresponding drop in the number of persons availing of Direct Provision.
- 6.6 Essentially, the recent upward trend in the graph, which started in 2014 and is accelerating in 2015, means that there will be a need to restore staffing and case processing capacities in the first and second instance determination bodies to the levels that existed in the past when application numbers were higher. A failure to invest in decision-making staff will inevitably lead to significant backlogs in case processing and a consequent need to accommodate ever greater numbers in Direct Provision, with all the attendant concerns noted in this report.

RESOURCES AND CAPACITY OF THE SYSTEM

- 6.7 Two key elements dictate the cost of the system:
- (1) Decision-making: the number of decisions at each stage of the process, including the number of judicial reviews.
 - (2) Accommodation: the number of persons residing in Direct Provision.
- 6.8 Tables 6.1 and 6.2 outline staffing levels and case-processing capacities in the first (ORAC) and second (RAT) instance decision-making bodies in the period 2009-14.

Table 6.1: ORAC Historic Staffing and Resources

Year	RSD* Decisions	RSD D/Making Staff	Support Staff	Total Staff	ORAC Cost €m
2014*	1,039	12.9	50.65	63.55	3.481
2013	802	12.1	63.55	75.65	4.092
2012	840	13.1	67.55	80.65	4.534
2011	1,349	19.3	77.75	97.05	5.288
2010	1,666	20	83.65	103.65	6.922
2009	2,861	36.5	104.98	141.48	8.675

*Refugee status determination.

- 6.9 As noted earlier in the report, in late 2013 ORAC took over responsibility for the subsidiary protection backlog of some 3,600 cases. ORAC appointed a legal panel of 20 persons to deal with the backlog of cases and assigned 4.8 internal staff to sign off on decisions and an additional 16 support staff. These resources are in addition to those in Table 6.1.

Table 6.2: RAT Historic Staffing and Resources

Year	Number of Decisions	Number of Tribunal Members	Number of Support Staff	Total Human Resources	RAT Cost €m
2014	255	17	35.3	52.3	3.041
2013	584	28	42.3	70.3	2.170
2012	691	23	40.5	63.5	2.153
2011	1,330	35	51.9	86.9	4.332
2010	2,781	35	65.6	100.6	6.346
2009	3,426	35	72.8	107.8	7.399

- 6.10 It is worth noting that 2014 is not representative of the full operational capacity of the RAT. As explained at para. 3.54, there have been extensive changes to the RAT membership, with a new panel of members appointed during late 2013 and 2014. The time required to appoint and train the new members affected the Tribunal's case-processing capacity.
- 6.11 It is not possible to produce an equivalent table in respect of historic staffing and resources for INIS for the period 2009–14, given that the unit tasked with processing decisions under section 3 of the Immigration Act 1999 also had responsibility for a range of decision-making functions not connected to the section 3 process.
- 6.12 Tables 6.1 and 6.2 demonstrate the fact that the decision-making bodies have as expected seen staffing levels and resources fall in line with new application numbers.
- 6.13 As shown in Table 6.3, the number of applicants accommodated in Direct Provision fell in the period 2009–14. The slower trend in the reduction in the population in Direct Provision relative to the number of new applications reflects delays in the system. A key point from a cost perspective is that decision-making and accommodation are interdependent. Any issues that lead to delays in decision-making will have as a consequence increased costs of accommodation.

Table 6.3: Historic DP Population and RIA Accommodation Costs

Year	Number of New Applicants	Applicant % Change	DP Population Year End	Applicant % Change	Accommodation RIA Costs €m
2014	1,448	53.1%	4,356	-0.1%	53.2
2013	946	-1.0%	4,360	-9.9%	55.2
2012	956	-25.9%	4,841	-10.7%	62.3
2011	1,290	-33.5%	5,423	-11.2%	69.4
2010	1,939	-27.9%	6,107	-6.0%	74.1
2009	2,689	-30.4%	6,494	-7.3%	86.5

C. METHODOLOGY AND RESULTS

DEVELOPMENT OF THE FINANCIAL MODEL

- 6.14 As a first step, a baseline scenario based on the existing system, case-processing capacity and the best estimate of new application numbers was developed. The best estimate figure agreed for new applications is 100% in 2015, increasing by 10% annually thereafter. The upside risks of these estimates are discussed later. The baseline scenario is shown in Table 6.4.
- 6.15 Following consultation with officials of the Department of Public Expenditure and Reform a method was agreed to estimate the costs of the protection system based on the following considerations:
- a five-year projection would be appropriate to demonstrate the effect of recommendations under consideration by the Working Group;
 - having regard to the terms of reference, identifying savings from the introduction of the single procedure could provide financial space to fund improvements recommended by the Working Group to the determination process, living conditions in Direct Provision and supports available to applicants;
 - inputs from the determination bodies (ORAC, RAT and INIS) and from RIA would be required to enable an accurate model of their respective costs and processing capacity (see below) to be developed,
 - the model would be based on a series of assumptions derived from historic data with the aim of projecting a reasonable representation of the key drivers of cost within the system, but it would be important that its limitations be understood, and
 - only material costs should be projected.
- 6.16 It was noted that any model of costs has limits and must be interpreted and weighted taking account of the wider context, including the fact that not all of the costs associated with persons in the system are capable of being estimated. For example, the cost of ensuring respect for human dignity cannot be reduced to a mathematical equation. Furthermore, while important and part of the terms of reference, cost should not be the only consideration informing recommendations; other key considerations include a clear rationale for reform, good governance, risk assessment, limiting future liability, “doing the right thing” to ensure respect for the dignity of those in the system, etc.

FINANCIAL MODEL – PROJECTED SAVINGS

- 6.17 The next step was to identify potential savings arising from the implementation of the proposed solutions for those in the system for five years or more (see paras. 3.128 and 3.134) and from the introduction of the single procedure. The model assumes that

those who benefit from the “long stayer” solution will move out of Direct Provision in 2015 prior to the anticipated introduction of the single procedure on 1 January 2016.

- 6.18 Table 6.4 shows net savings from these two initiatives after the costs of additional human resources are taken into account as outlined below. A crucial assumption underpinning these projections is that the determination bodies are adequately resourced, as a failure to do so would mean that the projected savings would not be realised.

Table 6.4: Financial Model: Five-Year Projected Savings Available for Recommendations

	€m 2015	€m 2016	€m 2017	€m 2018	€m 2019	€m 2015-19
Baseline Existing System Projections	77.024	88.542	107.825	132.024	159.633	565.047
Long Stayer Solution	-5.444	-18.147	-18.024	-17.924	-17.838	
Single Procedure	0.000	-5.734	-21.515	-37.140	-52.703	
Total Projected Savings	-5.444	-23.881	-39.540	-55.064	-70.541	-194.469
Revised Protection System Projection	71.580	64.661	68.285	76.959	89.092	370.578

FINANCIAL MODEL – PROJECTED COSTS

- 6.19 For consistency, the key outputs from the financial model, namely the projected population in Direct Provision and the projected number of decisions, are used in estimating costs. Relevant Government Departments and Agencies provided inputs to enable the recommendations to be costed.
- 6.20 The projected net costs (savings) arising from the implementation of the Working Group’s recommendations in the years 2015–19 are shown in Table 6.5.
- 6.21 If the Working Group’s proposed “long stayer” solution is adopted by Government the costs identified for Additional College Places (marked in Table 6.5 with *) for protection seeking children more than 5 years in the Irish school system will be incurred by the Department of Education and Skills in 2015 only.

Table 6.5: Financial Model Five-Year Projected Costs of Recommendations

	€m 2015	€m 2016	€m 2017	€m 2018	€m 2019	€m 2015- 19	Responsible Department
Improve Protection Process Recommendations							
Early Legal Advice	0.427	0.907	1.018	1.141	1.276		Justice
Training, Quality & Interpretation	0.225	0.814	0.814	0.814	0.814		Justice
RAT Governance	0.000	0.050	0.050	0.050	0.050		Justice
Additional AVR Costs	0.000	0.250	0.250	0.250	0.250		Justice
Additional DO Costs	0.266	1.065	1.065	1.065	1.065		Justice
Total Improve Protection Process Costs	0.918	3.086	3.198	3.320	3.455	13.977	
Improve Direct Provision Conditions							
Communal Kitchen	2.846	3.363	1.103	1.355	2.201		Justice
Add Family Space (Implement 2016)	0.000	3.169	7.020	8.808	11.480		Justice
Single Rooms +9 months (Implement 2017)	0.000	0.000	2.313	5.031	6.009		Justice
Provision of Playgrounds	0.574	0.191	0.191	0.191	0.191		Justice
Provision of Homework Clubs	0.993	0.993	0.993	0.993	0.993		Justice
Provision Extra Transport	0.187	0.187	0.187	0.187	0.187		Justice
Vulnerability Assessment	0.376	0.791	0.870	0.957	1.052		Health
HR Impact of Recommendations	0.166	0.332	0.332	0.332	0.332		Justice
Independent Inspectorate	0.000	0.400	0.400	0.400	0.400		Justice
Total Improve DP Conditions Costs	5.142	9.426	13.408	18.254	22.845	69.075	

Table 6.5: Financial Model Five-Year Projected Costs of Recommendations

Improve Protection Applicant Supports							
DP Allowance	1.901	3.639	3.686	4.238	5.062		Social Protection
Restoring CWS in DP Centres	0.075	0.149	0.149	0.149	0.149		Social Protection
Additional Orientation Classes	0.200	0.200	0.200	0.200	0.200		Justice
Remove Prescription Charges for A/Seekers	0.142	0.272	0.276	0.317	0.379		Health
Health Promotion and LGBTI Services	0.250	0.500	0.500	0.400	0.300		Health
Additional College Places*	0.980	1.225	1.470	1.715	1.960		Education
Additional ESOL Provision	0.510	1.020	1.020	1.035	1.155		Education
Fund for Local Integration Initiatives	0.000	0.480	0.480	0.480	0.480		Justice
Fund to support NGO Services	0.500	0.625	0.781	0.977	1.221		Justice
Transition Supports	5.343	5.374	0.000	0.000	0.000		Justice
Total Improve Prot. Applicant Support Costs	9.901	13.485	8.562	9.511	10.905	52.364	
Total Cost of Working Group Recommendations	15.961	25.997	25.168	31.084	37.206	135.416	

REVIEW OF RESULTS

6.22 Table 6.6 demonstrates that the projected savings yielded from the “long stayer” solution and the introduction of the single procedure – €194.5m over five years – are sufficient to fund recommendations which give rise to additional costs of €135.4m over the same period. These additional €135.4m costs are broken down between improvements to the protection process of €14.0m, improvements in living conditions in Direct Provision accommodation centres of €69.1m and improvements in supports to applicants of €52.4m.

Table 6.6: Financial Model: Five-Year Net Projected Savings/Costs from Recommendations

	€m	€m	€m	€m	€m	€m
	2015	2016	2017	2018	2019	2015-19
Projected Savings yielded by						
Long Stay Solution and Single Procedure	5.4	23.9	39.5	55.1	70.5	194.5
Less Costs Improving Protection Process	-0.9	-3.1	-3.2	-3.3	-3.5	-14.0
Less Costs Improving DP Conditions	-5.1	-9.4	-13.4	-18.3	-22.8	-69.1
Less Costs Improving Prot. Applicant Supports	-9.9	-13.5	-8.6	-9.5	-10.9	-52.4
Net Projected Savings/Costs	-10.5	-2.1	14.4	24.0	33.3	59.1
Cumulative Projected Savings/Costs	-10.2	-12.6	1.7	25.7	59.1	

6.23 Comfort can be drawn from the fact that the cumulative net position after three years is a break-even one. This is the period where the reliability of the model would be at its highest.

HUMAN RESOURCES – COSTS AND REQUIREMENTS

6.24 The Working Group has made a number of recommendations that will require additional human resources. The successful implementation of these recommendations is conditional on securing those additional human resources. In particular, the financial model projects the human resource requirements necessary to implement the “long stayer” solution recommended for those in the system for five years or more and the additional decision-makers and support staff required in the first year of the single procedure.

“LONG STAYER” SOLUTION – PROCESSING RESOURCES

6.25 The recommended “long stayer” solution envisages all those in the protection process for five years or more receiving a decision in six months or, in the event that that is not achieved, that they be considered for leave to remain under an accelerated section 3 process. Persons in the system for five years or more in the leave to remain process or with unenforced deportation orders will, subject to specific criteria, also be eligible for accelerated section 3 processing to be completed within a six-month period.

- 6.26 The financial model makes its calculations on the basis of the number of persons who were in the system for five years or more as of 16 February 2015. This is the best available data, but it is acknowledged that the input data will have changed in the light of case processing in the interim.
- 6.27 For the six months of the “long stayer” solution the following additional resources will be required:
- ORAC will require an additional 12 legal panel members, 2.5 decision-making staff and six support staff to process the 344 cases concerned in the protection process.
 - RAT will require an additional six members and four support staff. The model projects, however, that the RAT will not be able to process all of the outstanding five years’ plus cases in six months. In accordance with the “long stayer” solution recommended, the remaining persons will be eligible for leave to remain under the accelerated process.
 - Most of the work falls on INIS, which will need to process in excess of 3,500 cases in six months on the accelerated basis recommended. The model projects that an additional 32 caseworkers and 42 support staff are required to conduct these accelerated section 3 cases, including the outstanding protection applications in the system for five years or more.
 - The Legal Aid Board will need to provide advice to the 3,350 estimated beneficiaries from the “long stayer”, solution which has resource implications.
- 6.28 Overall, in order to successfully deliver the “long stayer” solution as recommended, additional costs of €3.6m will be required. This is a one-off cost in 2015.
- 6.29 The number of new protection applications in 2015 has outpaced the capacity of available resources to process these applications.³¹⁹ A failure to provide decision-making bodies with the further additional resources to process these cases will result in a new backlog affecting those in the system for shorter durations.
- 6.30 In addition, resources are required to process the substantial number of legacy cases of less than five-year duration, which ideally should be processed in advance of the introduction of the new single procedure to help facilitate as smooth a transition as possible.³²⁰

SINGLE PROCEDURE RESOURCES

- 6.31 With the increase in new application numbers, additional resources will be required for the single procedure following its anticipated introduction from 1 January 2016 relative to current resources (not including additional resources provided specifically for the duration of the processing of the “long stayer” cases).

³¹⁹ There are currently almost 1,400 refugee cases outstanding at first instance (ORAC).

³²⁰ It should also be noted that a significant backlog (in excess of 2,500 cases) already exists in relation to section 3 cases which have not come through the protection process, and resources will also need to be allocated to clear this backlog.

- 6.32 ORAC will require an additional 20 legal panel members, three decision-making staff and eight support staff. As part of the single procedure process these staff will also consider at first instance any non-protection reasons put forward by applicants for permission to be allowed to remain in the State.
- 6.33 RAT will require an additional 15 Tribunal Members and 10 support staff.
- 6.34 The reduced length of time that applicants are expected to spend in the process under the single procedure will result in a reduced scope for their circumstances, and correspondingly any reasons why they should be allowed permission to remain in the State, to change significantly between the first instance decision and the conclusion of their appeal.
- 6.35 Some additional resources will, however, be required to consider any cases where new or additional information is provided by applicants at this stage of the system. In addition to the existing case processing and support staff resource in INIS dealing with section 3 cases which have come through the protection process, two caseworkers and three support staff will be required to consider cases at this stage. This is based on the assumption that there are no other section 3 backlogs at the time the single procedure comes into operation. These additional staff will cost €1.8m annually.
- 6.36 It is also worth emphasising that the additional resources identified are sufficient for the first year of the single procedure but will not be adequate if application numbers continue to grow.

KEY ASSUMPTIONS

- 6.37 There are a large number of inputs to the financial model and the relevant agencies have reviewed the reasonableness of each assumption made. There are, however, a number of broader assumptions that underpin the costings process.
- 6.38 The General Scheme of the International Protection Bill has been published, which signals the long-anticipated introduction of the single procedure. A fundamental assumption is that this stated element of Government policy will be passed into legislation promptly.
- 6.39 The model assumes that the single procedure will be introduced on 1 January 2016 and will operate effectively. This includes not only the first and second instance decision-making processes, but also that the stages for unsuccessful applicants will function efficiently, including the assisted voluntary return programme and the deportation order stage.
- 6.40 The savings projected are predicated on the assumption that the “long stayer” solution recommended is implemented and successfully delivered over a six-month period during 2015 in advance of the single procedure. A failure to implement the “long stayer” solution will result in larger backlogs being transferred into the single procedure.
- 6.41 The financial model assumes that the human resource requirements identified earlier in this chapter will be provided. A failure to adequately resource the

determination bodies will negate improvements to the protection process arising from recommendations as significant backlogs will remain. Essentially, it does not matter how efficient the new single procedure is if applicants cannot get a first instance decision because of backlogs or inadequate resources.

- 6.42 The results are sensitive to the new application assumptions. In the model it is assumed that there will be a 100% increase in application numbers in 2015 and a further 10% per annum each year thereafter. This will result in application numbers increasing from 2,896 in 2015 to 4,240 in 2019. There were 1,448 asylum applications in 2014.
- 6.43 The determination bodies identified a number of factors that could lead to application numbers being significantly higher than those included in the projections, as follows:
- In light of mixed migration flows the strengthening of the Irish and EU economies, which are emerging from recession, could lead to increased applications.
 - The trend across the EU in protection applications is strongly upwards – this could be exacerbated by the migrant crisis in North Africa and the Mediterranean and emerging responses from Member States in terms of shared responsibility.
 - Arguably, the implementation of Working Group recommendations with respect to improved conditions and supports may lead to an increase in applications.
- 6.44 In general the approach to costing the recommendations relating to improved living conditions in Direct Provision and supports for protection applicants has been to identify the key drivers of costs and model them. There may, of course, be other practical and operational challenges to implementation, which the model assumes can be overcome for the purposes of costing.

CONCLUSIONS

- 6.45 The financial model developed by the Working Group demonstrates conclusively that investing in decision-making not only will yield returns in reducing time spent in the system, but also makes financial sense. Each year that a person remains in the system gives rise to accommodation costs of €10,950 on average per applicant. The cost of decision-making is a fraction of this cost.
- 6.46 The model shows significant savings with the anticipated introduction of the single procedure in January 2016 on the assumption that the decision-making bodies are adequately resourced and the proposed solution for those in the system for five years or more has been effectively delivered. In the absence of adequate resources it will not matter how speedily applications will be processed under the single procedure because with new applications far outstripping current processing capacity at first instance, the result will be the development of a substantial backlog of applications.
- 6.47 It is worth noting that the successful resolution of the situation of those in the system for five years or more is also predicated on significant extra resources coming on

stream immediately. Otherwise the result will be to reduce the backlog at one end of the system only to create one at the start. Thus, the model endorses a call for additional resources at all stages of decision-making, not simply a redeployment of existing resources. Tables 6.1 and 6.2 show that the additional resources are essentially a restoration of case-processing capacity in ORAC and RAT consistent with resources employed in the past when application numbers were at similar levels.

- 6.48 Table 6.3 demonstrates how accommodation costs have fallen significantly since 2009 due to the smaller number of applicants in Direct Provision. With new application numbers projected to increase sharply, it can be seen how quickly accommodation costs will increase if the delays are not eliminated from the decision-making process.
- 6.49 Overall, the costing exercise demonstrates that efficiencies arising from resolving the situation of those in the system for five years or more and eliminating delays in the determination process will outweigh the costs of implementing the Working Group's recommendations to improve living conditions in Direct Provision and to enhance supports for protection applicants.

D. BROADER COST IMPLICATIONS

- 6.50 As noted at para. 6.1, the terms of reference require that all recommendations for improvements to the protection process including Direct Provision and supports must be considered in the following context:

"in light of recognised budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels".

In light of this requirement the approach adopted by the Working Group was to identify and quantify, where required, the financial implications of its recommendations in relation to the protection system. Those costs and savings are indicated above in Table 6.6.

- 6.51 It is recognised, however, that some of the recommendations will have financial implications for the State beyond the protection system, which will give rise to additional expenditure. One such example is the solution recommended for those in the system for five years or more at paras. 3.128 and 3.134. The resolution of this issue provides for the fast-tracking of applications and will result in persons found to fulfil the criteria being granted status earlier than would otherwise be the case. Status brings with it certain rights, including eligibility to apply for certain services and social supports which carry associated costs.

Appendices

APPENDIX 1

Agreed Work Programme

This Work Programme has been prepared in accordance with the terms of reference agreed by the Government and taking account of the Ministerial Roundtable Consultations with NGOs held on 18 September 2014.

The work will be approached on a thematic basis. Three themes have been identified from the terms of reference:

Reception conditions

Theme 1 Improvements to the direct provision system (i.e. living conditions while in designated centres) aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

Theme 2 Improved supports (e.g. financial, educational, health) for protection applicants aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

Determination Process

Theme 3 Improvements to existing arrangements for the processing of protection applications with particular regard to the length of the process.

All recommendations for improvements are subject to the need to ensure that:

- in light of the budgetary realities, the overall cost of the protection system to the taxpayer is reduced or remains within or close to current levels,
- the direct provision system remains a 'whole of Government' responsibility, and
- existing border controls and immigration procedures are not compromised.

It is acknowledged that there is some overlap between the themes. The working methods adopted by the Group will facilitate crossover between the discussions of the themes where necessary.

Theme 1 Improvements to the direct provision system (i.e. living conditions while in designated centres) aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

The following topics are suggested for consideration by the Working Group with a view to identifying practical measures that can be taken in the short and longer term to improve the experience of protection applicants in direct provision centres:

- Policy governing the transfer of residents between centres

- Complaints process available to residents
- System for monitoring centres/sanctions for breach of contractual obligations by centres and mechanisms for dealing with breaches by residents of RIA house rules
- Arrangements for families within centres
 - Sleeping /living arrangements for families with young children, families with teenage children.
 - Play/homework/study facilities for young children/teenagers
 - Child safety and protection
- Arrangements for single adults within centres
 - Sleeping/living arrangements
 - Catering facilities within centres in the context of direct provision
 - Nature and variety of foods
 - Scope for residents to prepare their own meals within existing or new physical structures
 - Whether limitations should be placed on the length of time persons spend in the direct provision system
 - Training of staff within centres.

Theme 2 Improved supports (e.g. financial, educational, health) for protection applicants aimed at showing greater respect for the dignity of persons in the system and improving their quality of life

The following topics are suggested for consideration by the Working Group with a view to identifying practical measures that can be taken in the short and longer term to improve the supports for protection applicants in direct provision centres:

- Financial supports
- Scope to increase the weekly allowance paid to residents
- Access to discretionary social protection supports
- Access to the labour market
- Access to education opportunities
- Improved linkages with local communities
- Mental health supports to residents including survivors of torture and others experiencing post traumatic stress disorder
- Services relating to sexual health
- Supports for residents who are LGBTI

- Training of other persons e.g. members of the Garda Síochána to ensure that they are equipped to deal with specific issues affecting applicants
- Transitional supports for aged-out minors entering the system from Tusla care
- Transitional supports for persons granted status including ease of access to mainstream State services.

Theme 3 Improvements to existing arrangements for the processing of protection applications with particular regard to the length of the process

The Government is committed to legislating for a single application procedure. The legislation will be forward-looking; applicants awaiting a final determination (grant of status or deportation order) on the commencement of the new regime will have their cases determined under existing arrangements, although the possibility of applying the single procedure to certain of those applicants is under consideration.

With this in mind the following topics have been identified for consideration by the Working Group with a view to identifying practical measures to support:

- Quality decision-making including
- supports to assist applicants in putting forward their case fully at the earliest possible stage
- supports to assist vulnerable applicants, including victims of torture, to put forward their case fully at the earliest possible stage
- Improved processing times at all stages – first instance and appeal for both refugee and subsidiary protection applications and ‘leave to remain’ consideration
- The early conclusion of judicial review applications
- The efficient operation of the deportation process including
- option of voluntary return before order is signed and engagement of International Organisation for Migration
- the situation of persons with deportation orders which have not been effected within a 12 month period
- Communications to applicants at all stages of the process, including those with judicial reviews and/or deportation

10 November 2014

APPENDIX 2

Membership of the Thematic Sub-groups

Theme 1 Sub-group		
Member		Alternate
Dr Bryan McMahon	Chair	
Aidan O'Connor	Department of Environment, Community and Local Government	
David Moriarty	Jesuit Refugee Service Ireland	Eugene Quinn
Diane Nurse	Health Service Executive	Tony Quilty
Jennifer DeWan	Nasc – Immigrant Support Centre	Fiona Finn
Jody Clarke	UNHCR	
Kate Ivory	Department of Public Expenditure and Reform	
Linda Keating	RIA	Ultan Ryan Teresa Clarke
Madeleine Halpin	Tusla - Child and Family Agency	
Michele Clarke	Department of Children and Youth Affairs	Siobhan Young
Noel Dowling	RIA	
Reuben Hambakachere ¹	Core Group of Asylum Seekers and Refugees	Stephen Ng'ang'a Simmy Ndlovu Judith Louw Patricia Kagodora Rita Mirembe
Rory Halpin	SPIRASI	
Saoirse Brady ²	Children's Rights Alliance	
Sue Conlan ³	Irish Refugee Council	Caroline Reid
Tanya Ward	Children's Rights Alliance	

Theme 2 Sub-group		
Member		Alternate
Dr Bryan McMahon	Chair	
Brian Power	Department of Education and Skills	
Caitriona O'Brien	Department of Education and Skills	Paul O'Brien
David Moriarty	Jesuit Refugee Service Ireland	Eugene Quinn
Greg Straton	SPIRASI	
Jackie Harrington	Department of Social Protection	Mary Pracht
Jennifer DeWan	Nasc – Immigrant Support Centre	
Linda Keating	RIA	Judy Howard
Mary O'Sullivan	Department of Social Protection	Denis Moynihan
Michael Kelly	INIS	
Noel Dowling	RIA	
Paddy Duffy	INIS	
Paul Cotter	Department of Public Expenditure and Reform	
Paula Quirke ³	Irish Refugee Council	Sue Conlan
Simmy Ndlovu	Core Group of Asylum Seekers and Refugees	Felix Dzamara Ruth Ncube Siphathisiwe Moyo Blessing Stephen Ng'ang'a Joe Odiboh Bisola Akanni Gift Nkomo Patricia Kagodora Ellie T Kisyombe Pamela Kapdawu
Susan McMonagle	UNHCR	
Tanya Ward	Children's Rights Alliance	
Tony Quilty	Health Service Executive	Diane Nurse

Theme 3 Sub-group		
Member		Alternate
Sophie Magennis	Chair	
Eugene Quinn	Rapporteur	David Moriarty
Barry Magee Chairman	RAT	
Ben Ryan	INIS	Jim Boyle, Tom Doyle
Caroline Daly	Office of the Attorney General	
Dr Ciara Smyth	Lecturer in Law, NUI Galway	
Dan Murphy	Formerly ICTU	
David Costello Commissioner	ORAC	Joe Keaney, Ray Minihan
Enda O'Neill	UNHCR	
Greg Straton	SPIRASI	
Fiona Finn	Nasc – Immigrant Support Centre	Claire Cumiskey
Ultan Ryan	RIA	
Maria Corbett	Children's Rights Alliance	Tanya Ward, Saoirse Brady
Martin McDonald	ORAC	
Michael Kelly	INIS	Tom Doyle
Noel Dowling	RIA	
Paddy Duffy	INIS	
Sue Conlan ³	Irish Refugee Council	Brian Collins, Paula Quirke, Marie Hennessy
Stephen Ng'ang'a	Core Group of Asylum Seekers and Refugees	Simmy Ndlovu
Tim Dalton	Former Secretary General, Department of Justice	
Tony Fallon	RAT	
Ultan Ryan	RIA	
Invited Expert	Grainne Brophy, Legal Aid Board	

1 Reuben Hambakachere tendered his resignation from the Working Group as of 21 April 2015

2 Saoirse Brady resigned from the Theme 1 Sub-group as of 18 February 2015.

3 The Irish Refugee Council resigned from the Working Group as of 26 March 2015.

APPENDIX 3

Report of the consultation process

REPORT on the CONSULTATION PROCESS: VOICES FROM DIRECT PROVISION

1. INTRODUCTION

In order to inform its deliberations the Working Group agreed at an early date that it would be essential to hear directly from those most affected by the system and to see first-hand the living conditions in accommodation centres. With this in mind the Working Group engaged in an extensive consultation process with residents in Direct Provision centres over the course of December 2014 and January and February 2015.

This report aims to provide a comprehensive account of the views of the residents who participated in the various phases of the consultation process. The report is, to a large extent, based on direct quotes from those who participated. It conveys a strong sense of the frustration and powerlessness experienced by those in the system for lengthy periods and their desire for: a meaningful existence, the opportunity to work to support themselves and their families, and the opportunity to contribute to Irish society.

2. CONSULTATION PROCESS

The consultation process agreed by the Working Group included a number of phases:

- a call for written submissions from adult and child residents of Direct Provision accommodation centres;
- regional consultation sessions with residents and visits to some accommodation centres;
- consultations with particular groups of persons in the system including victims of torture, victims of trafficking/sexual violence, members of the LGBT community;
- an opportunity for some participants to make oral submissions to a plenary meeting of the Working Group.

In order to help focus the consultations the following guide questions were provided, but participants were encouraged to express their views in their own words:

- What are the main challenges that you have experienced during your stay in Direct Provision?
- How can living conditions and quality of life in Direct Provision centres be improved?

- Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside Direct Provision, could be improved.
- How have you experienced the asylum application process? Suggest ways it could be improved.

To encourage participation, assurances were given that the process was confidential and would in no way impact on protection claims.

With the assistance of RIA and accommodation centre managers, notices were posted in all centres calling for written submissions. Child-friendly, colourfully illustrated packs were distributed to centres to encourage children to give their opinions (whether by drawing pictures or in writing) as to how the system could be improved. Submissions were received from 13 groups of residents and individually from 58 adults and 31 children.

Regional consultation sessions were held at 10 locations and were facilitated with the assistance of regional and local support groups. In all, 381 residents attended the sessions, most of which took place at locations outside of the accommodation centres in order to encourage participants to speak freely. A number of unplanned sessions were also held in two centres at the request of residents, and in the region of 100 residents participated in those sessions. In so far as practicable, five Members of the Working Group attended each consultation session.

Visits to selected centres in the region concerned took place on the same day. In all 15 accommodation centres were visited by Members of the Working Group. The visits were announced. The centres were selected to ensure a representative sample in terms of family type hosted (family/single male centre etc.), accommodation type (former hotels, hostels, purpose built, etc.), and state-owned or not. In addition to allowing visiting Members to see the living conditions, the visits provided informal opportunities for residents to engage with the Working Group.

Consultations with particular categories of persons in the system were also held, including meetings with victims of torture, victims of trafficking/sexual violence, and members of the LGBT community. There were 35 participants in all. These sessions were facilitated by the NGO sector with particular expertise in the area.

Finally, a representative from each of the regional consultation sessions was invited to make an oral submission to the Working Group. Nine accepted the invitation. Eloquenty describing their experiences of the system, they vividly conveyed the human costs of waiting indefinitely for a final decision on their cases.

The Working Group is appreciative of all those who engaged with the consultation submission process. The Working Group is also appreciative of the regional and local support groups who assisted with the consultation process by raising awareness of it, encouraging residents to attend, hosting the sessions, etc.

The table below sets out the schedule of the regional consultation sessions and sessions with particular groups, and details the number of residents who attended these sessions, the Direct Provision centres visited, etc.

Sections 3 and 4 of this report summarise the individual submissions received from adults and children respectively.

Section 5 summarises the submissions received from groups of residents.

Section 6 contains the reports of the regional consultation sessions with residents.

Section 7 contains the reports of the consultation sessions with specific groups of protection applicants.

Schedule of Regional Consultation Sessions and Accommodation Centre Visits						
County/ Region	Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Numbers Attended	Date (all 2015)
Kerry	Atlas House Tralee. Park Lodge, Killarney	Atlas House, Killarney; Atlas House, Tralee; Park Lodge, Killarney; Johnson Marina, Tralee	Fells Point Hotel	Tralee International Resource Centre	15	15 January
Cork	Kinsale Road, Cork; Millstreet, Co. Cork	Millstreet; Kinsale Road; Ashbourne House; Clonakilty Lodge; Glen Vera, Cork	Nasc	Nasc	58	16 January
Laois	Montague Hotel	Montague Hotel	Montague Hotel	Irish Refugee Council	30	20 January
Limerick/ Clare	Victims of Trafficking Consultation	N/A	Doras Luimní	Doras Luimní	2	22 January

Schedule of Regional Consultation Sessions and Accommodation Centre Visits						
County/ Region	Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Numbers Attended	Date (all 2015)
	Knockalisheen, Co. Clare; Mount Trenchard, Co. Limerick	Knockalisheen, Co. Clare; Mount Trenchard, Co Limerick; Hanrattys, Co Limerick Westbourne Holiday Hostel, Co Limerick	Doras Luimní	Doras Luimní	53	23 January
Meath/ Dundalk	Mosney	Mosney; Carroll Village, Dundalk	Mosney	Cultúr	82	26 January
Waterford/ Tipperary	Birchwood House, Waterford; Atlantic House, Tramore	Atlantic House; Ocean View; Birchwood House; Viking House, Waterford; Bridgewater House, Tipperary	St Patrick's Gateway Resource Centre	Waterford Integration Network	20	27 January
	LGBT Consultation	All Accommodation Centres	Belong To Office	Belong To	14	3 February
Monaghan	St Patrick's	St Patrick's	Teach Na Daoine, Family Resource Centre	Dóchas for Women	18	4 February
Westmeath	Athlone	Athlone	Prince of Wales Hotel, Athlone	Westmeath Community Development	24	5 February
	Victims of Torture	All Accommodation Centres	SPIRASI Office	SPIRASI	19	6 February

Schedule of Regional Consultation Sessions and Accommodation Centre Visits						
County/ Region	Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Numbers Attended	Date (all 2015)
Galway/ Mayo/Sligo	Eglinton Hotel; Great Western Hotel	Eglinton Hotel, Salthill; Great Western Hotel, Galway; The Old Convent, Ballyhaunis; Globe House, Sligo	Croi Na Gaillimhe, Resource Centre	Irish Refugee Council	31	12 February
Dublin	Clondalkin Towers	Balseskin Reception Centre; Clondalkin Towers; Georgian Court; Watergate House; Hatch Hall; The Staircase, Dublin; Eyre Powell, Newbridge	Bewley's Hotel, Newlands Cross	Crosscare	50	17 February

3. WRITTEN SUBMISSIONS FROM ADULTS

INTRODUCTION

Notices calling for written submissions were placed in all centres in December 2014 with the assistance of RIA and centre managers. Every effort was made to reassure those engaging in the process of the confidentiality of their correspondence, and stamped envelopes were made available at the centres to facilitate the communication.

58 adult individuals responded to the call for written submissions. A small number made multiple submissions which are counted as one. Submissions were received from residents in Direct Provision in Cork, Clare, Dublin, Galway, Kerry, Kildare, Mayo, Sligo, Tipperary, Waterford and Westmeath.

The summary below of the written submissions received contains at least one direct quote from each item of correspondence received. Many have contributed the same or similarly consistent points on the key issues and as such only a few quotes are recorded in this summary for efficiency of reading. The messages are clear and have been eloquently repeated throughout the face-to-face consultation process undertaken by the Working Group Members nationwide with residents (see section 6).

The submissions were very clear in identifying the main issues about life in Direct Provision and in the protection process. The clear and constant message throughout all submissions, regardless of the location of the Direct Provision accommodation centre, is the frustration felt about the length of time it takes to be processed through all stages of the system – the first and second instance stages of the protection process, the leave to remain stage, the deportation order stage – and the length of time legal challenges take to be determined.

As one resident noted:

‘What could be said to be wrong with the system is in one way or another, directly linked to the length of time spent in it.’

This point, repeated by many, cascades down throughout Direct Provision. The length of time where people:

- do not know their future,
- cannot provide for themselves or their families,
- live in shared spaces,
- cannot cater for themselves,
- do not have the financial resources for independent living,
- cannot upskill or access full third-level education,
- cannot work to self-support,
- cannot have a home life similar to others in the community where they reside

has informed their commentary and communication with the Working Group. There is a

strong positive message of hope for the deliberation of the Working Group. The submissions also make strong commitments to Ireland and to being productive self-supporting citizens if granted status, and a desire to make their own contribution to active citizenship.

The summary below is of key issues, expressions of frustration, cooperation, fears, commentary and resolution which populate the correspondence. Solutions offered might vary somewhat depending on the length of time already spent in the system, but all ranges are covered below. This document is a record of the voices that offered to communicate with the Working Group, the key issues that affect their daily lives while waiting for their status, and living in Direct Provision in Ireland in 2015.

SUMMARY OF ISSUES RAISED AND SUGGESTIONS

TIME AND DELAY

A consistent underlying theme in the submissions was the length of time spent in a) the system and the resulting length of time spent in b) Direct Provision:

(a) The System

- *'The most frightening thing about the Irish refugee system is WAITING IN LIMBO.'*
- *'I met a person [who had been] in the system for nine years, which defeats all efforts to try to integrate with Irish society, so that they see you are a good person and can be a good Irish citizen.'*
- *'Eight years is too long to wait and it has really damaged my personal and mental health development.'*
- *'The length of time and the small number of cases where asylum is eventually granted, makes it difficult for them to muster the self confidence to take responsibility for their lives.'*
- *'...the endless length of time without knowing what you are waiting for, and this is agonizing, we just live for hope in this regard, but after waiting five to eight years, we still might be given a negative decision...'*
- *'I have been under asylum system for years and how these years could be regarded as wasted years. I think the length of the whole process should be six months, maximum twelve months, rather than living in traumatic combination of hope and despair for years.'*
- *'I am always scared of being deported.'*
- *'One of the arguments is that putting asylum seekers in Direct Provision will not encourage others from coming to Ireland. This doesn't hold any ground because those running away from persecution or looking for a better life will go to any length to achieve that.'*
- *'The granting of Leave to Remain takes a lot of time. There is no date for applicants to receive the results.'*

- *'If we make a commitment to examine their cases quickly, we might deny them the opportunity of explaining their case, of gaining enough confidence to talk about things ... and of not availing of all the legal recourse open to them.'*
- *'If application commissioner's office is allowed to make rejections upon the whims and caprices of the interviewer, the system will always remain opaque.'*
- *'Separate application process is more convoluted with applications for subsidiary protection and humanitarian leave coming after asylum application has been rejected.'*
- *'A sense of fairness and humanity should be espoused when dealing with applications of asylum seekers.'*
- *'Rejection decisions often contain large excerpts of reports selected to suit the refusal. I would suggest that the use of country reports be put to the test of objectivity.'*

(b) Time Spent in Direct Provision

- *'The length of time as it currently stands is mainly responsible for 90+% of the problems faced by those living in the system.'*
- *'Long stays in direct provision is not a suitable place for asylum seekers especially children.'*
- *'I want someone to tell me or my daughters how long will I live like this or is ten years not enough?'*
- *'Residents are feeling like slaves or prisoners while staying since long time, mostly under mental depression due to the long wait for their cases. Please change the time frame, it should be quicker and more transparent.'*
- *'Ten years later I still live in the same bed, in the same shared room, of the same direct provision centre – a full decade spent in limbo.'*
- *'People are here in this country to save their lives – please change the time frame of the asylum process in Ireland.'*
- *'As we kill the time, the time kills us.'*

DAILY LIFE IN DIRECT PROVISION

Most contributors commented in detail on daily life in Direct Provision. There were strong common themes, regardless of the location of the accommodation, though there appear to be some differences in the quality of facilities, services and regimes throughout the country. The positive work of staff was acknowledged. Living in Direct Provision for long periods results in a loss of motivation. It is monotonous and boring and the uncertainty of status rulings results in well-being and mental health pressures. The challenges of living with strangers; accommodating different cultures, religions and languages; and the close proximity of this interaction over long periods of time were a constant theme.

It was pointed out by some that an initial stay in Direct Provision had its merits, but most of the concerns resulted from the monotony of day-to-day living, without any capacity to direct their own lives or to live independently. This resulted in complaints about accommodation,

rules, services and inadequate facilities, especially for children. The key areas identified for attention are summarised under a range of themes below.

Many residents are in shared rooms. They often share with strangers and have no connection culturally or personally with their roommates or fellow residents on their corridor or in their building. Families are accommodated in shared rooms which must double up as living and sleeping facilities. There is little scope for privacy.

Strong statements acknowledging the physical liberty of open access being of little use, when the system itself was seen to restrict movement and remove all certainty of a future, were recorded. The accommodation provision, especially for people who remain for years in the system, also gave rise to widespread comment.

- *'This system dehumanises everyone in it ... it is not be accident, like slavery and apartheid, it is man-made and can be removed by the actions of human beings (Nelson Mandela).'*
- *'The direct provision system has been prison to many people, undeservedly serving unending sentences.'*

(a) Liberty/Privacy

- 'The challenges people face in the Direct Provision system originate more in poverty than their residential status in the state. It is even worse than the prison system ... Prisoners have a fair idea about how long they will stay behind bars.'
- 'Living in direct provision is like living a prisoner's life – we are free but we don't have liberty.'
- 'Even people in prison are much better off since they can work, they can get their PhD's and come out better people.'
- 'People are made to feel like criminals whilst exercising their human right to seek refuge.'
- 'It is a draconian system of putting profit before human dignity and a right to a fundamental human life.'
- 'No freedom especially for single, they are being restricted from staying outside a lot.'
- 'I live a lonely life here in direct provision, I can't have female or male visitors and I can't cultivate a relationship.' 'There is no privacy.'
- 'They are left with very little room for privacy and this situation needs to be changed.'
- 'There is no dignity in living under direct provision ... many adults are driven out of their minds, others have taken their own lives, and many more have seen their families fall apart because of inconsiderate mixing of families with singles.'
- 'In these rooms we cannot sleep because our minds cannot sleep. Our minds are not at peace. The room becomes a prison – an open prison.'
- 'Inadequate communal rooms confine residents to their bedrooms.'

- 'I have been living in direct provision since 2006 – when I came here my children were 5, 3 and 1 year old.'
- 'I have been sharing with four to six people for the past five years.'
- 'There is no choice of who we end up living with.'
- 'No privacy – CCTV cameras are in all public places in centres, even while we eat.'
- 'I am living this hostel for more than five years, I have got a very bad life experience.'
- 'It is a hard way to live trying to manage living with different people of different cultures and background.'
- 'It's like institutionalisation. People have no privacy, sharing rooms with people they don't know, living in a room with people young enough to be their children.'
- '4 people in one small room and can't take a bath in front of my children on privacy.'
- 'Have to ask for toiletries.'

(b) Resources/Regime

Residents write about the cost of Direct Provision. Many feel it would be more economical if monies were allocated directly so that residents could become more self-sufficient and independent. There are also suggestions and comments about the operation of the Reception Integration Agency (RIA) and its sub-contractors, and their rules, policy and regime.

- 'The main beneficiaries to the lengthy delays are the direct provision hostel owners who get paid millions of euro at the expense of asylum seekers.'
- 'The bulk of the money allocated to each asylum seeker almost €200 is given to the hostel management.'
- '[RIA should be] open and transparent in selecting providers and locations. Inspections should be unannounced and include meetings with residents' – 'no adverse consequences if grievances are aired.'
- 'Inspection visits are well known in advance.'
- 'The agreement between RIA and the owners of these hostels is to provide top standard accommodation, something that we have never experienced. There is not enough we can say about the conditions we are living in which RIA does not seem to notice.'
- 'Huge discrepancy between what an asylum seeker receives and what the providers of direct provision receive from the State – system benefits the latter.'
- 'RIA buys bed spaces – bed spaces are for hospital patients – asylum seekers need living spaces.'
- 'Some of the centres are run at best like military camps and at worst like prisons, while others treat residents fairly well.'
- 'Hostel is costing the Government a lot of money. Adults and children are €12,000 per year – a family of four is €48,000 per year which does not make sense. If we were in a house, we would not pay that per year.'

- 'We are not pencils whose lives must be carved into a Direct Provision system by RIA with no hope for the future.'
- 'There is no flexibility within the system to accommodate people who are afraid of Authority based on their life experience.'
- 'I have seen so many people transferred to another hostel just because they talked or complained.'
- 'The system should try more to disallow racism/racist from top down to bottom staff, demonstrate a good attitude towards them, although some staff are extremely good.'
- 'The issue of signing every time to show one is present is also very degrading and a direct stab at ones dignity.' 'More like a prison or primary school.'
- 'I am glad we are finally in agreement that the system doesn't work.'

(c) Financial support

Another overriding common theme in submissions is that people do not want to rely on welfare. They want to lead independent lives, make the decisions that affect their families and develop or maintain their skill base. Residents expressed a strong desire to contribute to the economy, to integrate and to contribute to Irish society. Residents want permission to work, to maintain their existing skills, to learn and to provide for their own families and contribute to, rather than draw upon, the Irish economy. The desire to work is reported on under Isolation and Segregation. Other financial and welfare concerns are set out below.

(i) Personal Allowances

- *'To let them survive on €19.10 is to blatantly strip them of their dignity. Most of the men resort to gambling in order to try and multiply the money, since there is no other means to do so.'*
- *'There needs to be a frank discussion on whether absolute equality is demanded as regards minimum welfare provision for citizens and those seeking asylum.'* *'The wholly inappropriate and miserly level of financial allowance currently paid to asylum seekers needs to be reconsidered yesterday.'*
- *'We ask the working group to consider increasing our weekly payment as it does not meet our needs.'*
- *'There are no valid and fair reasons to deny asylum seekers from accessing a number of other welfare payments.'*

(ii) Clothing

- 'We used to get a clothing allowance of €300. That money was cut. A welfare officer will now review an application and make a decision if to pay and how much to pay, up to a maximum of €100. Previous to that, we used to get €120 for summer clothing and €180 for winter. However from that day, we now get a max of €100 a year.'
- *'The six months clothing allowance is €50 per child and €100 for adults – since we are not allowed to work, we can not afford to buy what they really need.'*

(iii) Welfare

- *'Community welfare clinics being withdrawn from Direct Provision in Kerry and Millstreet has caused undue hardship to women and children.'*
- *'The 25% Christmas bonus is unfair as residents must be in receipt of payments for 15 months – harder on new residents.'*
- *'The CWO doesn't pay for school tours, swimming, provide transport for parents to attend meetings in our children's school. The former CWO was providing all this for us.'*
- *'We don't have a CWO on Killarney, she moved to Tralee.'*
- *'Using the CPI will roughly deduce how much an asylum seeker would spend – this could be payable in vouchers.'*

(iv) Supports

- *'We want concession tickets and vouchers from organisations.'*
- *'There ought to be equality in the system, the basic supply some hostels get, others don't get it.'*

(d) Food

- *'Most people complain about this after a year at least in the system'*
- *'First, the food is appalling, it is not the type of food I am used to.'*
- *'All meals are timetabled and food is monotonous, cooked vegetables are privileged to people with medical letters.'*
- *'The children have the same sandwich filling from the day school opens to date.'*
- *'Manager provides the same school lunch every day.'*
- *'There are many rules and regulations surrounding consumption of food. Residents are not allowed cook or exercise choice. Management will naturally prioritise value for money foods over nutritional value.'*
- *'From January 1st to December 30th the main food is potato, no choice cause you are treated like a detainee.'*
- *'There is no dignity in forcing an adult to sit down and be fed by someone else a meal they didn't even have a part planning.'*
- *'No access to kitchens or to store their own food in fridges.'*
- *'I have a medical condition and allergies that I developed while in Direct Provision.'*

(e) Mental Health

- *'Mental health risk for adults and children: Depression, behavioural issues with children, post natal depression, separation anxiety, post traumatic stress disorder are all very common for residents of Direct Provision.'*

- *'Their mental health suffers greatly and their children are in turn affected by their parents' state of mind.'*
- *'We have experienced depression, memory loss, living with violent people, sharing rooms with strangers, destroys marriages, pushing people to prostitution, miscarriages, trauma, discrimination in community.'*

(f) Health Resources

- *'Health wise the government has gone out of its way to help. The HSE has been very effective. We can all see our GPs and that is good. Teeth problems are blamed on lack of necessary nutrients in the food.'*
- *'Prescription is really unaffordable because there are times when you have more than one item and you don't have enough money to collect them' 'We appreciate if the €2.50 charge is dropped ...'*
- *'The €2.50 prescription charge is unaffordable for us. I don't get extra money from the CWO.'*
- *'... if parents or children are unwell or need to go to hospital this causes indescribable distress and additional expense – people are going to others for money.'*

ISOLATION AND SEGREGATION

Residents described in detail the effects of social isolation and the lack of a meaningful day. Restricted access to education and training, and no access to paid work, occupational therapy or the maintenance of their own skill base, is a recurring theme throughout the submissions. This affects capacity to cope with monotony, the decline of skill sets, inability to make a societal contribution, and degrading treatment. There is great fear that even if successful in the asylum process, following their long stay, they will have lost their skill for independent living.

- *'The great challenge for me in the system is stress, depression and mental health issues.'*

(a) Effects

- *'The notion of isolating asylum seekers into a particular group of people thereby creating social segregation is inhuman.'*
- *'We basically do nothing. As a result it is not uncommon to see a 30 years old man behave like 15 in the system.'*
- *'I have taken time to look at the levels of frustration that people have in our centre, particularly men. It is surprising how one can turn wild on you, if you ask a simple thing or make a funny joke.'*
- *'Such is the kind of manhood that lives among the direct provision centres, a very angry, frustrated and depressed manhood.'*
- *'When I wake up in the morning there is nothing to do – I watch television all day (a complete waste of time).'*

- *'...I have spent a large chunk of productive years of my life doing nothing, other than sleeping and feeding and not knowing the outcome of my application. This makes direct provision look more like a correctional facility, rather than a place of succour to refugees.'*
- *'I can not make my own decisions'*
- *'People are tuned into queuing for food and sleeping all day.'*
- *'The system of accommodation is having a very negative impact on resident's behaviour, alcohol abuse is a serious problem ... as they have nothing to occupy their minds.'*
- *'Most of us are on prescriptive medicines to deal with chronic depression caused by the indignities of the Direct Provision system ... confined space, sharing, monotonous daily routines, stealing our children's prospects as they become Ireland's new class of untouchables.'*
- *'There are no families to be united with at Christmastime. We are branded as fugitives, people with uncertain futures ... they see us as failures with no hopes and dreams.'*
- *'We are not a happy family living together – I feel to kill myself I am nowhere in my life with my family. I feel the future of me, my wife and children is dark and we are nowhere in our lives.'*
- *'Now to go back to a country with which I have had minimal contact over past six years and starting from scratch is very emotionally taxing and stressful and seem an impossible task.'*
- *'No money leads to prostitution, every woman in Direct Provision is being looked down upon.'*
- *'I am converting religion and it is very difficult.'*
- *All this time (8 years) no good education, no to work, its like I'm living without a future.'*
- *'My situation is very stressful and I am anxious and depressed every day and I am constantly crying.'*

(b) Work

One of the major themes of resident responses is their desire to be allowed to work, to provide for themselves and their families and not to be viewed as welfare dependent. Many pointed out their professional qualifications, their capacity for self-advancement through accessible third-level education, and a frustration with enforced dependency.

- *'I don't need any help from anyone, just want at least to allow us work for Gods sake.'*
- *'Why won't the government allow people to work so as to finance their own living?'*
- *'People who are capable and willing to work should be allowed to fend for their own families.'*

- *'These effects include dependency syndrome and laziness coming from the fact it is illegal ... to seek work.'*
- *'These wasted years doing nothing – after leaving the system you are faced with a dilemma of where to start from and where to go from here – what would I put on my resume for these years?'*
- *'Ireland is only one of two countries not signed up to EU Directive on Reception, thereby denying asylum seekers the right to work ... means that they lose their original skills.'*
- *'The longer the time we are not allowed to work, the more we rot and waste away. Our mental and physical health is greatly disturbed and completely demoralised.'*
- *'They often do not have the chance of having a fruitful distraction in studying, they are not allowed to work, which takes away their dignity and the role of providers for their family.'*

CHILDREN AND FAMILIES

Many adults referred to their concerns about the well-being of their children being brought up in the environment of Direct Provision. Their proximity to strangers, cultural difference, adult behaviour, mental health challenges and lack of privacy were constant and real concerns. While attempting to integrate their children into a normal family life, their local community and to stay in touch with their cultural heritage, all argued that Direct Provision's institutionalisation was not a normal environment in which to raise children. Serious concerns were raised about the rights of all children, including Irish-born children, as being the only Irish-born children forced to be raised in Direct Provision, because of the status or lack of status of their parents.

Parents felt inadequately equipped to make the choices necessary to assert their parental identity and to infuse their traditions and culture. Their inability to access Irish education, where they could support their children, who are being educated in that system and under a curriculum that they have not studied, is also a challenge. Many parents felt that their authority and role were undermined by their economic dependency and lack of family living space.

They expressed a concern for the lack of privacy in family life and the impact on the development of their children and adolescents. Their inability to include their children in school activities that involve charges – thus increasing the social isolation of their families – was a recurring concern. Normal childhood activities, play, study, birthdays and social outings are beyond many parents to provide when in Direct Provision. This also impacts negatively on the development for the child and the self-esteem of the parents as providers and sources of discipline and respect. Inadequate financial support, especially for school expenses and clothing, were a cause of concern, especially as previous supports had been cut.

(a) Family Life in Direct Provision

- *'No child needs to be born in a hostel, no child deserves to be raised in one either.'*
- *'More than 1,600 children are growing up in Direct Provision with limited access to play or recreation.'*

- *'Children born in this system do not know the difference between a house and a room.'*
- *'Children, whose entire childhood has been subject to these living conditions, not knowing any other type of life.'*
- *'They are living there too long.'*
- *'Children are growing up in abnormal family environment, having in their mind activities, services, welfare are provided for them because they are asylum seekers.'*
- *'Children in Direct Provision lack self esteem, confidence. They are excluded from community. Their friends ask them questions about Direct Provision.'*
- *'Children are being allowed to wallow in such overcrowded, degradable, and unsuitable setting for as long as 10 years.'*
- *'I do feel sorry and sad for my children because of what they see, hear and what goes on among adults within this centre.'*
- *'The children also in their daily lives, experience violence in their vicinities.'*
- *'... family has little control over decision making regarding family life.'*
- *'When you have children, it is not easy to instil your own cultural values on them as they end up learning things from other residents.'*

(i) Children in Community

- *'My children are under depression, they feel ashamed to tell their friends that they are asylum seekers'*
- *'Children are being bullied in school because they do not have a home.'*
- *'Direct Provision militates against children leading a life integrated in their schools and wider community – difficult to have their friends over to play.'*
- *'Why can't I have sleepovers like the other kids in school?' Does this mean we are poor?'*
- *'Access to homework space does not exist.'*
- *'My son has told me he doesn't feel loved among other children that live outside the hotel all because he is different from them.'*

(ii) Privacy

- *'Neither the parents or the children can enjoy privacy. It is also desirable to offer families a minimum of two rooms.'*
- *'Parents share rooms with grown up children ... they are not allowed leave them unattended. Children not allowed to play ball outside.'*
- *'It is not normal for children to grow up in a situation where they have not seen their parents cook or where they are not sharing a meal in private.'*

(iii) Social and Recreation

- *'We can not take the children on outings and they are fed up with us, disliking me and my wife and they do not listen to us some time.'*
- *'Children don't have anywhere to play – they play in the four corners of the room.'*
- *'Girl children are at risk sharing the same hostel with strangers.'*
- *'Children have been made to live lives different from other children outside the system. They are made to feel guilty and ashamed at schools where their parents can not pay for activities and whatever needed in school.'*
- *'Birthdays celebrated in corridors and stairwells due to lack of communal spaces.'*
- *'Kids bully each other and this creates unnecessary animosity among parents.'*
- *'One of my neighbours, we are living together smokes in the house, which is not good for my children.'*
- *Not allowed to do laundry in many centres.'*
- *'Children suffer from poor diet, exposed to danger from frustrated adults, not fully integrated into local community, no play space, risk of early sexual abuse in centres.'*

(iv) Regime

- *'My children doesn't want to go for signing, they feel so afraid and they get depressed. They ask 'why we come here to this Garda station, what we did was bad – we are not bad people.'*
- *'Children have to miss classes just to go sign for deportation.'*
- *'Children are growing up under fear because of the rules and regulations imposed by the hostel management.'*

(b) Basic Needs

- *'Our basis needs are not met, we do not receive clothing allowance and children do not get school bus, they walk in the rain.'*
- *'We cannot afford school trips and activities.'*
- *'Back to school allowance is barely enough for a school uniform. We can not afford books, satchels and other school requirements.'*
- *'The reality is that sending a child to school will cost €299.00 and the Mother only gets €100.00.'*
- *'The weekly money is too small. Also the clothing money is too small and the duration is too long for such a small amount.'*
- *'Asylum children get €9.60 per week and are not eligible for child benefit.'*

(b) Parents' Concerns

- *'Another Mum was very distressed after visiting her GP with two sick children and*

received prescriptions costing €12.50. On her way going around town trying to get a pharmacy that will give her the medicine on instalment payments, her buggy broke.'

- *'If the father of the child in Direct Provision does not live with the family, the child is denied significant rights to have a relationship with him or for him to offer respite, as they can only meet in open living/play room area.'*
- *'As a father to my daughters born in Ireland, I was granted overnight "Weekend Access" rights by the Courts. I have on several occasions sought a suitable transfer to a suitable centre to no avail from the RIA.'*
- *'If a deportation order is served on a family who have been in the Direct Provision system for years then a child/children who were born and grew up in Ireland and know no other country, are forced to return to their parents home country, with huge impacts on them.'*
- *'The saddest part of this process is making children born in Ireland apply for asylum. These children are not asylum seekers, their parents are.'*

EDUCATION

Education as a stepping stone to work, to maintain or develop knowledge and skill, and provide an opportunity to plan for a productive future is seen as crucial by residents to their hopes for a productive future. Access to education is a strong common theme in correspondence. Many adults noted that they were no longer keeping up their educational skills base and if that if they were given an opportunity to return to the workplace, their knowledge would be out of date.

Parents reported limited study facilities for their children. One parent reported that her child studies in the toilet each evening as it is the only private space in their cramped living quarters. Others study in a room which accommodates and sleeps their parents and siblings. Others cannot avail of school study times as public transport is not available for those who wish to stay on to study in homework clubs.

Many young people in Direct Provision wonder what their third-level future might be. The treatment of protection applicants including Irish-born children as 'foreign students' for fee purposes puts many third-level courses out of reach of many. The limitations on going beyond FETAC level 4 courses were also cited as a concern

The use of education as an intellectually progressive occupier of time, and the feeling of achievement that academic success brings, appears to be beyond the circumstances of those living in Direct Provision. Many were concerned about the impact of this on ensuring young people grew up to be productive citizens.

- *'Most of these people crave an education but it is denied to them – he who opens a school door closes a prison (Victor Hugo).'*

(a) Education and Skills

- *'The European Convention on Human Rights and Fundamental freedoms refers to the right to education in Article 2 of Protocol 1 ... the largest section of the asylum*

seeking population has been neglected, left out and consequently denied access to what has been stipulated as one of the basic human rights.'

- *18–35 year olds: 'These people are youthful, energetic and full of verve. They meet up in Churches, intercultural workshops and all they speak of is the issue of denial to third level education by the state.'*
- *'... if data statistics are to be collected from those education centres, it will show clearly that most of the people are over qualified for [FETAC] level four, which is the highest level offered to asylum seekers and which is the reason why most people don't want to do it again.'*
- *'There should be some way to ensure asylum seekers do not lose their skills whilst in asylum.'*
- *'If someone spends 3–5 years in direct provision without proper education, work training, what do you think that person will become even after he or she is given permission to stay in the country? The only thing they will know is to end up lining up in the Post office week in week out to collect Government money.'*
- *'There is a major de-skilling going on. Any professional who stops practice for a period of eight years would have found out that things cannot usually go back to the same work and be effective.'*

(b) Access

- *'Even when they achieve high points in the Leaving certificate, asylum seekers can only enter third level education as overseas students – pay exorbitant fees, excluding them from higher education.'*
- *'On being granted asylum, many attending e.g. a PLC course are advised by Social Welfare Officers that they must leave the course and sign on for Jobseekers allowance for six months, at which point they become eligible for back-to Education.'*
- *'I was transferred from Galway hostel to [one in the next county] because I went for a course in child health in the South East. I spent four days there only to come back and was told my bed space had been taken over.'*

INTEGRATION, STATUS AND PROCESS

There is a very strong commitment to Ireland and to active citizenship in many of the submissions. People want to be self-sufficient and provide for themselves and their families. They want to know Irish culture, sports and to integrate themselves and their children with the everyday life of their neighbours. They see their neighbours as their future community and yet feel removed or distanced from them by Direct Provision and their economic and accommodation circumstances.

Many clearly state an ambition to be granted status, because they want to live in Ireland and to have their children grow up here and prosper. They emphasise their good behaviour as a matter to be considered. Lack of adequate economic supports excludes them from many social and community activities. Lack of facilities to invite people to their homes adds to

this social exclusion. Single people express a keen sense of relationship loss while in Direct Provision, and feel they are wasting critical years where they might find a partner, create a home and family.

There is fear and suspicion in the operation of the protection process of victimisation in any contact with the State, especially if it is to comment or complain about processes or provision. The absence of timelines in the determination process heightens anxiety and fear. There was a fear of engaging with the Working Group consultation process, and at times an apology or fear of offence in expressing an opinion to the Group.

(a) Integration

- *‘Emphasis should be put on their [RIA’s] integration role.’*
- *‘There needs to be wide consultation that involves asylum seekers and those who have previously resided in direct provision centres, as regards what can be reasonably done to ensure respect for and protection of core social and economic rights, while awaiting determination of their refugee or protection claim.’*
- *‘We have seen the difficulties that clients have when they leave Direct Provision to settle into the community. A short stay in direct provision introduces them to differences. The challenges are many and complex. We may need to offer direct provision for a short time and appoint special workers to support asylum seekers when they move out into the community.’*
- *‘Integration of an individual in the State can help the process, learn English and Irish and involve in community activities.’*
- *‘We have seen people getting their papers and failing to cope on their own. This is because all they knew is depending on the number of years spent in the hotel sleeping, eating and watching TV. Somebody else was managing for them.’*
- *‘This country needs us in the field of sport, medicine, politics, education, engineering, agriculture – we are hard working people.’*

(b) Status

- *‘Residents are fearful that there will be adverse consequences if they complain.’*
- *‘I have been left wondering if those working on asylum cases have connections with managers of Direct Provision centres and they can always victimise you and keep you quiet with deportation orders.’*
- *‘I yearn for the speech of President Barack Obama on asylum seekers in the USA to infiltrate into the hearts and minds of those in the Justice system, to do the right thing for asylum seekers in this country.’*
- *‘There are double standards at the heart of Irish migration policy – [vis-à-vis welcoming changes for undocumented Irish in the US].’*
- *‘Ireland registers poorly in terms of granting refugee status or subsidiary protection when compared to other EU countries.’*

- *'After eight years, you can not even fit into the country you came from, for having been left for so long.'*

(i) Status Granted

Residents were concerned about the long-term impact of dependent living and how it ill prepares those who eventually are granted status.

- *'When leaving hostel accommodation, the main problem people face is paying deposit which one wouldn't have at hand. People need to be given full benefit and rental assistance after acquiring status. Isn't that what reception and integration means?'*
- *'In many cases the initial euphoria [of being granted asylum] is replaced by an overwhelming feeling of frustration and powerlessness ... finding somewhere to live, managing money, bills, catering, job, interviews etc.'*
- *'It is painful for me to see many others who spent fewer years than me in the system to be granted humanitarian leave to remain.'*

(c) Process

Frustration with the process was a recurring theme. Residents appear to be unaware of the timeline of the progression of their applications or appeals. This gives rise to frustration, disillusionment and a fear of authority. Language and cultural barriers can add to the challenges of understanding the system which they find themselves under.

(i) Fear

- *'They live in constant fear of what is going to happen to them on a day-to-day basis.'*
- *'The initial interview is frightening up to 13 hours.'*
- *'It is difficult sometimes to tell some one all about your life when you don't know them.'*

(ii) Officialdom

- *'The whole process appears to start with a strong misconception and prejudice towards the applicant. The asylum seeker seems to be considered as an intruder.'*
- *'There seems to be a culture of disbelief amongst the individuals charged with processing the asylum applications.'*
- *'Privacy and confidentiality must be practised. The interviewer should not show any sign of body language of not believing the story.'*
- *'ORAC staff must render impartiality – a few lack professionalism and courtesy.'*
- *'The very act of rejection applications is considered a positive action to combat immigration which is a topic that creates fear in all nations.'*

(iii) Proof

- *'The applicant is called upon to lay down clear facts and present appropriate documentation. The nature of events that lead to flight and exile are themselves not coherent, nor sensible. Flight and exile often occur in unplanned circumstances. The applicant is at best unprepared and at worst traumatised.'*

- *'When applying for Leave to Remain, they will ask us to bring reference letters and certificates of courses we've done. How do we achieve this with the restriction imposed on us [FETAC Level 4 max] and this really slows down the integration process?'*

(iv) Appeals

- *'Many asylum seekers have to fight the numerous unnecessary appeals while living their lives in limbo.'*
- *'The protection process however adopts a twisted approach to the appeal. The specific grounds upon which the appeal was made are not dealt with. Instead, what is offered is a fresh interview, to shield the application commissioner's office.'*
- *'When dissatisfaction with a decision is taken to the High Court, the time is extremely long. In that period one attempts to deal with the traumatic physical and mental hardship arising from the situation. Success at the High Court only leads to another interview. The High Court sends you back to the same place where an injustice was done without any specific guidelines.'*
- *'The reform of the subsidiary process in 2013 did not include those who had been issued with a deportation order which had not been executed, as a result of this flawed process.'*
- *'My case is in Judicial review since 2012, I have asked my lawyer to withdraw my case from the court which I have not heard from them.'*

(d) Consultation

There was a strong welcome for the Working Group's remit and huge investment of hope for real change as a result of its deliberations. Many correspondents expressed appreciation for the opportunity to be consulted. Some philosophised about the context of the work, firmly placing it in the area of human rights. Others invoked positive religious prayers for a successful outcome.

Great emphasis and urgency was placed on immediate change, especially for people in the system for a long time and those without adequate resources along the lines recorded above.

There is a strong sense that the Working Group will be the catalyst for reform across many areas of the protection process and Direct Provision, and that this reform will be immediate and far reaching. Others expressed concerns that the Working Group might be another layer of delay in the reform process. More had difficulty with some of the logistics of communicating with the Working Group. These matters were addressed during the consultation process. Some expressed consultation fatigue.

- *'I think the process and the procedure are not working at all. I hope you really take action and do something because we have had enough talking.'*
- *'Apprehensive the Working Group is tied by the very narrow terms of reference given to it.'*
- *'There were no stamped addressed envelopes. I think the manager is trying to dissuade people from writing. I am going to fundraise and buy stamps for those interested in writing to the group.'*

- *'I had to pay postage, no free postage envelopes available at the Centre as indicated on your information leaflets. I hope no offence.'*
- *'The Working Group cannot pretend they do not know our problems and the right thing to do. All they need to do is to place themselves, members of their families, their friends and relations in our situation and let them tell us in their recommendations, what they wish for their lives and in the lives of families and friends and relations. What they sow in their recommendations will be the seeds to which history will vindicate the just.'*
- *'I hope that this is an opportunity to make the right change. I also hope no future Taoiseach will be making apology on behalf of nation to residents of Direct Provision.'*

SOLUTIONS: KEY ISSUES AND ACTIONS

Participants were encouraged to offer solutions to the issues raised in their commentary. Some could not see beyond the frustration of being in the same system for so long. Many others offered constructive and far-reaching reforms, from abolition to imposing stricter rules on law breakers.

The right to work was identified as a key means of improving living standards and the quality of life in Direct Provision. Suggestions were made to improve processing timelines, communications, complaints mechanisms, supports and resources.

Enabling better family living and improving personal space and interaction with local communities were priorities for change.

An amnesty for those in the system for a long time was frequently suggested as a solution to clear backlogs and to vindicate human rights.

The following is a summary of the key recommendations from the submissions on a thematic basis.

(a) Right to Work

- *'The only solution is to give asylum seekers the right to work after e.g. nine months in the system, or at least to allow them to become interns in the country.'*
- *'After one year asylum seekers should be allowed work.'*
- *'Work offers dignity and the best means of integration and reduces the cost to the State.'*
- *'Many people here have the capability to create jobs for others. Some people have owned companies in their own country.'*
- *'People who have the ability and would like to work must be given an opportunity to apply for a work permit.'*
- *'I believe strongly that asylum seekers should be allowed to work after six months in the system.'*
- *'It would be massively helpful if there were courses provided, maybe after a year or two, to be allowed to work until a decision is reached.'*

- *'A doctor who has not practised for eight years would have found out that things have changed by the time he tries to work.'*

(b) Improvements in Direct Provision

- *'Ensuring dignity and respect for human rights has a financial cost. The fact that any new system may be more expensive than direct provision cannot be an argument for the further denial of rights that is so inherent within the Direct Provision system.'*
- *'Abolish Direct Provision and institutionalised living.'*
- *'I am of the opinion that Direct Provision should not be totally done away with. It helps as a place to calm down, get used to new environment, system, culture for new asylum seekers.'*

(i) Complaints Procedure

- *'Recommend another independent body to whom Direct Provision residents can complain other than RIA.' 'Improve the complaints system and ensure there is an independent arbitrator.'*
- *'We would also like channels provided for one to be able to talk and if necessary complain about something.'*

(ii) Centre Management

- *'RIA to place one qualified person to manage direct provision centres.'*
- *'All centres should meet best standards and be independently assessed by health information and quality standards authority'*
- *'Train staff in interculturalism.'*
- *'Gays and Lesbians; Employ personnel that are homosexual.'*

(iii) Food Services

- *'Kitchens to be managed by a person qualified in nutrition and awareness of diverse cultures.'*
- *'There should be a residents' kitchen.'*
- *'Allow access to residents to cook for themselves and to do their laundry – rotas and self catering options.'*

(iv) Accommodation

- *'We suggest two to a room is the maximum desirable.'*
- *'Families should be separated from singles.'*
- *'The living condition can be improved upon with not more than two adults to a room.'*
- *'Minimise the number of single men/women sharing rooms in hostels.'*
- *'Not more than two residents to be in one room – ideal single rooms for everyone for privacy.'*

- *'The conditions and quality of life in Direct Provision centres can be improved – by closing them down – by providing self catering units.'*

(v) Time

- *'Living in direct provision should not extend beyond six months.'*
- *'Cap stays in Direct Provision at 6 months and move to community based accommodation. Introduce a determined period of Direct Provision residency.'*
- *'Reduce the stay to less than one year.'*

(vi) Integration

- *'...management need to work closer with NGOs to access community supports and programmes.'*
- *'NGOs should be represented on advocacy committees in centres.'*
- *'Accommodation centres should be in areas with easy access to supporting services and for a defined maximum period only.'*

(vii) Resources

- *'Change the distribution of the money provided for asylum seekers. Residents could be allocated the monies to provide their own toiletries, cleaning supplies and food.'*
- *'Direct Provision centres can be improved by encouraging us to do things like school, a bigger space for children to be able to play and breathe as well.'*
- *'Provide supports – access to education, work and self catering accommodation.'*
- *'Closing down the system will save the Exchequer a huge sum of euro. Those drawing on full social benefit are not getting as much as is being spent on those in Direct Provision.'*
- *'Already a family of two in the hostel is costing a lot, surely this sum could easily be used to find a family their own accommodation?'*

(c) Improvements in Process

- *'Any asylum system must have a clear legislative and legal basis in compliance with international and European Human rights obligations such as Article 26 (1,2) of the Universal declaration of Human Rights.'*

(i) Time and Backlogs

- *'Clear the backlog before introducing a new law – stop deportations of people who have been in the system for more than one year.'*
- *'Those who present all the time should be granted within a short period.'*
- *'Please look into the cases of those of us who have been in the system a long time and consider us on humanitarian grounds.'*
- *'Process requests in a timely manner and streamline legal procedures.'*

- *'It would be a big improvement if all cases are dealt with fast enough so that a final decision is reached before two years.'*
- *'Process our asylum application as soon as possible. Me and my wife are scared we don't want to be feel the same pain and stress like other people waiting for decisions for many years.'*
- *'Place a time limit of seven years to give status to people here.'*
- *'There should be a clear legal basis on the length of time (e.g. six months). After this the authorising body should be able to determine whether the applicant is entitled to remain in the State either as a refugee or on humanitarian grounds or deported.'*
- *'It would be a big improvement if all cases are dealt with fast enough so that the final decision is reached before two years.'*

(ii) Reform

- *'Introduce the single procedure and enact the new Immigration Bill.'*
- *'The Government need urgently to reform the system to ensure that asylum applications are dealt with speedily, efficiently, fairly and humanely.'*
- *'The system for determining whether an individual has a legal right to refugee or some other protection status, needs to ensure that well reasoned decisions are taken in a fair and transparent manner that will offer certainty to applicants.'*
- *'A speedy process should be put in place or a split in the system giving autonomy in each body for consideration of different claims.'*

(iii) Amnesty

- *'Support one off scheme to clear the backlog before introduction of single protection procedure.'*
- *'Look into deportation orders for those that have lived in the country for five years and revoke the deportation.'*
- *'Those who have lived in Direct Provision for five years or more must be given their Stamp 4 provided they haven't committed serious crime.'*

(iv) System Changes

- *'Review Appeals Process.'*
- *'Give more time at the initial process and allow access earlier to legal advice and supports.'*
- *'The initial interview process must be done at the point of entry.'*
- *'Put in place a system which will treat people seeking asylum with dignity and respect again, ensuring rigorous control of your border and immigration procedures.'*
- *'Let people be allowed to apply for all available options of stay at once. If someone is not deported from the State within six months of arrival let there be no deportation.'*

- *'Grounds upon which applications are rejected must be looked into, made objective or at least reasonable.'*
- *'It would be of great value if the working group could question the appeals process and make it relevant to the specific issues that are brought up by the grounds of appeal. The appeal should be a time to test the reasons for rejection.'*
- *'The reform of the subsidiary process in 2013 should be broadened to include those who had a deportation order issued but not acted upon, as the initial decision which led to the order was flawed but not included in the reform.'*
- *'The Ministry/Department of Justice should please consider the good impact an asylum seeker has made in the country and references submitted/made towards such a person.'*
- *'After the oral hearing, if unsuccessful, the applicant appeals and if unsuccessful s/he goes straight for subsidiary protection and leave to remain.'*
- *'The process of taking the matter to the High Court should be scrapped, it is time consuming and should not take longer than six months.'*
- *'Copies of all files, including JR, deportations and minutes of interviews, and provide support to obtain certain documents to support claim should be given to all applicants at all stages of the process.'*

(v) Interviews and Staff

- *'Address the fact that asylum seekers experience "culture of disbelief" during their interviews.'*
- *'Trained translators present for interviews and significant documents should be translated in advance.'*
- *'Language analysis is too easy and the questions are the same – offer a written language analysis.'*
- *'Writers to be provided to assist in filling out forms and explaining their claim.'*
- *'An independent Officer should be present at all interviews to monitor the process'*
- *'Interpreters and all document translation read and done before any signing. Interpreter should not be judgemental, listens attentively in one language, Repeats message accurately without interpretation, takes note, ensures confidentiality, have no role in establishing applicants credibility.'*
- *'Male interpreters should not be allowed for female applicants, specially it is related to gender based claims.'*

(vi) New Arrivals

- *'Introduce new arrivals within a reasonable period to groups and services that can assist with psychological, health, medical issues, language classes, children's education, information on Ireland, integration.'*

- *'A new system for those given status to help people negotiate their new situation, rights, entitlements, responsibilities, issues, contacts for State and other bodies – ideally an advice clinic.'*
- *'Single application form and questionnaire for the whole family who have arrived together should be interviewed together, and those joining later should be considered together.'*

(vii) Leave to Remain Reform

- *'We recommend that anyone who has been there for three years should have their case reviewed immediately.'*
- *'We would like to see anyone who has been here for five years get 'Leave to Remain' on humanitarian grounds, on the basis that they have waited long enough.'*
- *'Those with Judicial review application against deportation, living in the country for five years, should be granted leave to remain as soon as possible in January 2015.'*
- *'The Minister's Leave to Remain discretionary powers remain opaque. The absence of any specific guidelines erodes the objectivity of this discretionary power. There should be a consistent application of circumstances, like length of stay, good behaviour etc.'*
'The establishment of some basic criteria for accessing these discretionary powers may be an area of interest for this working group.'
- *'Those kept in the country for more than four years should automatically be given leave to remain.'*

(viii) Survey and Consult

- *'I request that the Department to send their people to the asylum centres for survey what kind of life they are spending.'*
- *'I would like them to carry out research on the country a person is seeking asylum from. I accept not everyone's story is credible but when it is linked to real events and activities which they don't know the information about, it might be credible.'*

(ix) Countries of Origin

- *'There needs to be a hard investigation of the country of origin, sometimes someone comes from Angola and says he is from the Congo.'*
- *'How many asylum seekers that have changed address are presently working in the UK – border control is needed as an emergency, Belfast area, deploy plain clothes officers to clean up, especially those travelling with student cards.'*
- *'The Department of Justice should impose strong sanctions on law breakers such as removing one out of the State for the sake of protecting the country because genuine people are being punished.'*
- *'Applicants should be granted access to database that holds their country of origin report.'*

(d) Education

Education as a source of personal improvement, intellectual occupation and preparation for the workplace is a key category identified for improvement in the submissions:

- *‘Asylum seekers living in the State for a long time e.g. should be recognised as long-term residents under the Long Term Residents Directive, enjoy equal treatment with EU Member State citizens as regards access to education and vocational training and study grants as well as recognition of qualification.’*

(i) Access

- *‘There should be comprehensive research on asylum seekers educational needs, the rights to education after a certain period of time spent in the State should be recognised ... remove government bureaucratic barriers and make study grants available.’*
- *‘Allow asylum seeker students to access third level education in the same way as Irish students (SUSI grants). Lift blanket ban on FETAC level four or above.’*
- *‘Provide access to homework space.’*
- *‘If a person is in the system for a year plus they must have a right to study.’*
- *‘We recommend that they should be allowed to avail of higher courses at the Irish fee rate than at the international fee rate.’*
- *‘After six months in Direct Provision asylum seekers can live and work in their communities and access education like everyone else.’*
- *‘The 1996 Refugee Act does not specify the rights of asylum seekers to education.’*
- *‘They should be given equal rights and opportunities to receive all third level education.’*
- *‘Most of us would have preferred the chance to learn or be engaged, also the social atmosphere and environment in school would help.’*

(ii) Vocational Training

- *‘Allowing asylum seekers to be involved in training and education (schooling) like FAS training programmes.’*
- *‘It would help massively if there were courses provided, maybe after a year or two, to be allowed to work until a decision is reached.’*
- *‘Government should waive all fees in FETAC courses for asylum seekers.’*

(e) Well-being

Well-being is key to improving the conditions of those living in Direct Provision. Delays, lack of information, no occupation, integration and monotony add to the insecurity of living as an asylum seeker. Residents made a series of suggestions to improve well-being of asylum seekers and those in Direct Provision.

- *'Life in Direct Provision in a foreign country is very stressful for individuals and for families.'*

(i) Health Policy

- *'We recommend that the HSE should appoint public health nurses and family support workers in order to deal with immediate issues of concern before they develop into full blown cases for the Social Workers.'*
- *'The Government levy on prescriptions for chronic illness needs to be looked at.'*
- *'Allocate a certain amount on the medical card to buy generic medication and no levy will be charged on generics.'*
- *'Those with mental health [issues] should be taken to a special centre.'*
- *'Financial assistance for over the counter medication, on prescription charges, travel costs for medical appointments and on food supplements.'*

(ii) Welfare and Supports

- *'The restriction on Christmas bonus, increasing back to school allowances, weekly and clothing allowances need to be lifted.'*
- *'Social services must allocate a travel pass to persons travelling for medical appointments and that card can be returnable.'*
- *'It is not right to deny asylum seekers access to a number of social welfare payments while prohibiting them from working?'*
- *'Scheme to ensure weekly welfare payment is still paid to people who are unable to collect it due to hospitalisation.'*
- *'it will be appreciated if the weekly and clothing allowance can be increased or better still grant us the right to work.'*
- *'Provide access to low cost counselling and play therapy for children.'*
- *'Provide receipted allowance for social engagement e.g. sports.'*
- *'Asylum seeker children to be eligible for Child benefit and raise the adult rate.'*

(iii) House Rules

- *'CCTV cameras planted all over while eating, sitting in communal rooms is abuse of our rights.'*
- *'ID cards should be issued and remain current to avoid police harassment.'*
- *'Visitors should be allowed to visit in rooms during working hours.'*
- *'Current centres could rent out available rooms to individuals, while they seek alternative accommodation and save for deposits.'*

(iv) Productive Activity

- *‘Opportunity to contribute to the micro economy through music, arts, theatre, sports and recreation, art and culture, hospitality, business ownership and by every way and means necessary to be tax payers.’*

(f) Family Life

Parents and children voiced real concern about the lack of a normal family life. Contact with strangers, different cultures, the economic powerlessness of parents, privacy, and poor school supports all impacted on families trying to normalise their lives and those of their children while remaining in Direct Provision.

(i) Accommodation and Privacy

- *‘The only dignified recommendation will be to allow families have their own housing.’*
- *‘Separate kids from sleeping with parents, get rid of direct provision, allow us to cook for our children and to work.’*
- *‘Provide suitable family accommodation with adjoining rooms for older children.’*
- *‘Allow fathers greater access.’*
- *‘Instead of giving money to the private companies to run the hostels, the government could allocate empty houses out there to asylum seekers while they await response to their applications.’*

(ii) Families in the Process

- *‘There is a need to examine approval rate of families in Direct Provision who apply for domiciliary care allowance for children with disabilities under 16 years of age.’*
- *‘Amnesty for children born in Ireland who have grown up in Direct Provision.’*
- *‘We that has stayed for a long time, had our children in Ireland who grow up here should be allowed stay and work to contribute to our economy.’*
- *‘Those with children born in Ireland, with families of school age children who have been in the system since 2012 should be granted leave to remain without delay.’*
- *‘Family reunification should be considered without prejudice.’*

4. WRITTEN SUBMISSIONS FROM CHILDREN

INTRODUCTION

The Working Group, as part of its consultation process, invited and facilitated children to make known their views. The Irish Refugee Council assisted in providing child-friendly and colourful packs with illustrative graphics to enable the children to communicate their views and experiences directly to the Group. These packs were distributed to centres, and NGOs active on the ground encouraged children to use them to participate in the process.

Children were encouraged to provide descriptions of their ideal life. They could write or draw their ideal home or social environment, and make suggestions for improvements. 31 children from all over the country contributed, including siblings. Some older children wrote on behalf of their younger siblings. Some parents wrote, assisted or added points to the packs.

Their creativity was engaging and they were assured of the confidentiality of the process of communication. Children used societal norms to reflect their ambitions, especially in the colourful and detailed artwork. They drew family homes with facilities and fun-filled illustrations of inclusive playtime activities.

SUMMARY OF ISSUES RAISED AND SUGGESTIONS

The following are the main messages and suggestions the children wanted to communicate to the Working Group.

WHEN INVITED TO DRAW THEIR IDEAL HOME

(a) Artwork

Many children drew a picture of a house with windows and front door, bedrooms and a front yard and backyard. They gave the colourful and detailed drawings various titles and indicated what purpose the details served:

- *'My dream house.'*
- *'My home, money, my Mum's car, a back garden, a Christmas tree.'*
- *'A big bed, bathroom, bookshelf, pillows, 2 wardrobes, TV – door into another room.'*
- *'My mum's room, resting room, spare room, my room, brother's room, garage, car, lamppost.'*

(b) Descriptions

- *'My ideal home would be a big home, with every food for you, it would have two big fridges. My parent's room would have a big bed and side tables. My brother's room would be a Power Rangers room and my room would be very big and pink and purple, it would be glittery and sparkly. The bathroom, well I don't know, the sitting room will be so big like five giants would be able to fit there, with a smart TV and four sofas. Well that's all.'*

- 'I would like a two beds apartment with one toilet and a big kitchen and a lovely sitting room and a nice garden. I needed in a sweet environment.'
- *'a separate living room, a kitchen and a garden with a swimming pool and a trampoline. The toilet would have pink and blue stripes on the wall. In my bedroom, I would have princess wallpaper and a TV. My Mum's bedroom would have flower wallpaper and a big screen TV. I am 7 years old and I don't want to sleep in same room with my Mum.'*
- *'Separate living room, a kitchen and a garden with a swing, a toilet and my bedroom with Barbie wallpaper on my wall and my small TV.'*
- *'I would like my dream home to have a living room, a kitchen and also a bedroom each for myself, my sisters and my Mum so can have a place to do our homework.'*
- *'We would all have our personal rooms and a family kitchen when needing to practice for my home economics practical.'*
- *'flowers around the place.'*

(c) Hopes for Home Life

- *'I would prefer homes to be normal, rather than living in hostels and being exposed that you're an asylum seeker.'*
- *'I want my Mum to cook for me always and I want a puppy.'*
- *'A private house where I don't live with people I don't know.'*
- *'I would like to have a place I will call home. I want my own bedroom.'*
- *'We will be happy for once.'*
- *'Slide, swing, my dream house.'*
- *'I want my Mum to cook for me, a shelf for my books, Russian TV channel, a puppy and I want my Mom to have a car.'*
- *'I want in my own house baby channel and Pakistani, MTA Muslim TV channels.'*

WHEN INVITED TO DRAW ABOUT THE ACTIVITIES THEY LIKED TO DO – MANY OF THE CHILDREN SUBMITTED

(a) Artwork

- 'Pictures of playing with friends in their own home.'
- 'Friends relaxing in the garden.' 'A church, CBS school, dancing class, library, cinema.'
- 'Playing football.'
- 'Friends, shoes, swings, books, skipping.'

(b) Recreational and Study Ambitions

- Children felt different to their peers, especially in terms of activities and facilities. They were anxious just to be normal.
- *'I would study, hang out with friends reading and writing. The last thing, I would play at the Park, go to the cinema like normal kids.'*
- *'Children in asylum are secluded from other children and there is not much to do. The children outside make fun of us. I don't want to be made fun of anymore'*
- *'I would like to have a room that is just for teenagers and no adults allowed except for staff, I would like to have more teenagers our age living here.'*

(c) Activities

Here is what the children said they would like to engage in for recreation and social interaction, including study and play:

- 'Go to the park every weekend.'
- 'Play on our roller skates and my Dad would have a car with five mini TVs. He would drive us to the library and to school.'
- 'I would like to do outside my home, play sports like football and hang around with my friends. I like to keep it simple and short.'
- 'I would like to have a big nice garden to hang out with friends and play, study some times and reading.'
- 'A place for playing ball and skipping and hula-hoop and see-saw and a study, play and garden chairs.'
- 'Hang out with your friend.'
- 'Play outside.'
- 'Go to Centra.'
- 'Go to my friend's house.'
- 'Go to cinema, sport activities, Grainne's.'
- 'Playground, gym, a place to play.'
- 'I like to play with my friends outside and I like to study my books with my friends outside.'
- 'I would like to read storybooks for my friends outside.'
- 'Swimming, horse riding, hanging out with friends, playing football, playing hurling.'
- 'I would like to hang with friends where we all have something to do together.'
- 'Go to a screening room or cinema where everyone is allowed.'
- 'play football, swings, library, sliding, tennis music.'

- 'I want to be able to stay with my friends for 2–3 days and my friends to be able to stay with me.'

ISSUES AND SOLUTIONS

When encouraged to have ideas to make seeking asylum better in Ireland, the children commented on their environment and suggested solutions.

(a) Accommodation/Privacy

- *'I have lived in a hostel since I was born.'*
- *'I would like my own room.'*
- *'We have stayed too long, we have no other home.'*
- *'everybody needs to be free from hotels.'*
- *'Family of six is made to sleep in one room. One of my brothers shares a single bed with me and at times with my Dad.'*
- *'Neither the children nor our parents have any privacy in the room.'*
- *'In a way of maintaining morality and discipline among us, my sister being the only girl is being asked to always dress in the toilet.'*
- *'In some occasions our parents send us outside to make some privacy for themselves.'*

Solutions

- *'my room to be like the one I drew.'*
- *'to have our own house.'*
- *'Families with children need to be moved out of the direct provision and be fully housed.'*
- *'Let us have a big house.'*

(b) Process

- *'I want my Mom to get papers quicker.'*
- *'I think smaller girls and boys like me should seek asylum to save their lives because in Africa it is dangerous for small kids like me.'*
- *'People might spend half of their lives here so speed of decision making is important.'*

Solutions

- *'Give us our paper so we will go to our home and live a good life. We will have an opportunity for our parents to do many things they want to do like freedom, walk, go to school and many other things.'*
- *'allow to work, not stay in the system more than 2–3 years with their children before they are given refugee status.'*
- *'It can be made better for me and young people by answering the application faster and positively.'*

- 'Give everyone documents, even people who don't have children.'
- 'Please help us reduce the length of our stay in the asylum system so that we can have a better life like other children in our community.'
- 'The Government should not make any decision for us – for how long to make a decision?'

(c) Social Interaction/Friends

- *'we have no friends.'*
- *'I want my friends to come to my house for a sleepover.'*
- *'In school the students go and I want to go on tours outside Ireland with my friends.'*
- *'Where we live for more than seven years we must have friends – we are not allowed to receive visitors.'*
- *'It is hard because there is no place for freedom. Yes we need entertainment e.g. cinema, going out to parks and enjoy our birthdays than celebrate in corridors.'*
- *'Celebrate birthdays with friends in our class as we can not invite anyone to come to our hostel.'*
- *'I have been here for six years, I didn't get to go to Millstreet by myself, I didn't get to go to the cinema by myself.'*
- *'go on vacation with friends outside the country.'*
- *'I would like to go to the Park.'*
- *'help the poor.'*

Solutions

- *'Allow us to live in a proper home, allow us meals from our culture cooked by our Mummies.'*
- *'I want to take people over for a sleepover.'*

(d) Finance, Work and Supports

- *'I would like my Mom to get money at work, so she can buy me stuff, food, clothes, to be rich to have a house and pay for me to go to College.'*
- *'our weekly money of €9.60 is not enough.'*
- *'Simple monetary contributions are very hard for our parents.'*
- *'I would appreciate it if you would give us paper.'*
- *'The clubs are free to age 6 but after that we have to pay – a club will make me mix with other children in the community.'*

Solutions

- *'right to work in Ireland for our parents.'*

- *'Allow every adult to work legally.'*
- *'Give my Mum a job, go to college and drive a car.'*
- *'I want my dad to work'.*
- *'Payment of Child benefit to every child in the system.'*
- *'Payment of full money to each family.'*
- *'More money.'*
- *'When the school is going on an excursion outside the country they should be given the freedom to go with their school and friends.'*

(e) Facilities

- *'The only bad thing is socialising as some areas may be poor, no activities. Environment needs to be more suitable with sports clubs and discos.'*
- *'The room we live in does not give us any space for play. In the winter period we find it very hard and difficult to cope with indoor play in our room because of lack of space.'*

Solutions

- *'A bigger playroom would be better.'*
- *'Activities should be made available at weekends to help us with the boredom.'*

(f) Food

- *'We have to eat the food they cooked whether we like it or not.'*
- *'Since 8 years the family has been depending only on what is given in the dining.'*
- *'We have no choice of food and no right to time of food.'*
- *'Inhuman monitoring with CCTV being told time to eat, what to eat and where to eat.'*
- *'I like when Mommy cooks rice, carrots and vegetables.'*

Solutions

- *'to eat food made by my Mam.'*
- *'Provide raw food to each family and increment of weekly allowances.'*

(g) Education

- *'Because when we do our homework, we sit on the floor or kneel down on the floor.'*
- *'I want to study above the second level.'*
- *'laws are made by people with education – the law gives us a right to education – you deny us education so we can not change the law.'*

Solutions

- *'Allow us to further our education past Leaving Certificate.'*

- *'fund third level education for parents and children.'*

(h) Health and Well-being

- *'Hygienic reasons sharing toilets with adults we get sick.'*
- *'Staying long in one place it disturbs us, the place is like a bush, haunted with grave yards it is scary during night.'*
- *'I am 7 years old, I don't know anywhere. I have lived in the hostel all my life. I need to see other places and be like other kids. I need my own space to be free and be normal. I don't like staying in the hostel. I was born in Ireland and I have no other home.'*
- *'we cry we are not happy like this. In school I keep thinking about this with teary eyes.'*

Solutions

- *'give better spacious housing facilities, self catering, better toilet facilities.'*

(i) Hostels/Environment

- *'This is a place that harbours different types of people, with different ideologies, mentalities, looks, thoughts, habits, behaviour and children are exposed to danger.'*
- *'My sister and I had been victims of hard slaps on our faces. My sister had lost one of her fingers in the door and nothing happened.'*
- *'Nearness of every rooms to one another, sharing of toilets and improper hygiene are the major ways through which diseases and sickness are quickly spread.'*
- *'the asylum system is creating bossy manager.'*
- *'Asylum in Ireland is horrible. People frustrated and are going to bed. People are here a long time.'*
- *'I don't like living in the hostel.'*

Solution

- *'I would like to have a home which is noise free.'*
- *'Thorough supervision of every hostel for the welfare of residents.'*

(j) The Future

- *'to allow young asylum seekers like me to get the same opportunities as their school mates.'*
- *'I want to be a doctor when I grow up.'*
- *'I want a good life in the future.'*

5. WRITTEN SUBMISSIONS FROM GROUPS OF RESIDENTS

INTRODUCTION

Written submissions were received from 13 groups of residents from eight Direct Provision centres, in Cork, Dublin, Meath, Sligo, Tipperary, and Waterford. The messages are clearly consistent with those submitted in the submissions from individual adult residents (see section 3). The issues raised are categorised by reference to the guide questions provided, as the group submissions used the guide questions to structure their input.

As with the written submissions from individual adults and children, the summary below of the group submissions received draws on direct quotes from the correspondence received. Many have contributed the same or similar points on the key issues, and as such only a few quotes are recorded in this summary for efficiency of reading.

(1) What are the main challenges that you have experienced during your stay in Direct Provision?

- ‘Depression, anger and fear because of an inability to have a say in the wellbeing of my children.’
- ‘Sharing rooms with strangers.’
- ‘Aggression, Living with violent people, fighting out of frustration or social-cultural differences.’
- ‘Memory loss.’
- ‘Children born and growing up in Direct Provision. Children are bullied in school because they do not have a home.’
- ‘It affects every aspect of children’s lives, physical, emotional and sexual, as parents share rooms with grown up children.’
- ‘Children feel isolated and lost in school as teachers ask other children what do they do during holidays our children do not have any story to tell as we cannot travel or take them anywhere.’
- ‘There is no dignity living in direct provision.’
- ‘There is no respect to families or individuals living in institutionalised living where one’s movements are controlled; eating is controlled, house temperatures controlled. There may have been some good intention in the beginning of the system, but whatever it was it has lost touch with the people whom it was meant to help.’
- ‘Even the menial task of cooking for your children which is very important to parents raising their children is denied.’
- ‘Single people are made to share a room with someone regardless of their socio-cultural and religious background.’

- 'We are forced to eat meals at set times which is not good for us, as humans you want to eat whenever you feel hungry not when you are forced to, if you are not around that particular time you miss the food and you will be hungry for the rest of the day or night as the case may be.'
- 'You are not allowed to stay away from the hostels for over two days without being penalised. It is just as an open prison.'
- 'When you have children, it is not easy to instil your own cultural values to them as they end up learning things from the residents of direct provision.'
- 'Girl children are at risk sharing the same hostel with strangers.'

(2) How can living conditions and quality of life in Direct Provision Centres be improved?

- *'Separate children from sleeping with parents/couples.'*
- *'Get rid of direct provision.'*
- *'No freedom especially singles, they are being restricted from staying outside a lot.'*
- *'We want to be able to cook for our children.'*
- *'€19.10 is not enough to take care of ourselves and the kids.'*
- *'Allow families to have their own housing.'*
- *'Providing after school activities for children, play grounds.'*
- *'Provide appropriate self-catering accommodation for everyone who respects family life in the system that embodies the best interest of all residents including children as well as identifying, and properly supporting individuals with special needs and vulnerabilities.'*
- *'Managers to have respect for the residents and treat them with dignity.'*
- *'There has to be an independent body where asylum seekers can report their problems apart from RIA and the management in hostels.'*
- *'Freedom to go out and visit other friends outside without being penalised by stopping their €19.10 payment.'*
- *'Stop transfer of residents after complaints about the services in the hostel as a means of punishment to residents and RIA have to investigate before making such decisions.'*

(3) Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- 'The weekly direct provision allowance is not enough, to buy sanitary products and treats e.g. ice cream, crisps and biscuits for our children.'
- 'We want concession tickets.'

- *'We need more financial help from the organisations in Ireland, i.e. vouchers.'*
- *'Our children cannot integrate as we cannot afford paying for their trips or some activities that other children attend.'*
- *'Back to school allowance – we only get €100.00 – which is barely enough for a full school uniform. We cannot afford books, satchels and other school requirements as we receive €19.10 a week, consistency with the amounts given to asylum seekers in all locations.'*
- *'Asylum seeking children are being asked to pay €80.00 in school for textbooks and photocopies on €19.10 which they cannot afford. Parents cannot afford to pay for the children's school activities on their weekly allowance as they don't get help from the Government.'*
- *'Government levy on prescription charges to be removed for asylum seekers, some asylum seekers default on their medication as they cannot afford the levy.'*
- *'Some pregnant women have to walk to their hospital appointments.'*
- *'Children with special needs should be specially catered for.'*
- *'No access to further education, we need access to further our education, we should be entitled to go to third level education after staying for a period of time. Children when finishing leaving cert need to proceed to university.'*
- *'Asylum seekers should also be trained in some technical and vocational training so that they can work after being allowed to stay.'*
- *'There should be a way to ensure that the asylum seekers do not lose their skills whilst in asylum. Most professions require Continued Professional Development and being in asylum not using your skills becomes detrimental to the asylum seekers regardless of which way the asylum application goes as there is that huge gap in their CV's.'*

(4) How have you experienced the asylum application process? Suggest ways it could be improved.

- *'The asylum application has been very challenging to many applicants as information given [on the asylum process] is not very sufficient and efficient for people to understand the whole process. In the beginning of the application process, people are given leaflets about services without clear understanding. They just give addresses and maps of places which individuals new to the country don't know and no one to guide them.'*
- *'The waiting period is too long, it is not fair for people to be kept in the system for five to ten years, we need six months to be processed. [People] end up very confused and frustrated without knowing what to do. The government don't provide enough support for applicants to know what options are available to them.'*
- *'Speed up the asylum process with maximum time of six months to a year.'*

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- 'The process of seeking asylum in Ireland is one of frustration, hopelessness and despair. It has left most people blaming themselves and regretting ever fleeing to safety to this country.'
 - 'People are made to apply for one option at a time, the one thing that makes the whole process so long.'
 - 'On the application forms, let people be allowed to apply for all available options of stay at once. This will make the process shorter and reduce the waiting time.'
 - 'Solicitors should be provided at the earliest opportunity as to guide the applicants through the process of asylum.'
 - 'Introduce a strategy for implementation of new system with a clearly defined timeframe to adapt to a reformed system of accommodation for asylum seekers.'
 - 'Introduce a mechanism that allows asylum seekers that have already begun the process of applying for asylum in Ireland and who are therefore unable to avail of the single procedure to be fast tracked to ensure that they are not delayed further.'
 - 'The saddest part of this process in this country is making children born in Ireland apply for asylum. Children are not asylum seekers, their parents are.'
 - 'Children born in Ireland should be recognised as Irish born like before.'
 - 'There should be no deportation order given to anyone who comes to seek asylum here ... After spending more than 10 months in the system, deportation is the most degrading action to be taken against someone.'
 - 'The idea of having people sign for deportation for years is more than disrespectful, despicable even. Children even have to miss classes just to go sign for deportation.'
 - 'Depression, madness, miscarriages, no happiness, anti-social and trauma.'
 - 'Asylum is destroying our marriages (lack of conjugal rights) and family.'
 - 'We ask the Minister to stop deportations for people who have been in the system for more than one year.'
 - 'Everybody in their being here wants to contribute positively to the country's economy. We have heard arguments that asylum seekers want to take jobs from the Irish people. This however cannot be true. Not everyone wants to be employed by someone else. Many people here have the capability to create jobs for others. Some people have owned companies in their own countries. They are waiting to be allowed to put their skills to use and help those who need employment. The opportunity to contribute to the micro economy through music, art, theatre, sports and recreation, and culture, hospitality, and by every way and means necessary be tax payers.'
 - 'We know that it isn't everyone who wants to work, we are therefore not saying that the justice department should give everybody work permit. We propose that people who have the ability and would like to work must be given an opportunity to apply for work permit. Conditions (reasonable) could be set for individuals applying for work permit or permission to open businesses.'

- ‘People must not be allowed to stay in the direct provision system for a maximum period of not more than 12 months.’
- ‘People who have been in this system and have suffered for so long should be set free.’
- ‘Abolition of the direct provision system and institutionalised living.’
- ‘When leaving hostel accommodation the main problem people face is paying deposit which one wouldn’t have at hand. There need to be arrangements for people to immediately be given full benefit amount and rental assistance after acquiring status.’

6. REGIONAL CONSULTATIONS WITH RESIDENTS

INTRODUCTION

Regional consultation sessions were held at 10 locations and were facilitated with the assistance of regional and local support groups. In all, 371 residents attended the sessions, most of which took place at locations outside of the accommodation centres in order to encourage participants to speak freely. A number of unplanned sessions were also held in two centres at the request of residents, and in the region of 100 residents participated in those sessions. In so far as practicable, five Members of the Working Group attended each consultation session.

Visits to selected centres in the region concerned took place on the same day. In all, 15 accommodation centres were visited by Members of the Working Group. The visits were announced. The centres were selected to ensure a representative sample in terms of family type hosted (family/single male centre etc.), accommodation type (former hotels, hostels, purpose built, etc.), and state-owned or not. In addition to allowing visiting Members to see the living conditions, the visits provided informal opportunities for residents to engage with the Working Group.

A briefing pack was provided in relation to each centre in advance. The briefing included a description of the accommodation, capacity, facilities, etc. Notices were posted in prominent locations in advance of each visit/consultation session in each centre. RIA organised transport for residents from the centres to the venue where necessary.

FORMAT OF THE CONSULTATION SESSIONS

The aim of the sessions was to ensure that the deliberations of the Working Group were informed by those in the system. The opening remarks made by the Member chairing each session were along the following lines in order to reassure participants: ‘We want to be informal today, to engage in a conversation with you to hear first hand your views of the protection process including Direct Provision. We are here to listen and we encourage you to talk freely. We will of course record your points of view but not your names – this is an open respectful process and there is no risk to you whatsoever in telling us your views and hopefully your solutions.’

Working Group Members each hosted a table and were joined by participants for an informal, open and confidential conversation lasting from 75 minutes to 100 minutes. Each table then

reported back to the full gathering, through the representative selected at the table concerned or the Member of the Working Group. Time was then given for any additional comments that any individual wanted to place on record.

The following issues were tabled for discussion:

- What are the main challenges that you have experienced during your stay in Direct Provision?
- How can living conditions and quality of life in Direct Provision centres be improved?
- Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.
- How have you experienced the asylum application process? Suggest ways it could be improved.

Participants were also told prior to the session commencing that:

'The Working Group will present its final Report to the Minister for Justice & Equality. The Report has set terms of reference including one noting the very limited resources that are available in the current economic climate, to fund significant changes. Therefore we may not be able to meet all your needs in the Final Report but we will do our best to seek the reforms possible to improve the process.'

'We can not discuss your individual cases or your status today. Today is about listening to you, giving you a safe space in which you can relate your experiences openly and honestly. You are very welcome to offer your good ideas on how to improve the system and we are very grateful to you for your participation.'

A rapporteur from the attending Working Group Members was appointed for each session. The contents of the summary notes that follow come from the rapporteurs' reports. The notes are a record of the opinions expressed and not statements of verified facts. It was important to encourage free and uninhibited discussion, which included considered analysis of the experience in Direct Provision as well as an expression of emotional experience of living in Direct Provision and its impact on residents and their families.

KERRY – 15 January 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Atlas House Tralee. Park Lodge, Killarney	Atlas House, Killarney; Atlas House, Tralee; Park Lodge, Killarney; Johnson Marina, Tralee	Fells Point Hotel	Tralee International Resource Centre	15

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- Length of time
- Boredom
- Lack of active social life (due to limited finances and ban on visitors to rooms)
- Difficulty in parenting in Direct Provision
- Difficulties for children growing up in Direct Provision
- Lack of play area for children
- Lack of ability for children to bring school friends back to the centre as can only bring them to communal areas
- Restrictions on visiting times
- Difficulty in paying for mock exams, uniforms, books, trips, etc. Principals can't always help (some schools have a lot of asylum seekers so is more difficult to provide assistance)
- Lack of facilities to follow up/practise training received e.g. ECDL and lack of PCs in centres
- Variety of food/Diet too restrictive
- Set meal times
- Quality of provisions – toiletries etc.
- Lack of choice in terms of provisions
- Lack of respect from management and staff
- Monitoring, invasion of privacy – security, CCTV, etc.
- Lack of autonomy – living under supervision
- Living space too small

- Sharing rooms with other single persons (strangers to you), different cultures – lack of privacy – residents watching TV at different times – religious aspect – not able to sleep – people wanting to sleep while others want to pray/watch television, different body odours because of different dietary preferences
- Managers not matching residents well when allocating people to rooms
- If people have to share there should be no more than two to a room
- Sharing toilets – different residents have different hygiene standards
- No Sky Sports on the television in the bedroom
- Communal living – don't feel safe
- Residents getting into quarrels because of living arrangements
- Direct Provision takes away personal responsibility – everything done for you and without your consent
- Prescription charges
- Clothing allowance does not go far enough
- Difficult to manage with €19.10 allowance
- Delay in maintenance in centres
- No uniformity across Direct Provision centres
- Absences – result in warning that could lose accommodation
- People become deskilled
- Lack of valid identification card/papers was raised in the context of opening bank account, producing papers for Gardaí, accessing services, socialising e.g. entry to nightclubs

2. How can living conditions and quality of life in Direct Provision centres be improved?

- Cap on length of stay in Direct Provision
- Single rooms
- Increase number of TV channels including those on television in bedrooms
- Wi-Fi throughout centre
- Being able to cook for yourself
- Different family units should be addressed differently
- Valid ID card

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Right to work
- Right to access third level education
- Access to FETAC level 5
- Increase to Direct Provision allowance
- Additional finance for school – uniforms, books, trips, etc.
- Abolish prescription charges
- More counselling should be provided

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Process very slow – living in limbo
- Various stages of the asylum process are unknown
- Certainty to process – need clear timeframes
- Need direct contact with person who is dealing with your case
- Need to be able to speak to solicitor – in Legal Aid Board only get to see caseworker, not solicitor
- Single procedure

CORK – 16 January 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Kinsale Road, Cork; Millstreet, Co. Cork	Millstreet; Kinsale Road; Ashbourne House; Clonakilty Lodge; Glen Vera, Cork	Nasc	Nasc	58

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- Length of time too long

- We want Direct Provision to end
- Not OK
- Direct Provision is stealing our dignity
- Discrimination – we’re living like outcasts
- We are not treated as human – degrading
- It’s like living in a prison
- Living in a prison is better, at least you know when you’re getting out
- Five group members with over 20 years’ combined length of time spent in Direct Provision, one lady has had two children born in Direct Provision aged four years & four months
- Boredom
- No visitors
- Not able to cope
- Children who have finished secondary school not being able to go to college

2. How can living conditions and quality of life in Direct Provision centres be improved?

- Should be allowed to work if application is not processed after 6 months spent in Direct Provision. This will raise revenue for the government; even if additional taxes were placed on asylum seekers, this could help to raise additional funds if needed for example to pay for flights if their application for asylum is refused
- Right to work – need to work
- Should be able to do courses at a higher level than FETAC Level 3
- Self-catering would be better
- Don’t like the food that is being served
- Don’t need to keep somebody in the same room for five+ years
- Staff watching all the time – feel like you’re under surveillance
- Three grown men sharing one room
- Clashes about the TV
- Volume of the fire alarm, goes off regularly and for about five minutes at a time
- Some staff call us names – say ‘go back to your own country’ and swear at us
- Children no place to play
- Excessive presence of Gardaí – for one incident 11 Gardai and six cars appeared.

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Financial – €19.10 not enough – not worth anything
- Difficulties paying prescription charges – four different prescriptions is €10 – half of weekly allowance – having to wait until the end of the week to buy prescriptions if no money left
- If an allowance was put onto a card it would increase the ability to manage money

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Feel like they don't believe you – if you make a mistake/omit a piece of information/ they don't ask you a certain piece of information, they doubt what you're saying
- three group participants had no help filling out forms – one had legal aid and interpreter – one hired a private solicitor
- The spirit is not there to believe you – interviewers shaking their heads while story is being told
- They are trying to catch you out, asking you your story and then asking the same thing later to make sure your answers are the same
- Damage has already been done – lives have been damaged – release people from Direct Provision – personalities have been damaged
- Improve the system for new asylum seekers and give the people who have been in Direct Provision long-term residency
- People long-term in Direct Provision have paid their dues – give them residency
- Let people contribute to society after six months in Direct Provision
- We are not lazy people – we want to help the development of the nation
- We feel completely redundant
- This type of system can lead people to crime because of poverty and boredom
- Direct Provision breeds criminality
- Nothing good can come from an abused mind
- Friend has cancer can't come back to Direct Provision because they can't provide the right type of diet – has been in hospital for six months, children are still in Direct Provision
- After six years of going through subsidiary protection need to remember story word for word – you're not going to remember everything exactly
- For years continually reciting what is already on the original application form

- Problems being allowed to drive
- Direct Provision not good for children to grow up in

Montague Hotel, Portlaoise – 20 January 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Montague Hotel	Montague Hotel	Montague Hotel	Irish Refugee Council	30

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- Direct Provision – it destroys lives
- Length of time
 - Mental Health – psychiatric issues
 - No closure to case
 - Long stays
 - Too many layers in process
 - Application appeal
- Dealing with people's lives – lost lives
- You can't improve Direct Provision
- Reform should be in processing & delays, length of time
- You should go to top of list from a won JR not go to the back
- Even with reform, long stays have to be addressed with positive decisions
- Lack of communication on applications and status
- Solicitors can get status update more easily – so should keep in touch with applicants
- Direct Provision allowance is too small
- Want to work
- Integration is a challenge – Direct Provision centres, many of the centres are remote. No contact with local community. They should be located in urban areas – destroys self-esteem
- Not enough to have visits with NGOs
- They want a safe environment

“Longstayers”

- Children born in or who came into system. They mature very early. There is no privacy
- There are lots of homes unoccupied which could be given to asylum seekers. Government needs to resolve this
- A house will give greater independence to people and their children

2. How can living conditions and quality of life in Direct Provision centres be improved?

- Separate accommodation for singles and families (people) with children
- Families should have kitchen/cooking facilities
- Different backgrounds & food should be taken into account
- Homework facilities for children with proper supervision
- Need a house – normal family values can be better catered for in homes

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Provide homes – save money with what service providers are getting
- You should get €60 per week in vouchers to live in community
- Health schemes (don't want prescription charge)
- Health Service generally OK
- Dentist – certain fillings and cleanings not provided
- Education – children cannot remain for study club because they have to get the bus early and its costs money
- School tours – it is part of academic development (friends are going) – cannot afford with the Direct Provision Allowance
- Third level – cannot get children into it. They have children instead – they cannot go back to school – no one to mind them. It encourages prostitution (it is happening).

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Too slow
- Communication very poor
- Lack of information on timescales
- Interviews too long & biased & prejudiced

- Judgements based on country of origin
- Should be prioritisation for those coming out of JR etc. and those who have stayed too long
- Some people getting residency earlier than others even though they are not waiting as long in the system.

5. General Points

- They want to work – to be self-sufficient
- Lack of work gives wrong message to children
- It causes depression – stress etc.
- NB Can't go for parent-teacher meetings as buses do not run at times they are scheduled etc. [they need to have better scheduled buses etc.]
- They can't do anything for themselves. Have to rely on others such as Social Welfare to approve everything
- Dietary requirements for health purposes are not provided for
- Asylum process
- Issue with translation of documents
- Issue with interpreters

Limerick – 23 January 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Knockalisheen, Co. Clare; Mount Trenchard, Co. Limerick	Knockalisheen, Co. Clare; Mount Trenchard, Co. Limerick; Hanratty's, Co. Limerick Westbourne Holiday Hostel, Co. Limerick	Doras Luimní	Doras Luimní	53

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- The length of time spent in Direct Provision arose as a common issue; for some of the representatives it ranged from five to nine years.

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- Lack of privacy arose as a common issue. Some elements of this issue are staff coming into rooms without warning or waiting; inability to sleep with a man/woman; living with numerous different people over the years spent in the system (one example was living with four different men over four years); no privacy leading to no social life.
 - No space or privacy for parents and families, as they live in confined spaces.
 - Unsuitable for family life (or social life).
 - Inability to have relationships.
 - No opportunity to socialise or meet people, leading to boredom and isolation.
 - The issue of children never being shown that their parents work and are educated arose.
 - Sharing arose as a common issue, with people of differing backgrounds, religions, cultures being forced to share the same room. This can lead to conflict between residents and with the management.
 - Sharing accommodation with someone with serious mental health issues leading to fear of being hurt.
 - Some of the centres are in remote locations.
 - Hygiene and cleanliness in some centres were an issue.
 - No gym or playroom facilities in some centres.
 - The shower blocks/bathrooms being shared by men and women, leading to a lack of privacy and feeling unsafe.
 - New sheets and blankets need to be funded by the resident.
 - Inconsistencies relating to food, signing in process, Wi-Fi, study room etc. across Direct Provision centres were highlighted as an issue.
 - The lack of opportunity to cook was raised by a number of the submissions and a suggestion of self-catering after six to 12 months was put forward.
 - The quality of the food varies by centre and some is poorly prepared with very little variety over the years. It was stated by one submission that 'If you complain about quality of food you are told to go back to your country if you are not happy with the food and more often than not transferred to a different centre.'
 - Common to all submissions was the issue of training of management and staff in the centres. Management were described as disrespectful and ignorant of different cultures and the situation of some of the residents. Management were considered unprofessional, with a lack of understanding of the situation of someone fleeing their country.
 - There was also an issue of lack of communication between management and residents.
 - Groups described management as calling people lazy and telling them to go back to their own country. It was stated that there is little compassion or consideration for someone who is bereaved.

- There was an also an issue concerning the making of complaints to the managers of the centres and an independent system to deal with complaints was suggested.
- In relation to RIA, it was expressed that there is a culture of disbelief and not responding to cases, particularly relating to urgent information. The poor information about cases was described as ‘like being on death row.’
- Signing in was described as being treated like children or prisoners. Some centres have roll calls every day; failure to sign results in your social welfare being terminated and in some cases transferred to another centre; sometimes Gardaí are called.
- Visitors are not allowed in some centres.
- Person in room for five days – no one checks but get transfer letter.
- Government spending so much money – look to see how hostel money is being spent.
- Access to internet and only one phone in the centre
- Some children are born into the Direct Provision system and they know no other life than this system.

2. How can living conditions and quality of life in Direct Provision centres be improved?

- No access to daily work and skills being lost over the time spent in the system. Professions given include lawyers, doctors, teachers, IT.
- The issue of not being able to carry out basic tasks, such as changing a light bulb, was put forward.
- Inability to access voluntary work when it is known the person comes from a Direct Provision centre.
- It was expressed that the conditions are ok for a short length of time, but not for the protracted lengths of time many spend in the system. The long stay leads to skills becoming obsolete, and the need to up-skill before being able to take up work after Direct Provision. No possibility of progressing or improving self or to make a contribution to society, leaving people to feel useless and not valued by society.

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Inability to access training and education, including third-level education, arose as an issue. It was stated that the only courses available are English language lessons or computing, and online courses cannot be accessed due to poor access to the internet.
- Another issue was the cost of education for children. Stationery, bags and extras such as outings related to school life are not covered and the expense is incurred out of the allowance received. Parents of children in Direct Provision are unable to provide money for the extras, such as swimming, arts and crafts or school trips, leading to children staying at home.

- Children attend primary and secondary school in Ireland but they are unable to access third-level education.
- The allowance of €19.10 is not enough. It was expressed that there is no access to child benefit and expenses such as books (can be €90), bags and uniforms need to be covered out of the allowances.
- The reduction of the clothing allowance from €300 to €100 per year was flagged as an issue.
- Mental health and depression among residents was flagged as a major concern. No support system or person to talk to highlighted.
- The cost of healthcare arose, with people having to justify getting an ambulance or taxi if ill, or going to a doctor and often doing without medication due to cost. Prescription charges, at €2.50, were described as a lot of money when taken out of the allowance.

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- In relation to interviewers, the opinion was expressed that they do not have the proper training and experience to deal with asylum seekers. One submission stated, 'They ask for documents we cannot get. How can you have all these documents when you are running for your life? It's absurd the questions we are asked during the interviews and documents we are asked to provide during these interviews.'
- The system of judicial review was described as not fit for purpose and it was stated that the system should be speeded up so people do not languish in it for years. Solicitors were described as not on the client's side, rude, disrespectful and arrogant, and asking for documents that the client is unable to provide.
- It was stated that many people are on deportation and when they try to leave they are deported back to Ireland and then imprisoned.
- Citizenship – having to wait for five years after receipt of papers.

Mosney – 26 January 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Mosney	Mosney; Carroll Village, Dundalk	Mosney	Cultúr	82

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- Long time in the country – seven years or more is of great concern to many applicants. A time limit of say six months in direct provision would address this issue.

- Long stay and generally negative outcomes results in psychological problems arising for residents.
- Second-class treatment of children, with no money for after school study activities, school trips or lunches apart from what is provided by centres.
- Uncertainty surrounding delays in respect of judicial reviews with no information packs or feedback from legal representatives.
- Segregation is an issue in schools and education system generally.
- Young people have no hope, with career planning impossible.
- Young people see unhappiness among parents and this has a negative psychological impact on them.
- Non-access to third-level education often results in young adults starting families early. Many applicants have skills which are lost because they are unable to use them.
- Lack of access to employment and the low Direct Provision allowance can result in prostitution.
- Low Direct Provision allowance limits the ability of parents to provide for their families.
- Quality/type of food can result in obesity among children.

2. How can living conditions and quality of life in Direct Provision centres be improved?

- Quality of accommodation in Mosney is generally good.
- Lack of privacy in other accommodation centres is a concern.
- Quality of food could be improved with a better selection and input from residents on menus for cultural reasons etc.
- Variety of healthy food could be improved for children – too many chips etc.
- No hot food is available when children come from school. Evening meal is not until 16:30.
- Kitchen should be open for longer to avoid long queues and to facilitate children coming from school.
- Direct Provision allowance is totally inadequate.
- Self-catering: Cooking is not possible as residents normally cannot afford to purchase the food they need.
- Improved staff training needed for cooking and hygiene purposes.
- Health services can be an issue, with long delay in ambulances coming etc.
- Stigmatisation of children in schools because they reside in Direct Provision – anti-racism training for teachers is required.

- Residents in Direct Provision centres who undertake work locally can be exploited by local employers because they are in the ‘informal’ economy.

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Direct Provision allowances need to be increased.
- The improvement of psychiatric services available to Direct Provision residents, including on site, would be helpful.
- Prescription charge is difficult to manage on the low Direct Provision allowance.
- Normal social welfare allowances should be paid to asylum applicants.
- Lack of access by students to ‘free’ third-level education after years in primary and secondary school is a big concern to families and impedes development of young adults.
- Funding should be provided for after school homework clubs and transport should be available to students to enable them to avail of after school services.
- Applicants would like access to employment even on a restricted basis – say, 20 hours per week.
- In relation to healthcare, residents would like access to female GP services.
- Residents would like access to training courses for personal development purposes and also as a precursor to eventual integration.
- Applicants with status in Mosney and other centres are still waiting to be housed.
- Financial support package for applicants who obtain status is required to assist integration.

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- The judicial review process is too lengthy and applicants have limited information from their legal representatives on the progress of their cases.
- Applicants would like updates from the processing agencies on timescales etc. in relation to the finalisation of their cases.
- The lengthy deportation process leads to uncertainty and complications, particularly where children are born in Ireland and have no ties to the parent’s country of origin.
- Staff in processing agencies require better inter-cultural training.
- Long deportation process is of concern. Some people receive deportation orders even after seven years or more in the system. In addition, people can have deportation orders in place for many years without any action being taken by the State to give effect to them.

- When adults have to sign on at GNIB, they are often required to take children out of school, which is disruptive.
- 'Statelessness' of asylum seeker children born in Ireland is difficult.
- Access to citizenship is restricted when in the asylum process and period of time in that process is not taken into account.
- Temporary Residency Certificate/asylum card is not an ID card and this poses difficulties for applicants in relation to getting driving licences etc.

WATERFORD – 27 January 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Birchwood House, Waterford; Atlantic House, Tramore	Atlantic House; Ocean View; Birchwood House; Viking House, Waterford; Bridgewater House, Tipperary	St Patrick's Gateway Resource Centre	Waterford Integration Network	20

1. What are the main challenges that you have experienced during your stay in direct provision?

- Residents have no control over their daily lives
- People feel institutionalised
- Whole families occupy single rooms – this gives rise to situations where young children become sexualised long before puberty as they see adults engaged in sexual activity (this point came up a number of times)
- Fear of abuse of children is worry for parents
- There are inconsistencies between the provisions made in different centres
- People feel intimidated if they make complaints
- People feel excluded from participation in society
- Not only is it difficult for other people to visit people in direct provision, but people in Direct Provision with children find it difficult to visit people living outside since children become very upset at the prospect of return to their accommodation after visiting others in a normal home
- The accommodation is too crowded – there are too many people per room – both families and singles The length of time people spend in Direct Provision is too long

(this was a common theme, repeated in various ways)

- There is no consideration for differences in cultural (and religious) backgrounds of residents
- Overcrowding gives rise to the danger of transmission of diseases

2. How can living conditions and quality of life in Direct Provision centres be improved?

- People should not have to stay in Direct Provision for longer than six months
- There is a need for a proper independent complaints mechanism
- When a new person enters Direct Provision, some help should be given to them in terms of where they can find things outside and in and how to get around etc.
- There is no consideration for differences in cultural (and religious) backgrounds of residents
- The weekly allowance should be increased

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- There is a need for educational facilities beyond the level currently allowed
- Children cannot participate in school trips outside the state.
- There is a failure to deal with people with psychological problems properly, leading to fear among residents for their safety in some instances
- People should not have to stay in Direct Provision for longer than six months
- People in Direct Provision for long periods feel humiliation and become depressed and apathetic
- People cannot afford school 'extras' such as swimming.
- There should be medical and counselling clinics in Direct Provision Centres.

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- The whole basis of Direct Provision is that it envisages residents staying in same for a short time but residents are kept in Direct Provision indefinitely because the Protection Process is not fit for purpose
- People who have been in Direct Provision for a long time should be allowed to leave and stay in Ireland immediately
- People in Direct Provision need to be allowed to take up employment to provide for themselves

- There should be no deportations after a person has spent a year in Direct Provision – it is ridiculous that people can be subject to deportation after spending five to eight years in Direct Provision
- The length of time people spend in Direct Provision is too long (this was a common theme, repeated in various ways)
- How can it be considered reasonable that children born in Ireland could be regarded as asylum seekers? Children born in Ireland should not have to apply for asylum.
- There should be a right to work and to education (repeated on a number of occasions)
- Is the Working Group going to make a difference? There has been no action from earlier consultations
- The problem has been allowed to get worse and worse.

Monaghan – 4 February 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
St Patrick's	St Patrick's	Teach Na Daoine, Family Resource Centre	Dóchas for Women	18

1. What are the main challenges that you have experienced during your stay in direct provision?

- Period of time in system – key issue raised which impacts residents' mental and physical health – boredom – isolation
- Impacts on children – little to do outside of school, impacts on their friendships outside the centre, health and well-being over time
- Sharing rooms with children – little privacy, inappropriate that mothers are sharing with 10- and 12-year-old boys
- Lack of respect from management and staff, they don't listen to residents, stressful environment
- Feeling that centre is not safe – insufficient lighting and CCTV in general access areas
- Other centres have better facilities than those in St Patrick's – residents referred to broken gym equipment, heating not working in some rooms, insufficient hot water to provide showers, Wi-Fi access and mobile phone coverage limited, Sky availability in bedrooms, playroom locked since early December 2014, no air conditioning
- Problems raised re the quality of the food and drinking water
- No cooking facilities in rooms – only one general cooking area – wait long periods to access

- Sharing rooms with other single persons (strangers to you), different cultures – lack of privacy – residents watching TV at different times – religious aspect – not able to sleep – snoring – people wanting to sleep while others want to pray/watch television – different body odours because of different dietary preferences – queuing for shared bathroom facilities in the room
- One resident raised a problem with the silage smell in the area
- Issues raised around policy of allocating different rooms to residents, in the context of four single people sharing versus two people sharing
- Small beds for adults
- Direct Provision allowance not sufficient
- Problems with paying for transport and taxis
- Problems with expired photo ID and accessing Direct Provision payment in post office
- Access to education is a problem – highlighted for teenagers who complete Leaving Cert
- Problem raised regarding the ambulance service, which did not attend the centre when requested

2. How can living conditions and quality of life in Direct Provision centres be improved?

- Close Direct Provision and provide financial supports to people to live in community
- Cap on length of stay in direct provision
- More space – privacy
- Improve facilities at the centre in line with other centres
- Being able to cook for yourself – remove restricted dining times that don't necessarily suit
- Increase activities for children – reopen playroom
- Review and improve transfer process between various Direct Provision centres
- Review bus times from centre – no bus service on Sunday (no public transport available)
- Centre should provide guest accommodation for visiting family members/friends

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Right to work
- Increase Direct Provision allowance

- Provide valid ID cards
- Access to education provided for school leavers
- Access to education provided preferably free or made available if you can afford to pay for it
- Increased Mosque facilities to recognise other cultures
- Cannot open bank account – address is not recognised for banking purposes

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Process very slow – living in limbo
- Certainty to process – need clear timeframes on decision making
- Improved engagement with solicitors

Westmeath – 5 February 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Athlone	Athlone	Prince of Wales Hotel, Athlone	Westmeath Community Development	24

1. What are the main challenges that you have experienced during your stay in direct provision?

- It was communicated that people are tired of talking and feel there is no point in telling their story again.
- People feel excluded from society and find it hard to interact with the local community.
- The lack of privacy arose as a common issue and people spoke of sharing their lives with other people. It was reported that five adults, or a family, may share one room, leading to no privacy. No space or privacy for parents and families, as they live in confined spaces. One woman spoke of sharing a room with her daughter for four years and sharing toilets for 11 years.
- Difficulties were expressed with sharing confined living spaces with people from different cultures and religions, with problems getting along and interactions being difficult.
- Parents feel stripped of their parental rights as they cannot teach their children basic household tasks such as how to shop, keep a home, etc. Parents feel that they cannot provide for their own families or manage their lives. It was reported that relations

within families are breaking down as parents blame themselves for the situation they are in, and children think it is the parents' fault. Family separation also arose as an issue and 'children don't get to feel normal'. There is a lot of dependency in the system.

- Accommodation and room sharing arose as an issue, with people of differing backgrounds, religions, cultures being forced to share the same room. This can lead to conflict between residents and not feeling safe in their room.
- One of the centres in Athlone was described as good for privacy and small but not designed for long-term living. It was acknowledged that there had been some improvements over the past two years in one of the centres. Generally the accommodation was described as not up to standard, with issues such as the beds being too small. There is no internal space for children, or place for adults to socialise. The on-site crèche was closed and moved off site so children are going outside to preschool.
- People would prefer self-catering and to be provided with food to cook in the mobile homes. The mobile homes were described as lacking. A complaint was made about the security everywhere, and the 11 CCTV cameras on site, which conveys the message that there is no freedom. Having to sign in with security at the gate and staff barging into rooms were two other complaints.
- It was expressed that food is ok in the short term but not for the extended periods of time spent in Direct Provision. Overall, food was described as not of a good standard (tastes bad, small portions) or not suitable for children. It was stated that people don't have their dietary or cultural requirements fulfilled and are advised by the GP to control their eating but must eat the same food as all. For example, one woman with Type 1 diabetes had no special diet and her health has deteriorated. It was stated that staff have favourites and give more food to them.
- The food was described as lacking in choice and not satisfying: 'they give us scraps'. The menus were described as 'a work of fiction'. People would prefer to cook for themselves.
- Submissions made complaints about the attitude of staff, and problems in communication. Management were considered rude and aggressive and said to treat people as if they are in prison. Staff were described as acting 'like we are dogs – treat us like we are here for free'. Staff's body language was said to demonstrate hostility towards residents.
- There was also an issue concerning the making of complaints to the managers or about the managers. It was felt that if a person complains they get transferred. There is victimisation of people that make complaints. A Resident's Committee makes complaints, but the Committee is ignored and the complaint not dealt with. There is no feedback and nothing changes.
- It was acknowledged that there had been improved activities for children recently. However, there were still some issues including the lack of space for children to play.

- Children do not want to invite other children to their caravans; they cannot have sleep-overs and are ashamed to tell people where they live.
- Children do not want to invite other children to their caravans; they cannot have 'sleep-overs' and are ashamed to tell people where they live.
- The length of time spent in Direct Provision arose as a common issue. Some people have spent up to 10 years in the system and it was described by one person as 'more or less my life'. One family, who were in the country for seven years, were moved five times to different centres in this period.
- In relation to deportations, people must go to Dublin to sign in and although they are supported with travel, they are not with food.

2. How can living conditions and quality of life in Direct Provision centres be improved?

- It was expressed that the conditions are ok for a short length of time, but not for the protracted lengths of time many spend in the system. People become institutionalised. The long stay leads to skills becoming obsolete, and the need to up-skill before being able to take up work after Direct Provision. People lose hope when living in Direct Provision, they cannot plan for the future and they feel that their 'life is on hold'. The length of time spent living with uncertainty is described as damaging for physical and mental health. It was stated that the time spent in the system feels like a 'sentence here after running away from death' and 'waiting to die'.
- It was recommended that more timely decisions be made and that 12 months would be the maximum duration of stay.
- Children cannot go on school trips as their parents can't afford it. The conditions for children were described as very difficult. Some other issues flagged include no homework club and no ability to go abroad with teams they are playing with.
- In relation to deportations, people must go to Dublin to sign in and although they are supported with travel, they are not supported with food.
- Another issue was the cost of education for children. Stationery, books and extras are not covered.
- Moving people between locations without consultation.

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Another issue was the lack of access to daily work, and skills being lost over the time spent in the system. It was expressed that people want to pay their way, they are ‘not here for the benefits’ and should have the right to work. People feel trapped, with no options but to eat and sleep seven days a week and no possibility of providing for their families. It was felt that the opportunity to volunteer might help.
- The issue of 18/19-year-olds having nothing to do was highlighted. They are getting into trouble and it is leading to alcohol and drug use. Another issue is gambling on site, with people getting addicted to gambling.
- Inability to access training and education, including third-level education, was highlighted as an issue. It was stated that the only courses available are English language lessons. People are unable to use their talents, and if and when a person is granted leave to remain, they find it hard to get work.
- Children attend primary and secondary school in Ireland, they may complete their Leaving Certificate but they are unable to access third-level education. It was stated that even if a friend will pay for the course, colleges ask about Stamp 4. Without access to third level, 18- and 19-year-olds have nothing to do, which leads to loss of motivation and getting involved in gambling or crime.
- Another issue was the cost of education for children. Stationery, books and extras are not covered.
- The allowance of €19.10 for an adult and €9.60 for a child is not enough.
- It was expressed that expenses such as book rental (€60 in September), bags and uniforms need to be covered out of the allowances, as well as toiletries, cleaning products and soap. School lunches cost €1 a day. No money for extra activities such as swimming or art. Other expenses include taxis in emergencies and children’s activities. The back to school allowance does not cover the costs. An example given of the effect on children is that one child chose not to do home economics in school as they would not be able to buy the ingredients needed. The clothing allowance is not enough, and it had been reduced from €300 to €100 per year. It was stated that when a child reaches 18, they lose their clothing allowance and the teenage rate of €80 is not enough.
- Children cannot go on school trips as their parents can’t afford it.
- The conditions for children were described as very difficult. Some other issues flagged include no homework club and no ability to go abroad with teams they are playing with.
- Suggestions include the payment of child benefit and an increase in the Direct Provision Allowance.

- Mental health and depression among residents was flagged as a major concern. People don't feel normal and the insecurity causes emotional problems. One submission stated that 'everyone is on anti-depressants'.
- The cost of healthcare arose, with people having to justify getting an ambulance or taxi if ill, or going to a doctor, and often doing without medication due to cost. People described the level of care as good when they do receive it. A suggestion was made that there should be a doctor assigned to the centre. Issues include no access to a telephone when sick and reception won't call doctors and there is nobody to mind children when a parent is sick. Prescription charges, at €2.50, were described as a lot of money when taken out of the allowance.
- One other issue that was flagged is the lack of infection control, with no isolation (for example with chickenpox).
- No support with mother tongue (for example Urdu) and children are not learning their mother tongue so have no language if they were returned to homeland.
- People getting their status but not being able to move.

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Submissions stated that the overall asylum system and getting a decision should be quicker. It feels like there is no functioning system for the process and "like they are randomly picking out cases". There is a problem with communication, people do not know what is happening and solicitors cannot tell them where they are in the system or what will happen next. It was stated that there is little guidance and people may only see the "caseworker" and never see the solicitor.
- In relation to the new Protection Bill, there was an opinion that this will help new people coming into the system but not those that are already there.
- Submissions highlighted the point that children born in asylum are not recognised as Irish citizens, they are forced to seek asylum although Irish born.
- In relation to RIA, it was expressed that there is a culture of disbelief and no level of trust.
- In relation to deportations, people must go to Dublin to sign in, and drag children to sign in Dublin every 18 days for two years.
- Cannot invite people back to the centre.
- More facilities like SPIRASI are needed; they currently have long waiting lists.

Galway – 12 February 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Eglinton Hotel; Great Western Hotel	Eglinton Hotel, Salthill; Great Western Hotel, Galway The Old Convent, Ballyhaunis; Globe House, Sligo	Croi Na Gaillimhe, Resource Centre	Irish Refugee Council	31

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- Although living in Direct Provision is hard on everyone in the family, it is particularly hard on the men/husbands because whereas the women can concentrate on the children, and the children are taken up with school, the men have nothing to do and perceive themselves as being surplus.
- There can be issues for women when they are out in public. Some Irish men treat them like prostitutes and offer them money.
- Almost everyone has experienced some form of racism in the city.
- Education is a big problem. For the older children, it is a question of how to sustain their enthusiasm and ambition when they are fully aware that their schooling will come to an abrupt end at 18 with no prospects of post-Leaving Cert or third-level education and no right to work. There is also a lack of study space for teenagers. For adults, it is a question of becoming de-skilled.
- Teenagers have their own issues with the Direct Provision system: there is no money for clothes or socialising with their peers and a total lack of space and privacy to do normal teenage things. Teenagers in Direct Provision do not gradually come to independence in the usual way.
- Having to live four to a room is inhumane. Also there is a mix of different cultures, sleeping habits, etc., which can cause tension between residents.
- There is a high amount of tranquilisation and a high incidence of mental health problems.
- Overcrowding is a big issue.
- Rigid eating times are problematic for residents. Set dinner times and menus are degrading. Being able to decide when and what to eat is a fundamental point.

- People likened living in Direct Provision to being in prison, except that in prison you know the date of your release and you might be paroled if you behave well. There is no light at the end of the tunnel of Direct Provision. Asylum seekers are warehoused/ segregated/herded into a place outside society. They are stigmatised by the system and this leads to racism.
- The protection/Direct Provision system does not differentiate between different groups of people, such as elderly people, who have very different needs.
- People come here for safety but they don't feel safe in Direct Provision.
- Many people referred to the tensions of living in cramped accommodation in Direct Provision centres, where they can overhear families fighting, children running wild, etc. It is a highly artificial living environment.
- It is impossible to protect children 24/7, especially from yourself! You can't be normal in Direct Provision – it is just not possible to live a normal life in a hostel. Direct Provision is not a normal environment for children and places huge stresses on families.
- Many people are on anti-depressants and some have been sectioned because of mental health problems brought on by Direct Provision.
- People have no control over their own lives and can't even have visitors in their rooms.

2. How can living conditions and quality of life in Direct Provision centres be improved?

- Direct Provision is a money-making racket and should be abandoned entirely. Or the government should consider making charities the service providers.

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- Medical costs and prescription costs were mentioned.
- People just want to work, pay taxes and become normal contributing members of society.
- Nearly all asylum seekers do volunteer work at some point but their contribution to society in this regard is not recognised. And you can only volunteer for so long.
- €19.10 is demeaning and a poverty trap.
- Access to education and skills development is crucial.
- Asylum seekers are sick of volunteering – it doesn't make much of a difference.
- It is only possible to get to Level 4 in a language programme. This is unhelpful if you want to progress beyond that or already speak fluent English.

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Time/delay is the biggest issue. The fact that the time-frame is unknown makes the suffering worse.
- The legal process is flawed. Some of the interviewers have very little cultural understanding and there is inconsistency in decision-making.
- It can be difficult to access your solicitor, particularly if he/she is not based in Galway, and there is not enough money to travel to visit him/her.
- Registration with GNIB is problematic. Mothers have to take their children with them as they have no one to mind them, and they have to foot the cost of this themselves.
- People should get Leave to Remain if their cases are not finalised within a certain period.
- Protection applicants get no orientation. The first few months in Ireland are extremely disconcerting and confusing; applicants are bombarded with paperwork that they don't understand and given minimal legal advice on how to navigate their way through the system. There should be some sort of orientation programme for newly arrived applicants, where the asylum procedure, the Direct Provision system, the entitlements and obligations, the support services, etc. are clearly explained.
- Some applicants from so-called "safe countries" are fast-tracked and do not have enough time to present their cases properly.
- Regularisation is the only remedy for the injustice caused to the people who have been in the system a long time.
- Dealing with the RLS can be very frustrating; your calls are usually not returned and at best you get to speak to a case-worker who is not a solicitor.
- The protection process should not take longer than six months.
- Asylum seekers are rendered impotent and useless by being forced to rely on the state. Then, even if they are deported, they have no skills and have to start from zero again. They have a complete lack of self-determination and are unable to make the most basic decisions about their lives. Asylum seekers should have the right to work. People don't want to be on "social" and reliant on the state.
- People conducting the protection interviews are often very young and seem overly reliant on the internet for their country of origin information. They have a negative mind-set and disbelieve everything you say.
- You are kept in the system for far too long and at the deportation stage you never know when they are coming for you.
- There is a lot of mistrust about the legal aid system. There is no transparency in the system and legal aid is delivered too late. There is a perception that the Refugee Legal Service is in cahoots with the government.

- Asylum seekers are blamed for taking JRs in the High Court. This is perceived as an abuse of the system and a way of frustrating the decision-making process. But what other choice to people have if they have not received a proper hearing before the asylum bodies? Also, if asylum seekers had proper legal advice from the beginning, they wouldn't need to go to the High Court.
- The system is breeding angry people; asylum seekers don't want window dressing; they don't want small, tokenistic changes. They want to see real, meaningful change.

Dublin – 17 February 2015

Accommodation Centre(s) Visited	Accommodation Centre(s) Covered	Consultation Location	Facilitator for Consultation Session	Number Attended
Clondalkin Towers	Balseskin Reception Centre; Clondalkin Towers; Georgian Court; Watergate House; Hatch Hall; The Staircase, Dublin; Eyre Powell, Newbridge	Bewley's Hotel, Newlands Cross	Crosscare	50

1. What are the main challenges that you have experienced during your stay in Direct Provision?

- Having kids while in Direct Provision causes a variety of difficulties for the children.
- Very little space for children: especially when they want to study they need peace and quiet; this is particularly so as they get bigger.
- In addition to what was already said, the point was made that people living in Direct Provision feel separated from society and don't feel welcome.
- They want a place for children to play.
- Moving from centre to centre has caused upset and confusion for people.
- Direct Provision does not give stability to their lives, and their children ask them consistently why they are in this system.
- Extended period is too long to be in Direct Provision.
- Long periods in Direct Provision are very stressful and can lead to excessive.
- Living closely with others with different cultural norms is hard.
- Medication.
- Some families are spilt up and can't live together in a normal family way.
- Families living in one room is not okay.
- Christians and Muslims in one room is not appropriate, particularly with single people sharing.

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- Managers entering rooms without permission is not okay.
 - Food lacks variety and is too monotonous. The chefs are not real chefs but chefs by name. The food menus are not consistent with cultures. They really would like to cook for themselves.
 - Privacy is a big issue – different cultures/nationalities sharing accommodation can be very difficult.
 - Children don't have variety of food – chicken nuggets given to them all the time. Parents not being allowed to prepare food for their children is a big problem for them.
 - No space for children to do their homework.
 - Quality of Direct Provision centres was inconsistent.
 - No integration within society.
 - Visitors are not allowed.
 - The living conditions are a form of prison.
 - Hard to socialise and form a relationship while being an asylum seeker. This has a major negative impact on them.
 - More than six months in Direct Provision is too long.
 - With cramped living conditions can't have a private life. There is no space in the rooms that people are living in.
 - Have had experience where managers knock on doors at 7 for room checks.
 - The time spent in Direct Provision and feels like a prison.
 - They feel they are using years of life in Direct Provision.
 - Quality, consistency and quantity in the provision of services are different between hostels.
 - Difficult for families with children as there were no cooking facilities, which they felt impacted on them greatly; they could not share preparation of food with their children and eat with their children whenever they wanted.
 - It was difficult for school-going children to fully integrate with society in that the children felt they could not really invite friends to their place; they themselves were preoccupied with getting "papers" so they could live a normal life like all other children.
 - Living conditions are cramped: one room with four single people sharing who don't know each other and are not related, not of the same culture, not of the same religion and not even the same country. They said this created difficulties and was claustrophobic; they said they really want their own space.
 - They also mentioned that if they are not happy with something and they complain, they feel they are simply not listened to; if they are looking for something they are

entitled to, they say asking nicely operates against them so they feel they have to be aggressive to ensure they get what they are entitled to.

- Cramped living conditions.
- No privacy for families where children and adults were sharing accommodation;

2. How can living conditions and quality of life in Direct Provision centres be improved?

- When they actually do acquire status, where do they go? RIA needs to give guidance about transitioning from living in Direct Provision to within the community.

3. Tell us how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved.

- When children have a day off there is nothing for them to do; they need money for after school activities but can't pay on the income they receive;
- Money not sufficient – they want a life, €19.10 is too little and they want extra for the children.
- Third-level education should be available to all.
- Some GPs are not listening to them basically telling them what is wrong with them before actually examining them;
- €2.50 prescription charge is not affordable given the Social Welfare payment they receive.
- They have experienced difficulties getting medical cards; medical cards are not always available.
- Go to GPs who tell them that they are stressed and they get tablets which make them worse.
- Education for adults is very limited.
- They have to pay for dental services.

4. How have you experienced the asylum application process? Suggest ways it could be improved.

- Need to speed up the processing of claims – big issue is the length of stay.
- Major plea to improve the asylum process.
- They feel their rights are taken away, i.e. their rights to work, socialise, etc.
- In relation to the processing of protection claims, no information or guidance is given as to where people are in the system. The length of time processing claims is very stressful and every time enquiries are made the response is the same: “wait, wait”. This appears to be the only answer they are ever given.

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- People don't know where they stand and live in fear. They do not know what is going to happen to them; for example, deportation.
 - They feel intimidated when they are dealing with Judges. They feel it difficult to express themselves to Judges.
 - The length of time in Direct Provision means too many cases are going through the legal system. Three to four years waiting for Judicial Review cases; no proper legal advice so don't know what stage their case is at.
 - Some interpreters used by the State don't have proper language skills, therefore sentiment of the interpreter is not necessarily the sentiment of the applicant. They don't know what is being presented on their behalf.
 - There is a problem with the administration of cases as there is a long delay.
 - The quality of ORAC decisions is poor and decisions are not always consistent.
 - Deportation orders over 12 months are not acted upon – they said either act on them or allow people leave to remain.
 - Where deportation orders are 12 months old, those affected should be given a new opportunity to apply for protection afresh or get leave to remain.
 - Time spent in Direct Provision should constitute time to be granted citizenship and three years should be minimum.
 - Irish-born children should have status automatically: children should not be deported if the children are born here; according to the residents the children are in fact Irish.
 - Children coming to Ireland to study seem to get papers more quickly than those in Direct Provision.
 - They want to be able to join society; that means working and paying taxes.
 - Being in the system for a long period was very stressful.
 - Not being allowed to work was a major issue for the residents.
 - The processing of protection applications is too long – it should take only six months.
 - The High Court takes a long time to process cases and doesn't give leave to remain therefore you have to go back into the system.
 - Where ORAC grants refugee status there is a delay in getting a letter from the Minister confirming refugee status. There should be no delay and ORAC should be allowed to issue the final letter.
 - Those in the system for more than four years have an expectation that they should be given leave to remain and be settled;
 - Children born in Direct Provision are treated differently to other children – Irish-born children should get naturalisation.
 - Legal advice should be given at an early stage so people are put on the right track from when they first enter the protections process.

- If asked by the Gardaí for ID they show an asylum seeker's card given to them by the Department of Justice and Equality. However, they are told that this card is not an ID. They asked if something could be done about this.
- They want leave to remain for themselves and a proper system put in place for those who enter the country and Direct Provision for the first time.

7. Consultation Sessions with Specific Groups

Consultations with particular categories of persons in the system were held with members of the LGBT community, victims of torture, and victims of trafficking/sexual violence. There were 56 participants in all. These sessions were facilitated by the NGO sector with particular expertise in the area.

Consultation Session with LGBT Asylum Seekers and Refugees – 3 February 2015

Meeting	Consultation Location	Facilitator for Consultation Session	Number Attended
LGBT Consultation	Belong To Office	Belong To	14

Report of Consultation with young LGBT asylum seekers and refugees

On 3 February 2015, a consultation was held with a group of LGBT asylum seekers and refugees. This consultation was held as part of actions committed to by the HSE in respect of informing recommendations of the Working Group established by the Minister of Justice towards improvement of the Direct Provision process. The consultation was hosted by Belong To on behalf of the HSE.

There were 14 young people present: 12 LGBT asylum seekers and 2 LGBT refugees. The discussion was facilitated by two members of Belong To staff, while HSE Social Inclusion was represented by two staff members. The group had previously agreed that HSE staff would be welcome to participate in the consultation.

Those present were based in Direct Provision Accommodation Centres around the country.

Anyone that could not attend on the day was contacted by phone and asked if he or she wished to contribute to the consultation. Six asylum seekers expressed an interest, so the Development worker asked them the same questions as in the consultation and recorded their responses.

QUESTIONS USED IN THE CONSULTATION

1. What are the main challenges that you have experienced during your stay in Direct Provision?

LGBT asylum seekers and refugees reported that safety and isolation were serious issues for them.

Safety is a major issue in Direct Provision, especially due to shared bedrooms and shared bathrooms. Sharing rooms forced people to go to extreme lengths to hide their identities, such as hiding any clothes deemed too masculine or feminine or having to carry books or reading material related to sexual orientation or gender identity around with them.

A concern was expressed that other residents could discover that one was LGBT through lack of privacy about the types of medical tests and services being received.

There is nowhere to safely store one's documents; some residents have experienced others searching through documents and they fear that other residents could discover they are LGBT as a result of reading appointment or advocacy letters from specific services.

Some of those at the consultation spoke of entering their room and seeing others searching through their property: this made them fear for their privacy and promoted a heightened sense of paranoia; they felt that maybe the residents noticed that they were "different".

When the group was discussing shared bedrooms and bathrooms, they discussed feeling particularly vulnerable when undressing and feeling they could not be themselves. This particularly affected those that may present in a different gender than the one assigned to them at birth.

Negative attitudes to LGBT people were expressed by other residents.

Some of those attending the consultation have been "outed" by others in accommodation centres and as a result have experienced isolation, harassment and threats of assault. One person reported being sexually harassed and receiving unwanted sexual advances from other residents. He did not report this to management, as he was afraid of what would happen and felt that he would be targeted as a result.

Other residents have experienced physical assault, one person reported this and felt it was addressed appropriately; however, others said there is no point and felt that they would have to "come out" if they were to report such instances. They feel they would be unsafe if they did "come out".

Some participants did not realize that they can report incidents of physical assault or sexual harassment to Gardaí; some have had very traumatic experiences with police and authorities in their countries of origin, with the result that they would fear contacting Gardaí and authorities here to speak about issues related to sexual orientation and gender identity.

Coming out to other residents was rarely seen as an option. Participants felt that they would experience discrimination by people from their own countries of origin or experience the same negative attitudes that led them to seek asylum in Ireland.

Some of those from certain countries have been told by other residents that being LGBT is a western concept and that this does not exist in their cultures. Those that were not present at the consultation meeting said that they found it difficult to come out due to trauma and stigma they experience. Participants have felt further stigmatised and isolated as they have been told to stay away from people, particularly children, and during meal times would find themselves sitting at a table on their own.

Some people had come out to service providers who were seen as supportive, e.g. medical staff and some staff in centres. It seems that the majority of those that came out have been advised not to come out as it is not safe. This affects their sense of safety and further impacts on the stigma and internalised homophobia that many experience.

One of the asylum seekers talked about being a “minority within a minority”, i.e. LGBT asylum seekers are asylum seekers in the first instance, but also are different as a result of their sexual orientation/gender identity, which leaves them even more open to attack.

2. How can living conditions and quality of life in Direct Provision Centres be improved?

The following suggestions were made by participants in the focus group consultations:

- Include questions about relationships or sexual orientation/gender identity in needs assessment/medical screening
- Train staff to support LGBT people and to be more aware of the particular vulnerabilities of LGBT asylum seekers
- Improve living situations for people; improve bathrooms
- Allow somewhere for people to safely store documents and personal belongings
- Tell people that they are safe and inform people about their rights and the procedures for people to report safety concerns. If people want to come out they should know they are protected
- Have a key person that can direct LGBT people to supports
- LGBT services should be consulted to provide supports and training to staff

When they were asked how supports (e.g. financial, educational, health) provided to asylum seekers, both inside and outside the Direct Provision system, could be improved, the following issues and suggestions were listed:

- Dedicated supports for LGBT asylum seekers and refugees to provide key supports, 1:1 support, referral to appropriate supports, peer support and psycho social support.
- Department of Social Protection should purchase tickets for some people to attend BeLonG To, BeLonG To In the Know Sexual Health and LGBT counselling: facilitation of these measures needs to be consistent.
- A few of those who attended the consultation reported that they are still awaiting medical cards. This has prevented them from accessing medical supports.

- Some of those feel that there are inconsistencies with providing supports from HSE and Department of Social Protection. Some are still paying €2.50 per item on prescriptions whereas others are paying €2.50 per prescription.
- Some people outside of Dublin have been advised by Department of Social Protection that they would not pay or reimburse travel to Dublin for supports related to sexual orientation or gender identity. They have been told to access local LGBT supports but these can often be ad hoc social groups that may not be able to provide the support that an LGBT asylum seeker may require.
- All of those at the consultation felt that the mental health support available to asylum seekers in general is rather poor. The waiting lists are long and there are so many people that require mental health supports.
- Those that have availed of supports have found them quite beneficial, especially as they believe that Direct Provision has a negative impact on their mental health. They find that some of the staff do not have the skills to discuss LGBT issues and may not address these with asylum seekers.

3. How have you experienced the asylum application process? Suggest ways it could be improved.

The following points and suggestions were made by participants:

- People would like a more transparent, consistent, fair and quick process, following approved guidelines around questioning LGBT asylum seekers.
- Those that were at the consultation talked about being asked inappropriate questions, e.g. “Do you want to be normal? You don’t look gay, you were married/have children, how can you be gay?” Participants don’t know what evidence to give apart from them self-identifying as LGBT: “how can you prove you’re gay?”
- LGBT friendly interpreters should be available: some participants found that interpreters would sometimes chastise the person for being LGBT; they also experienced people using derogatory terms to describe their sexual orientation or gender identity.

Lack of early legal advice

Some of those present did not have any legal advice or support. They completed the application without any support and were afraid to disclose information about their arrest or persecution due to their sexual orientation; they felt that this may have a negative impact on their case. This experience was echoed by others – some have gone to private solicitors recommended by people in different accommodation centres and feel they have received poor legal advice or that the solicitor did not have any knowledge about LGBT rights around the world.

Training for staff involved in application process

Participants felt that staff engaged with the application process could benefit from sensitivity training in general. LGBT awareness training should be included in this. They felt too, that staff – while they might be knowledgeable about LGBT issues – don't appreciate the difficulty for someone who is LGBT coming from an African country or a predominantly Muslim country.

Consultation with victims of torture – 6 February 2015

Meeting	Consultation Location	Facilitator for Consultation Session	Number Attended
Victims of Torture	SPIRASI Office	SPIRASI	19

This meeting was facilitated by SPIRASI, and Members of the Working Group met with SPIRASI clients who were victims of torture.

1. Accommodation

- “The centres make you more depressed.”
- Single people made the point that sharing rooms with people they don't know and from different countries with different cultures was very difficult. Some individuals said a request they made to change rooms was not allowed. These living conditions were very stressful. No privacy or private space. Security is a concern. Also disruptive if attending an appointment early the next day; the roommate may be watching TV very late.
- Difficult for families also – family of four in one room – cramped conditions which affect young children in particular who are going to school.
- Some said that food times were strict – can't choose to have food other than at set times.
- Afraid to complain as they said if they complain they could be transferred to another Direct Provision centre in a different part of the country.
- Manager “gives you orders, scares you, you can't complain or say anything”.

2. Communication

Numerous communication issues were raised.

- A number of people said from when you land here it is difficult to get information on what you are entitled to or where you can go for help.
- Some said little or no information or explanation given on our legal system and the processing of claims.
- Some had difficulties with interpreters engaged for them, as the interpreters did not speak their language or dialect.

3. Health care

- GP just gives you tablets; they don't understand you
- By and large most agreed that the initial health screening given to them was good from a physical health but not a mental health perspective. This in turn has led to mental health issues not being identified at an early stage, with appropriate help being given. Individuals felt that this has had a negative impact on them when applying for protection.
- HSE representative said that this was a matter that could be followed up to address the gap. SPIRASI to liaise further with HSE on the matter.
- Some said they experienced delays in getting medical cards or could not get a medical card. "They didn't give me a card for six months in the hostel as I had to wait until transferred to Killarney."
- "They cover us, but no GP accepted me, they pushed me to and fro."
- "I never stayed in Direct Provision centres because my dad lived outside. Wouldn't get medical card because I'm outside of Direct Provision."
- General consensus that the prescription fee of €2.50 was too much. HSE representative said work was in progress to see if €2.50 charge could be lifted.
- Question was posed as to why medication could not be available at Direct Provision centres.
- Stress was a factor for some people getting ill.
- Interpreters: "They offered me the general health screening; my problem was that I wasn't speaking any English. Whenever I have a need to see a doctor I never get the correct interpreter. I am from Iraq; I will get an interpreter from Sudan. I cannot explain my right health issues and then can't get help."
- "When I applied in 2010 I had documentation to prove I had been tortured and in a coma for 11 days. The med team here in Ireland denied it."

4. Processing of claims

- "When I came in here seeking asylum, taken to Baleskin and told to fill in a form and to write your experience of what happened. Then the interview comes, documents in file. The story I write starts being a problem."
- A belief that state lawyers do not give a good service whereas private solicitors give a better service and will do what a client asks.
- General experience is that when individuals meet their legal representatives the legal system or decision-making process is not explained. Not enough information.
- "After ORAC, I had to be the one calling the solicitor. Given two weeks to appeal, three days before my file had been given to another solicitor. Passed judgement before I could meet."

- “When you get first form: ‘This is a judicial process’. At first interview, why don’t we get a lawyer at that point? Have to go to RAT four/five years; the same problems could have been dealt with at the beginning.”

5. Social Welfare

- Claims were made that individuals did not get back to school clothing or footwear allowance.
- Communication issues rose concerning front-line staff of the Department of Social Protection. Complaint made that staff could be controlling and not polite or informative.
- Complaint made that clothing allowance was cut without explanation.
- Rent allowance does not meet cost of rent.
- No money to go anywhere – €19.10 very little money.
- Very controlling: “what is it that you’re up to?” “What clothes you’re wearing?” “How did you get mobile phone? Clothes?” Then they won’t give you money.

Member of WG from Department of Social Welfare explained how the schemes mentioned above operate and that they apply to everyone. Communications point was noted.

6. Education

- Difficulties with accessing third-level education because of fees.
- Difficulties in doing courses, not necessary third level because of fees involved. Some raised the point that you need to be working to do some courses.
- Even if courses are completed can’t use the qualification and work.
- Many of those in attendance had qualifications from their country of origin.

General points

- Those waiting on the processing of their claims, whether in Direct Provision or not, want to be able to work.
- Direct Provision leads to social exclusion.
- Bus services limited – therefore need to get taxis at times which cost a lot.
- Travel to attend legal appointments is difficult (presumably for private solicitors).

Consultation with victims of trafficking – 22 January 2015

Meeting	Consultation Location	Facilitator for Consultation Session	Number Attended
Victims of Trafficking Consultation	Doras Luimní	Doras Luimní	2

1. Context/Background

Doras Luimní consulted with a number of victims of trafficking to ask whether they wished to participate in consultations with the Working Group. While four initially agreed to participate, two (both victims of sexual exploitation) ultimately did so. Two members of the Working Group met with each participant. The report below is based on the presentation to a plenary meeting of the Working Group by Doras Luimní.

Issues raised

- While some centres endeavour to allocate single rooms to a victim of trafficking, more often than not people have to share rooms, which causes further anxiety and frustration, leading to sleepless nights and friction between residents.
- Food was (and still is) a main cause of frustration. The regimented meal times, the lack of variety, and culturally inappropriate menus. People reported going without food, being served food that was out of date, or buying whatever they could with their limited €19.10 budget per week. Residents could not eat outside of main meal times. If they were hungry in the evening, they were not permitted access to additional food. One of the victims said to us that the food at the hostel did not agree with him and he experienced serious stomach and digestive problems and we had to accompany him to a doctor.
- Male and female clients all required medical or psychological assistance, for either physical or emotional injuries, as a result of their trafficking experience. Mental health was poor among all. In particular, anxiety, sleeplessness and feelings of anger, shame, and desperation were common. Sexual and reproductive health issues continue to present as issues due to the long-term effects of exploitation. Both victims of labour exploitation had serious health problems. One ended up in hospital (as a result of an accident in his workplace) and was left with a huge medical bill which he was not able to pay, which caused additional stress.
- Victims of trafficking are forced to pay for their prescription costs out of their €19.10 per week.
- Due to the high levels of physical and emotional abuse experienced by all trafficked persons, the after-care period is a crucial time to recuperate, reflect and recover from their experiences. Due to a lack of resources it is often up to organisations, such as Doras Luimní, to source affordable or free services from local service providers and to provide language classes. Also, to attend clinics, transporting to community welfare offices, hospitals, groups, appointments, etc.

- Female victims of trafficking reported sexual advances or inappropriate behaviour/ comments from other residents. They were often approached by male residents who were interested in them sexually and who made regular advances toward them. One client also reported men coming to her bedroom looking for same. This caused further pressures, discomfort and exploitation and reliving the trauma. This is wholly inappropriate given the abuse and trauma that they had experienced. As a coping mechanism they often distance themselves from other residents, leading to further isolation.
- All victims of trafficking expressed anxiety given the known central location of the centres and the possibility of being contacted by their traffickers. One male client reported being contacted by his exploiter (who lived the other side of the country) on more than one occasion. This caused him much additional anxiety and distress, which we had to deal with.
- Two victims of trafficking expressed anger and surprise at their treatment by (Direct Provision) Centre staff. They perceived disrespect and discrimination based on their nationality or ethnicity. When they complained to staff the complaints were met with hostility by management. In our experience, disputes are rarely resolved between residents and management due to the lack of an independent complaints procedure, as per RIA policy.
- Satisfying the Habitual Residency Condition has been a huge issue on exit from Direct Provision. Few can prove habitual residence, therefore they do not qualify for social welfare or other payments as they did not have tenancy agreements in their own names, no wage slips or employment contracts; for victims of labour exploitation employers deny knowing them, no PPS numbers.
- One case study in our research (No choices, No Chances ... Human Trafficking and Prostitution in Limerick – Key Issues and Challenges – 23 February, 2015. Vincent) said “Nobody has supported me except Doras Luimní and a NGO in Dublin”. This sentiment was expressed by all VOTs presenting to us.
- All four victims of trafficking attended Doras language classes. English language was a big problem, especially for one of victim of trafficking, and there weren’t many options available for them apart from Doras English classes (they came during term time and ETB not generally able to take on new students halfway through term).
- Many were transferred to other areas or had asked for transfers to Limerick as they knew from other victims of trafficking of our specialist supports. Some transferred to other areas of the country where there were absolutely no supports – leading to further isolation/exploitation/perceived punishment. Our staff had to travel from as far as Monaghan, Dublin and Waterford to accompany to specialist appointments (one of which was sourced and paid for by Doras Luimní without any compensation).
- All victims said to us that they want to access employment (further education/training) and not stay idle at the hostel, which is an issue for all asylum seekers. We obviously recommend the right to work and access to education.

APPENDIX 4

Interested parties from whom written submissions were received (other than as part of the Consultation Process)

- Barnardos Waterford Student Mothers Group
- Monica Cronin, Co. Waterford
- Hanne Donga, Co. Sligo
- Doras Luimní
- Robert Dowds TD
- Maeve Foreman, Assistant Professor in Social Work, School of Social Work and Social Policy, Trinity College Dublin
- An Garda Síochána
- Alan Hyde, Proprietor, Birchwood Asylum Accommodation Centre, Waterford City
- Colm O'Dwyer SC
- Immigrant Council of Ireland
- Irish Family Planning Association
- Irish Red Cross
- Rev. Bill Mullaly, Methodist Church in Ireland – Midlands & Southern District Synod
- Siobhán Mullaly, Professor of Law, Director of the Centre for Criminal Justice and Human Rights, University College Cork
- Dr Muireann Ní Raghallaigh, Lecturer in Social Work, School of Applied Social Science, University College Dublin
- Law Society of Ireland
- Office of the Ombudsman
- Office of the Ombudsman for Children
- Rape Crisis Network of Ireland
- St Stephen's Green Trust
- Uplift
- The Vincentian Partnership for Social Justice

APPENDIX 5

List of persons who made oral submissions and experts with whom the Working Group met

Representatives of residents in Direct Provision accommodation centres: Cork, Clare/Limerick, Galway, Kerry, Monaghan, Mosney, Sligo, Waterford, Westmeath

Pamela Cotter	Aramark Ltd
Maria Hannigan	Aramark Ltd
Colm O'Dwyer SC	Bar Council
Michael Gillen	Bridgestock Ltd
John Davis	Chief State Solicitor's Office
John Cooke SC	Formerly of the High Court
Karen McHugh	Doras Luimní
Vania Alexandrova-Jovic	Doras Luimní
Brian Byrne	East Coast Catering Ireland
Lisa Clifford	Dept Of Environment, Community & Local Government
Wayne Stanley	Focus Ireland
Mr Justice Colm Mac Eochaidh	Member of the High Court
Laurentiu Ciobanica	International Organization for Migration, Ireland
Siobhan O'Hegarty	International Organization for Migration, Ireland
John McGeoghan	International Organization for Migration, Ireland
Betty Purcell	Irish Human Rights and Equality Commission
Therese Blake	Irish Human Rights and Equality Commission
Siobhan Mullally	Irish Human Rights and Equality Commission
Dr Geoffrey Shannon	Special Rapporteur on Child Protection
Shane McCarthy	The Law Society
John O'Doherty	The Law Society
Grainne Brophy	Legal Aid Board
Patrick McKenna	Mosney Irish Holidays plc

Phelim McCloskey	Mosney Irish Holidays plc
Martina Glennon	Office for the Promotion of Migrant Integration
Ann O’Gorman	Office for the Promotion of Migrant Integration
Tom Morgan	Office of the Ombudsman
Bernie McNally	Office of the Ombudsman
Peter Tyndall	Ombudsman
Mánuis deBarra	Office of the Ombudsman for Children
Niall Muldoon	Office of the Ombudsman for Children
Alan Hyde	Stompool Investments Ltd
Bernadette McMahon	Vincentian Partnership for Social Justice
Gráinne Weld	Vincentian Partnership for Social Justice

APPENDIX 6

Length of Time – Additional Statistics

Table 1 – Number of Cases in the System at 16 February 2015 by length of time

All Persons								
		1 year	1–2 years	2–3 years	3–4 years	4–5 years	5+ years	Total
								% of cases
Total cases in system		1,331	584	443	545	684	4,350	7,937
		16.5%	7.5%	5.5%	7.0%	8.5%	55.0%	100%
Total number residing in DP accommodation centres		859	378	235	298	357	1,480	3,607
		24%	10%	7%	8%	10%	41%	100%
Total number not residing in DP accommodation centres		472	206	208	247	327	2,870	4,330
		11.0%	4.5%	4.5%	6.0%	8.0%	66.0%	100%
Persons Within Protection Process								
Total no. residing in DP accommodation	All	851	362	157	178	164	428	2,140
	Child	132	119	51	67	70	97	536
	Adult	719	243	106	111	94	331	1,604
Total no. not residing in DP accommodation	All	441	155	122	128	129	761	1,736
	Child	74	24	15	27	28	82	250
	Adult	367	131	107	101	101	679	1,486
Total number of persons in the Protection Process	All	1,292	517	279	306	293	1,189	3,876
	Child	206	143	66	94	98	179	786
	Adult	1,086	374	213	212	195	1,010	3,090

Table 1 – Number of Cases in the System at 16 February 2015 by length of time

Persons Outside Protection Process									
Total no. residing in DP accommodation	All	8	16	78	120	193	1,052	1,467	
	Child	1	6	38	51	88	342	526	
	Adult	7	10	40	69	105	710	941	
Total no. not residing in DP accommodation*	All	31	51	86	119	198	2,109	2,594	
	Child	3	3	19	24	38	303	390	
	Adult	28	47	66	95	160	1,806	2,202	
Total number of persons in the Protection Process	All	39	67	164	239	391	3,161	4,061	51%
	Child	4	9	57	75	126	645	916	11%
	Adult	35	57	106	164	265	2,516	3,143	40%
* Including estimated figures for persons on DOs continuing to report to GNIB.									

Table 2 – Persons in Direct Provision with outstanding Leave to Remain (LTR) Applications by length of time (as of 16/02/2015)

	< 1 year	1–2 years	2–3 years	3–4 years	4–5 years	5+ years	Total
Time in System	8	13	71	110	143	545	890
	1%	2%	8%	12%	16%	61%	100%
Time at LTR Stage	207	77	61	154	215	176	890
	23%	9%	7%	17%	24%	20%	100%
	By Age		By Gender		Family Type		
	Child	Adult	Male	Female	Family	Single	
	346	544	464	426	615	275	
	39%	61%	52%	48%	69%	31%	

Table 3 – Persons in Direct Provision with Deportation Orders signed by length of time (as of 16/02/2015)

	< 1 year	1–2 years	2–3 years	3–4 years	4–5 years	5+ years	Total
Time in System	0	3	7	10	50	507	577
	0%	0.5%	1%	2%	8.5%	88%	100%
Time since DO signed	12	30	159	161	99	116	577
	2%	5%	27%	29%	17%	20%	100%
	By Age		By Gender		Family Type		
	Child	Adult	Male	Female	Family	Single	Unknown
	180	397	299	278	349	207	21
	31%	69%	52%	48%	60%	36%	4%

Table 4 – Persons in private accommodation with outstanding Leave to Remain (LTR) Applications by length of time (as of 16/02/2015)

	< 1 year	1–2 years	2–3 years	3–4 years	4–5 years	5+ years	Total
Total	31	50	85	116	186	1,985	2,453
%	1%	2%	3%	5%	8%	81%	100%
Children	3	3	19	23	36	285	369 (15%)
Adults	28	47	66	93	150	1,700	2,085 (85%)

Table 5 – ORAC Refugee Application Processing 2010–2014

	2010	2011	2012	2013	2014	Total
Caseload						
Total Cases Processed	2,192	1,834	1,198	1,122	1,060	7,406
New Applications Lodged	1,939	1,290	956	946	1,448	6,579
Outcomes						
Positive Recommendations	24	61	67	128	132	412
Negative Recommendations	1,905	1,530	987	812	907	6,141
Dublin II Determinations	263	243	144	160	21	831

Table 6 – RAT – Appeals Processing 2009–2014

	2009	2010	2011	2012	2013	2014	Total
Caseload (including 'Dublin' Appeals)							
Total Cases Processed	3,424	2,781	1,330	691	584	262	9,072
New Appeals Received	2,720	1,552	1,106	686	660	1,023	7,747
Live Appeals at End of Year	2,306	888	642	602	661	1,308	
Outcomes							
Positive Determinations	266	129	81	47	55	102	680
Negative Determinations	3,158	2,652	1,249	644	529	160	8,392

Table 7 – ORAC JR Processing 2009–2014

Year	2009	2010	2011	2012	2013	2014	Total	
Judicial Review Caseload								
Number of negative decisions	3,409	1,905	1,530	917	834	839	9,434	
Judicial Reviews Filed	92	112	79	29	7	22	341	
% of Cases Judicially Reviewed	2.70%	5.88%	5.16%	3.16%	0.84%	2.62%	3.61%	
JRs Outstanding by year of filing	2	37	32	4	1	19	95	
Judicial Reviews Outcomes								% of Determined
Unsuccessful or Withdrawn	304	24	7	16	26	13	390	58.91%
Successful Applications	50	27	8	7	3	8	103	11.56%
Settled Applications	17	5	4	35	13	18	92	13.90%
Other Applications	24	15	6	5	10	17	77	11.63%
Total Judicial Reviews determined	395	71	25	63	52	56	662	

Table 8 – RAT JR Processing 2009–2014

Year	2009	2010	2011	2012	2013	2014	Total	
Judicial Review Caseload								
Number of negative decisions	3,158	2,652	1,249	644	529	160	8,392	
Judicial Reviews Filed	303	513	243	155	75	4	1,293	
% of Cases Reviewed	9.59%	19.34%	19.46%	24.07%	14.18%	2.50%	15.41%	
JRs Outstanding by year of filing	5	140	119	93	47	3	407	
Judicial Reviews Outcomes								% of Determined
Unsuccessful or Withdrawn Applications	210	118	52	47	173	219	819	57.68%
Successful Applications	14	22	12	13	61	44	166	11.69%
Settled Applications	51	28	32	31	76	70	288	20.28%
Other Applications	26	10	10	19	80	2	147	10.35%
Total Judicial Reviews determined	301	178	106	110	390	335	1,420	

Table 9 – INIS JR Processing 2009–2014

Year	2009*	2010	2011	2012	2013	2014	Total	
Judicial Review Caseload								
Number of negative decisions			2,135	2,066	1,160	570	5,931	
Judicial Reviews Filed	241	281	385	303	272	196	1,678	
% of Cases Judicially Reviewed			18.03%	14.67%	23.45%	34.39%	28.29%	
JRs Outstanding by year of filing*	19	33	143	106	72	55	428	
Judicial Reviews Outcomes								% of Determined
Unsuccessful or Withdrawn Applications	99	118	44	74	83	95	513	39.43%
Successful Applications	4	11	6	9	10	13	53	4.07%
Settled Applications	68	64	46	217	195	145	735	56.50%
Total Judicial Reviews determined	171	193	96	300	288	253	1,301	

* In the case of JRs outstanding this figure related to the period 2002–2009.

Table 10 – Legal costs paid in cases lost or settled by the State per annum *

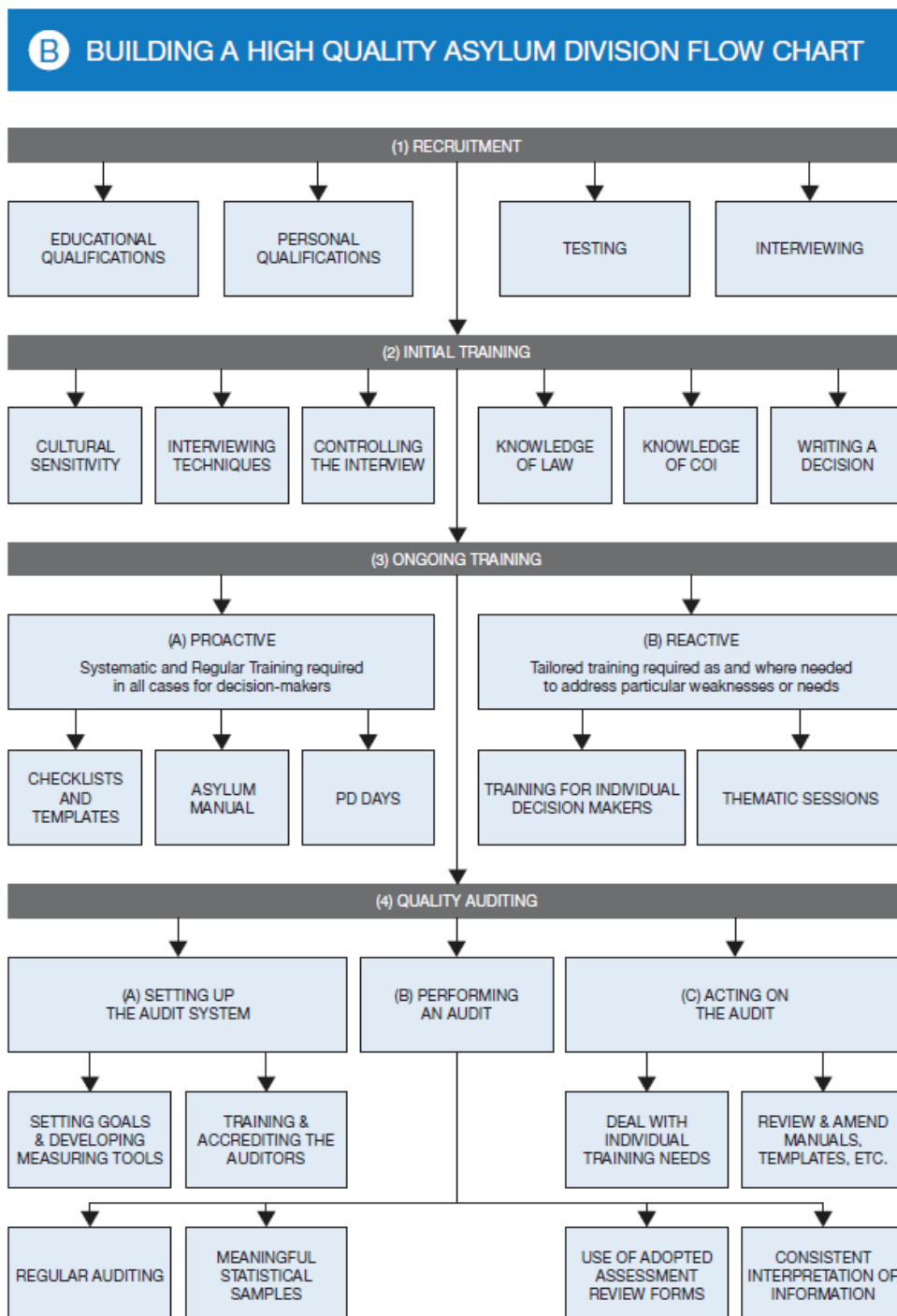
Year	2009*	2010	2011	2012	2013	2014	Total
Office of the Refugee Applications Commissioner	€1,130,946	€1,201,902	€ 333,580	€345,268	€76,695	€296,937	€3,385,328
Refugee Appeals Tribunal	€4,520,000	€4,360,000	€3,170,000	€1,430,000	€1,620,000	€2,670,000	€17,770,000
INIS**		€3,186,437	€3,009,758	€2,675,816	€1,966,866	€1,238,031	€12,076,909
Total	€5,650,946	€8,748,339	€6,513,338	€4,451,084	€3,663,561	€4,204,968	€33,232,237

* Not including the State's legal costs; figures relate to when costs arose rather than the calendar year the cases were disposed of.

** A small proportion of the costs listed here relate to JRs concerning non-protection related cases dealt with by the Repatriation Unit.

APPENDIX 7

Chart setting out core elements for the building and maintenance of high-quality asylum decisions



APPENDIX 8

Ownership of accommodation centres, contracted capacity and length of time in use as an accommodation centre

Contractor	Centre	Capacity	Date
Aramark	Kinsale Rd (State-owned)	275	17/04/2000
	Knockalisheen (State-owned)	250	15/10/2001
	Athlone (State-owned)	300	22/05/2000
Mosney Irish Holidays plc.	Mosney	600	07/12/2000
Bridgestock Ltd	Old Convent, Abbey Street, Ballyhaunis	267	30/07/2001
	Globe House, Chapel Hill, Sligo	240	31/07/2004
The Old George Ltd / Fazyard Ltd	The Towers, Clondalkin	225	10/10/2006
	Georgian Court, Dublin 1	110	25/01/2005
	The Montague, Emo, Co. Laois	165	16/10/2007
Barlow Properties/ Bideau Ltd/ Stompool Investments Ltd/ Baycaster Ltd/D and A Ltd	Ashbourne House, Glounthane	95	26/06/2000
	Glenvera, Wellington Rd, Cork	107	19/12/2001
	Birchwood, Ballytruckle Rd, Waterford	115	15/05/2001
	Mount Trenchard, Foynes, Co. Limerick	55	20/01/2007
	Clonakilty Lodge, Clonakilty, Co. Cork	108	30/10/2007
East Coast Catering (Ireland) Ltd	Balseskin, St Margarets, Co. Dublin	269	17/12/2001
	Hatch Hall, 28A Lower Hatch St. Dublin 2	175	21/02/2005
	Carroll Village, Dundalk (SC)	20	29/03/2005
Millstreet Equestrian Services Ltd	Millstreet	200	31/10/2000
	Bridgewater House, Carrick-on-Suir	95	19/12/2001
	Viking House, Waterford	85	24/05/2001
Onsite Facilities Management (OFM)	Johnson Marina (State-Owned)	90	25/04/2001
	Atlas Tralee (State-Owned)	90	20/08/2001
	Atlas Killarney (State-Owned)	90	11/01/2002
	Park Lodge (State-Owned)	55	24/04/2001

Contractor	Centre	Capacity	Date
Tattonward Ltd/ Mo Bhaile Ltd	Staircase, 21 Aungier St, Dublin 2	33	14/05/2012
	St Patrick's, Monaghan	200	24/12/2001
Maplestar	Eglinton, Salthill, Galway	200	17/01/2000
Shaun Hennelly	Great Western House, Galway	132	04/09/2000
Birch Rentals Ltd	Hanratty's, Glentworth St, Limerick	118	08/06/2009
Westbourne Holiday Hostel Ltd	Westbourne, Dock Rd, Limerick	90	25/06/2001
Peachport Ltd	Eyre Powell, Newbridge	90	30/04/2003
Maison Builders Ltd	Watergate House, Dublin 8 (SC)	68	01/04/2003
Atlantic Blue Limited	Atlantic House, Tramore	65	30/04/2007
Ocean View Accommodation Ltd	Ocean View, Tramore	60	03/04/2007

APPENDIX 9

Sample of Contract with accommodation providers

Memorandum of Agreement: Table of Contents

Preamble / Citation

Clauses:

1. Reception/Registration
2. Accommodation Centre House, Rules and Procedures
3. Accommodation
4. Housekeeping
5. Catering Services
6. Staffing
7. Security and Supervision
8. Financial
9. Statutes and Regulations
10. Fire Certification
11. Public Liability
12. Termination
13. Miscellaneous
14. Notices.

Appendices:

- | | | |
|------|----------------------------------|--------------------|
| I. | Official Register and Forms | (Clause 1.3) |
| II. | Furnishing of Accommodation Unit | (Clause 3.4) |
| III. | Menu List | (Clause 5.2) |
| IV. | Needs of Young Children | (Clause 5.5) |
| V. | Payments | (Clauses 8.2, 8.4) |

Signatures

MEMORANDUM OF AGREEMENT MADE THE DAY OF 2014 BETWEEN [CONTRACTOR] (hereinafter called “the Contractor”) OWNER OF THE PREMISES KNOWN AS [PREMISES] (hereinafter called “the Centre”) SITUATED AT [PREMISES], of the one part and THE MINISTER FOR JUSTICE AND EQUALITY having his/her principal office in the State at St. Stephen’s Green in the city of Dublin (hereinafter called “the Minister”) of the other part.

Whereas:

1. The Contractor is the owner of the Centre situate at [PREMISES].
2. The Minister has adopted a programme for the provision of accommodation to asylum seekers within the State and has allocated this task to the Reception and Integration Agency (hereinafter called “The Agency”).

NOW IT IS HEREBY AGREED by and between the parties hereto as follows:-

The Contractor hereby agrees to provide residential full board accommodation and other services hereinafter described which said accommodation and other services shall be to a standard which is reasonable having regard to the daily needs of Asylum Seekers.

The term of this Agreement, which shall supersede and replace any previous Agreements between the Parties, shall be [TERM] and such term shall commence on [START DATE] and shall finish on [FINISH DATE]. **Nothing in this Agreement shall be taken to commit either party to any renewal of this Agreement.**

1.0 RECEPTION

- 1.1 The Contractor shall accept, for the provision of full board accommodation and other services, any person whom the Agency refers to the Centre. Notification of any placement shall include details of previous Agency accommodation, if any.

[1.2: PLACEMENTS - NEW MoA SITUATION]

- 1.2.1 The commencement date for placing Asylum Seekers at the Centre shall be determined by the Agency having regard to overall accommodation requirements and this may necessitate placement on an agreed phased basis over a period of time until the agreed maximum capacity is reached. Payment under Paragraph 8.2 will reflect any such phasing arrangement.
- 1.2.2 It shall be the responsibility of the Contractor to endeavour to ensure maximisation of capacity in each accommodation unit at all times. This may require the transfer of residents to alternative bedrooms within the Centre.

[1.2: PLACEMENTS - FOLLOW-ON MoA SITUATION]

- 1.2 It shall be the responsibility of the Contractor to endeavour to ensure maximisation of capacity in each accommodation unit at all times. This may require the transfer of residents to alternative bedrooms within the Centre.

- 1.3 The Contractor, shall to the best of his/her ability, record the name and Temporary Residence Certificate reference number of each resident in the official register of Asylum Seekers on his/her arrival at the Centre and thereafter on a daily basis - see format at **Appendix I**. The register shall be available for inspection, at all times, by any officer designated by the Minister. In addition, the Contractor shall forward to the Agency by fax/e-mail, before 10.00 pm each Sunday a copy of the updated register, including arrivals, departures, vacancies and reconciliation sheets. This information must be presented in the agreed format, either (i) computer generated and e-mailed to **riaregisters@justice.ie** or (ii) typed and faxed to **The Reception & Integration Agency at the fax number shown on the bottom of the form**.
- 1.4.1 It shall be the responsibility of the Contractor to contact the relevant Community Welfare Officer (CWO) to enable the CWO to ensure that all new arrivals receive any statutory entitlements to which they are entitled.
- 1.4.2 Where a resident informs the Contractor that s/he is vacating the accommodation the contractor shall inform the relevant CWO and fax/e-mail details to the Agency.
- 1.4.3 The Contractor will be advised by the Agency of all current fax numbers and e-mail addresses for the purposes of this Clause.

2.0 ACCOMMODATION CENTRE HOUSE, RULES AND PROCEDURES

- 2.1 The Accommodation Centre House, Rules and Procedures are as set out in the Agency's booklet dated **November 2009** (or any amended version thereof). The Contractor shall ensure that all staff are aware of the contents of this booklet and that a copy of the booklet is given to residents on arrival.
- 2.2 The Contractor will operate a strict code of practice for persons working in the Centre, as set out in the Agency's Code of Practice dated **29 SEPTEMBER 2005** (or any amended version thereof) and shall ensure that all persons working in the Centre are aware of this Code of Practice.
- 2.3 The Contractor will ensure that a child protection policy is in place, that all staff are aware of this policy and that it is adhered to.

3.0 ACCOMMODATION

- 3.1 The Contractor agrees that the Centre shall be reserved entirely for the reception and care of Asylum Seekers.
- 3.2 The Contractor will be responsible for carrying out checks on all accommodation units, on a weekly basis at least;
- 3.3 The Contractor may not assign or sub-contract any or all of his/her obligations under this Agreement to any other person or body without the prior written consent of the Minister.

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- 3.4 The Contractor agrees that no other business will be transacted from the Centre except with the prior written consent of the Minister.
 - 3.5 Each accommodation unit will be adequately furnished and in particular will contain, at a minimum, all the items set out in the inventory in **Appendix II** and the said items shall be suitable for their anticipated use. The Contractor shall be responsible for repairs and/or replacement of any items damaged or broken.
 - 3.6 The Contractor will ensure that the accommodation is provided with adequate heating.
 - 3.7 The Contractor shall be responsible for all internal and external maintenance and shall keep the Centre in good and tenable repair, order and condition and shall indemnify the Minister in relation to any claims which might arise from the Contractor's non-performance in this respect.
 - 3.8 The Centre shall have, as a minimum, separate landline telephone and separate facsimile facilities available on site.
 - 3.9 All entertainment/leisure facilities provided by the Contractor on site for use by residents shall be free of charge or be at a nominal charge as agreed in writing with the Minister.
 - 3.10 Where the Centre has a Licensed Premises on site, the Contractor must ensure that there is no direct access to the licensed premises from areas used by residents. The Contractor must ensure that no alcoholic beverages are for sale or stored at the Centre.
 - 3.11 The Contractor shall make available at the Centre, if required, all requisite office and/or ancillary accommodation as agreed between the parties, for use by the Agency or other Statutory Agencies in connection with the provision of necessary services relating to the Centre for the reception and care of Asylum Seekers.
 - 3.12 The Contractor will put in place a procedure to allow residents to receive visitors. Such visitors may be received in areas specified as suitable by the Contractor, subject to the Contractor's right to refuse admission in an individual case, daily at least between the hours of 10 a.m. and 10 p.m. Each visitor should be signed in by the resident being visited prior to gaining admission to the Centre. It shall be the responsibility of the Contractor to ensure that visitors vacate the Centre as required.
 - 3.13 The Contractor agrees to provide a secure facility to all residents for the storage of valuables but provided that the Contractor shall not be responsible for insuring any of the residents belongings or valuables, and it is acknowledged that such belongings/valuables are held by the residents at the Centre at their own risk, and the Contractor shall be entitled to erect signs within the Centre specifying this.
 - 3.14 The Contractor will ensure that the kitchen and dining areas are of sufficient size to cater for the number of residents at the Centre.
 - 3.15 The Minister reserves the right of his/her nominated agents to inspect the centre at all times in order to ensure that all requisite standards are being met. The person carrying out the inspection shall identify himself/herself to the contractor/manager on duty on arrival.
 - 3.16 The Contractor must put in place procedures for the distribution of post to residents.

4.0 HOUSEKEEPING

- 4.1 Each resident shall be supplied with 2 towels on arrival, which will be replaced as required but at least on a weekly basis.
- 4.2 The Contractor will also ensure that a reasonably adequate supply of soap, shampoo, toothpaste and toilet paper is available in each room and that these are replenished as necessary.
- 4.3 Bed linen shall be replaced as required. Notices of the availability of a laundry service shall be posted prominently within the Centre.
- 4.4 The Contractor shall provide, free of charge, a laundry service either at the Centre or elsewhere, for all residents at the Centre. This service shall be offered, at a minimum, on a weekly basis.
- 4.5 The Contractor will use all reasonable endeavours to ensure that an adequate supply of hot water is available where possible to all residents.
- 4.6 The Contractor shall ensure, insofar as is possible, that only staff, residents, visitors signed in by residents and the Minister's nominated agents are present at the Centre.
- 4.7 Each Centre shall have adequate and appropriate cleaning equipment including brushes, vacuum cleaners, cloths, etc., and an adequate supply of ironing boards and irons.
- 4.8 The contractor must ensure that the accommodation units are cleaned on a weekly basis;
- 4.9 The contractor must ensure that all accommodation units, including those which are vacant or held for emergency accommodation, are checked on a weekly basis, at a minimum. Such checks to include cleaning standards, heating system, smoke detectors and fire fighting equipment (where applicable), and note any maintenance issues requiring attention;
- 4.10 Where residents choose to clean their own accommodation they must be provided with a supply of cleaning materials. In such cases, the contractor is responsible for ensuring that the unit has been cleaned. Where cleaning standards are not maintained by the resident, the contractor has responsibility for cleaning the unit;
- 4.11 When a unit is vacated, it must be deep cleaned and painted, where required, by the contractor before being assigned to a new resident;
- 4.12 The contractor must ensure that all communal and administration areas within the centre- i.e. corridors, tea-rooms, showers and any other administrative or meeting area (including areas used by local V.E.C. support groups, pre-schools, offices and consultation areas for doctors, nurses, community welfare officers) and/or any other area deemed by the RIA as "administrative" or "communal"- are cleaned on a daily basis, at a minimum;

5.0 CATERING SERVICES

- 5.1 The Contractor shall provide full board accommodation to all persons resident at the Centre. It shall be the responsibility of the Contractor to prepare, cook and serve breakfast, lunch and dinner each day in a communal facility.
- 5.2 Full Board shall include breakfast, lunch and a 3 course dinner each day. A sample menu is attached at **Appendix III**. It shows the types and choice of food which may be offered and the Minister reserves the right to make reasonable alterations with regard to types and choice of food offered to Asylum Seekers.
- 5.3 The menus offered shall reflect
 - (i) the reasonable needs of the different ethnic groups accommodated at the Centre, and
 - (ii) the reasonable prescribed dietary needs of any person accommodated at the Centre.
- 5.4 An early breakfast & late evening meal must be provided (in addition to the normal meal service) during Ramadan if the hours of fasting fall outside normal meal times. Please note that the times and dates for Ramadan change on an annual basis, and some years there may be a significant time difference between start and end of normal meal service and the start and end of fasting;
- 5.5 The Contractor shall provide a 28 day menu cycle to the Agency when requested.
- 5.6 The Contractor must have reasonable regard to the dietary needs of young children and infants resident at the centre, e.g. the provision of formula and infant food and access to heated milk for children. The Contractor must ensure that all infant food conforms with the “Infant Feeding Guidelines”;
- 5.7 The Contractor must request residents to sign a consent form for changing infant food formula. A copy of the signed consent forms must be maintained for inspection by the Agency.
- 5.8 Tea/coffee, milk, drinking water and light snacks shall be made available to residents outside of normal meal times.
- 5.9 Asylum Seekers shall be offered a meal and/or refreshments on arrival at the Centre. When travelling to Dublin, for interview by the Department of Justice and Equality in connection with their application for asylum, they should be provided with a packed lunch.
- 5.10 The Contractor shall ensure that adequate arrangements are in place for the provision of meals for residents who, in exceptional circumstances, are unable to be present at normal mealtimes.
- 5.11 If required, a packed lunch to include at least a sandwich, fruit and a beverage, shall be provided for each school going child.

- 5.12 It shall be the responsibility of the Contractor to ensure that a food safety management system incorporating the principles of Hazard Analysis and Critical Control Points (HACCP) is in place, in keeping with the European Community (Hygiene of Foodstuff) Regulations, 2000 (S.I. No. 165 of 2000).

6.0 STAFFING

- 6.1 The Contractor shall employ an appropriate number of staff, which must include a daily, seven days a week management presence on site between 8am and 8pm, to ensure the efficient and effective functioning of the Centre at all times.
- 6.2 The Contractor shall
- (i) furnish details of staffing arrangements to the Agency prior to the commencement of this Agreement, and
 - (ii) furnish details to the Agency of any changes in staffing arrangements as they arise.
- In addition, payments under this agreement are at all times conditional on the Contractor being in compliance with this Clause.**
- 6.3 The Contractor is obliged to ensure that relief staff are available at the appropriate level to cover holiday and sick leave.
- 6.4 The Contractor shall take all reasonable measures to ensure that all staff, employees or other Centre personnel are of good character and the Contractor and all such staff, employees or other Centre personnel shall be required to be Garda vetted.
- 6.5 The Contractor shall employ a chef possessing, at a minimum, the National Certificate in Professional Cookery (awarded by FETAC), or equivalent.
- 6.6 The Contractor shall ensure that all staff employed in the Centre are lawfully entitled to work in, and be employed in, the Republic of Ireland.

7.0 SECURITY AND SUPERVISION

- 7.1 The Contractor shall be responsible for the security and supervision of the Centre on a 24 hour basis. Such security and supervision shall include ensuring that the Centre's Rules and Procedures are adhered to and that any annoyance and nuisance to neighbours is kept to a minimum. The Minister does not warrant the behaviour of Asylum Seekers and cannot be held responsible for their behaviour in any circumstances. The Contractor shall take all reasonable security or other measures as may be necessary to ensure, insofar as is possible, that the residents comply by the house rules. In this regard the Minister shall provide the contractor with any relevant information which s/he is enabled to provide.

8.0 FINANCIAL

8.1 The agreed capacity for this Centre is as specified in **Appendix V. The Contractor shall ensure the availability of sufficient bedspaces to achieve this capacity at all times.** Should the Contractor be in breach of this agreement so that the number of persons whom the Contractor here agrees shall be accommodated cannot be so accommodated in the Centre, then the Contractor shall pay to the Minister as liquidated damages the sum of €50.00 for each person less than the total number of persons agreed to be accommodated who cannot be so accommodated for each night that the breach continues. The sum of liquidated damages payable under this clause may be deducted by the Minister from the sum payable under clause 8.2. Liquidated damages shall be payable even where the Minister wishes to terminate the agreement, whether under Clause 12.1 or 12.2.

8.2 Payments under this Agreement, inclusive of VAT, will be made every four weeks as specified in **Appendix V.** This amount is an all-inclusive sum in respect of provision of accommodation and all other services outlined in this Agreement.

8.3 The sum agreed will be paid every four weeks in advance.

[FOLLOWING SENTENCE FOR USE IN NEW MoA SITUATION]

However, for administrative reasons, the initial payment will be made following placement of asylum seekers at the Centre.

8.4 In the event that the Minister wishes to terminate this Agreement within the period of the Agreement where s/he deems it necessary to do so, (other than for the reasons specified in Clause 12.1 or 12.2), s/he may do so, without making a default payment, by giving 12 weeks written notice to the Contractor.

8.5.1 This agreement is subject to review on the **[REVIEW DATE]**. At this review the Minister reserves the right to reduce the capacity for the remainder of the Contract. The Minister shall indicate to the Contractor no later than ----- his intentions in relation to any possible renewal of the Agreement.

8.5.2 The Minister proposes to have quarterly Service Level Delivery meetings a year. The dates will be agreed by both parties.

8.6 The Minister shall indicate to the Contractor no later than the above review dates his intentions in relation to any possible renewal of the Agreement. Nothing in this Agreement shall be taken to commit either party to any such renewal.

8.7 The Contractor warrants that s/he has good title to the Centre (subject to any Mortgage, where applicable) and can provide the accommodation and other services contained in this Agreement. The Contractor shall produce evidence of his/her interest in the Centre if requested to do so by the Minister. **In addition, payments under this agreement are at all times conditional on the Contractor being in compliance with this Clause.**

- 8.8 The Contractor must comply with all statutory charges and levies in relation to the Centre and must supply an original current valid Tax Clearance Certificate, within ten working days of being requested, before payment under the agreement is effected. **In addition, payments under this agreement are at all times conditional on the Contractor being in possession of a current valid tax clearance certificate.**

9.0 STATUTES AND REGULATIONS

- 9.1 It shall be the responsibility of the Contractor to ensure that the premises complies and operates in accordance with all relevant statutory requirements of Local Authorities and other Agencies in relation to planning, building bye-laws, bedroom capacity, food, food hygiene, water supply, sewage disposal, fire precautions, minimum pay, legally binding industrial or sectoral agreements and health and general safety, including:
- Building Control Acts 1990 and 2007;
 - Building Regulations 1997 to 2009;
 - Building Control Regulations 1997 to 2009;
 - Employment Permit Acts, 2003 and 2006;
 - European Communities (Drinking Water) Regulations 2000 to 2007;
 - European Communities (Hygiene of Foodstuffs) Regulations 2000 to 2009;
 - European Communities (Official Control of Foodstuffs) Regulations 1998;
 - Fire Services Acts, 1981 and 2003;
 - Food Hygiene Regulations, 2000;
 - Housing Acts, 1966 to 2004;
 - Industrial Relations Acts 1946 to 2004;
 - National Minimum Wage Act 2000;
 - Planning and Development Acts 2000 to 2005;
 - Private Security Services Act, 2004;
 - Safety, Health & Welfare at Work Act, 2005;
 - Tourist Traffic Acts, 1939 to 2003;
 - Any statutory modification or re-enactment of same; and,
 - Any other relevant Act or Regulations as may be notified by the Minister to the Contractor.
- 9.2 In the event of the Contractor failing to operate substantially in accordance with the statutory requirements as set out in Clause 9.1, the Minister reserves the right to terminate the Agreement in accordance with Clause 12.1.

-
- 9.3 At the request of the Agency, the Contractor shall be obliged to provide evidence of the appropriate planning permission and compliance with building and other relevant regulations for the centre.
- 9.4 Under the Immigration Act 2004 the identity of Asylum Seekers is required to be protected and the Contractor and his/her staff shall put in place measures that ensure such protection is maintained. Save in respect of bona-fide support groups, no information likely to lead members of the public to identify a person as an applicant shall be made available without the consent of that person. In addition, all requests from media organisations in relation to the Asylum Seekers resident at the Centre must be referred to the Agency.
- 9.5 All information relevant to the carrying out by the Contractor of his/her obligations under the Agreement shall be treated as proprietary and confidential to the party imparting same to the Contractor. All information covered by this clause must be protected at all times to ensure its confidentiality.
- 9.6 The Contractor and the Minister agree that the Contractor shall use the said information solely for the purposes of the Agreement and that s/he shall not at any time, during or after completion, expiry or termination of the Agreement, disclose same whether directly or indirectly to any third party, without the prior written consent of the Minister. In the context of the Data Protection Acts, 1988 and 2003 contractors will be data controllers within the meaning the acts where such data is held on computer and shall register as such with the Office of the Data Protection Commissioner.
- 9.7 The Contractor agrees that all databases created by him/her for the Minister shall be the joint property of the Minister and of the Contractor and that all copyright in the databases shall belong to the Minister and the Contractor jointly. The Contractor and the Minister undertake with each other to provide to each other full details of tables, fields and structures of databases along with any other information reasonably necessary to enable the Minister and the Contractor respectively to administer, utilise and amend, where necessary, the databases.
- 9.8 The duties of confidentiality referred to above shall not apply in respect of any information which:
- has become or becomes generally available to the public through no fault of the party receiving it; or
 - was already known to the receiving party prior to entering into this Agreement and was not previously acquired by the receiving party from the disclosing party under an obligation of confidentiality or non-use towards the disclosing party; or
 - is information which is disclosable under the Freedom of Information Acts, 1997 and 2003.

10.0 FIRE CERTIFICATION

- 10.1 The Contractor shall comply at all times with the provisions of the Fire Services Acts, 1981 and 2003 and, in this regard, with the requirements of the local authority Fire Officer. In the event of correspondence from the Fire Officer resulting in loss of capacity at, or temporary closure of, the Centre by the Fire Officer or the Agency, the financial terms specified in Clause 8.2 shall be adjusted to reflect such loss of capacity or temporary closure. **In addition, payments under this agreement are at all times conditional on the Contractor being in compliance with this Clause.**
- 10.2 The Contractor shall be obliged to provide, annually, to the Agency written confirmation of the Office of Public Works [OPW] requirements regarding fire certification together with evidence of ongoing, independent, third party fire safety certification. In addition, payments under this agreement are at all times conditional on the Contractor being in compliance with this Clause.
- 10.3 A Contractor who knowingly makes a false written confirmation to the OPW requirements regarding fire certification and/or knowingly furnishes a Certificate of Compliance from a competent person which is false shall have his/her Agreement terminated without liability therefore with immediate effect. Moreover, the matter will be considered by the Agency in the light of its criminal implications and may be referred to An Garda Síochána for further investigation.

11.0 PUBLIC LIABILITY

- 11.1 Prior to the commencement of this Agreement the Contractor shall extend his/her public liability and all risks cover insurance to the entire Centre and shall indemnify the Minister in relation to all claims arising from the operation of the Centre and the contractor shall have the interests of the Minister noted on the public liability insurance policy. The Contractor shall notify his/her insurers of the use to which the Centre shall be put and shall provide his/her insurers with a copy of this agreement, and shall furnish to the Minister evidence that such cover has been procured. The minimum level of such insurance shall be €6,500,000 in respect of each and every incident, unlimited in any one period of insurance. **In addition, payments under this agreement are at all times conditional on the Contractor being in compliance with this Clause.**
- 11.2 The Minister accepts no liability whatsoever for any claims howsoever arising as a result of negligence on the part of the Contractor or his servants or agents.

12.0 TERMINATION

- 12.1.1 If either party is in material breach of this Agreement, the party not in default may, by written notice to the party in default, specify the breach complained of and specify a period of 30 days, or such longer period as may be necessary

in the circumstances, in order to remedy such breach. If the breach is not remedied within such time, the party not in default may terminate the Agreement by giving 7 days notice in writing. Termination in accordance with this clause shall be without prejudice to any claim which either party may have against the other with regard to any antecedent breach of this Agreement by either party.

12.1.2 If the Contractor is in breach of either Clause 10.2 or Clause 11.1 of this Agreement, the Minister may, by written notice to the Contractor, specify the breach complained of and specify a period of 7 days, or such longer period as may be necessary in the circumstances, in order to remedy such breach. If the breach is not remedied within such time, the Minister may terminate the Agreement by giving 7 days notice in writing. Termination in accordance with this clause shall be without prejudice to any claim which either party may have against the other with regard to any antecedent breach of this Agreement by either party.

- 12.2 If the Contractor becomes bankrupt or goes or is put into liquidation (other than solely for solvent amalgamation or reconstruction) or if a Receiver is appointed over all or any part of his/her business or assets or an administration order is made in respect of him/her, the Minister may regard any such circumstances as grounds for immediately terminating the Agreement without liability therefore.
- 12.3 Termination under Clauses 12.1 and 12.2 shall not discharge either party from liability for payment of any sums already due to date of termination or from the duty of confidentiality applicable under this Agreement.
- 12.4 Upon termination or non-renewal of the agreement for whatever reason, each party will immediately deliver up any property belonging to the other party which it has in law no contractual right to retain.

13.0 MISCELLANEOUS

- 13.1 This Agreement shall be governed by the laws of the Republic of Ireland as the same are applicable to agreements to be wholly performed in the Republic of Ireland and the parties hereto submit to the jurisdiction of the Courts of the Republic of Ireland.

14.0 NOTICES

- 14.1 (1) Any Notice required to be made, given to or served on the Minister under this agreement shall be duly and validly made, given or served if addressed to the Minister and delivered by hand or sent by pre-paid registered post to the Minister's principal office in this State; and
- (2) any Notice required to be made, given to or served on the Agency under this agreement shall be duly and validly made, given or served if addressed to the

Agency and delivered by hand or sent by pre-paid registered post or recorded delivery mail or facsimile transmission to its last known address; and

- (3) any Notice required to be made, given to or served on the Contractor under this Agreement shall be duly and validly made, given or served if addressed to the Contractor (and if there shall be in any case more than one of them), then to any of them, and delivered by hand or sent by pre-paid registered post or recorded delivery mail to the last known address or to the address of the Centre.

- 14.2 Where a notice under this Agreement has been sent by post to the Minister, the Agency or the Contractor in accordance with clause 14.1, the notice shall be deemed to have been duly given to or served on the recipient on the third day after the day on which it was so sent.

APPENDIX I: Official Register (Clause 1.3)

FORM 1 OF 5 FORMS: OFFICIAL REGISTER

Accommodation Centre: **[PREMISES]**

Contractor / Manager:

Contact Telephone Number:

Week Ending: / / 201__

(PLEASE TYPE IN OR USE BLOCK CAPITAL LETTERS)

Please mark as follows: P = Present X = Absent H = Bed held while in hospital etc.

Room No	Bed Type: Double, Single, Twin, Bunk	Occupancy Max Current	Name	Nationality	Temporary Residence Certificate reference number	Mon	Tues	Wed	Thur	Fri	Sat	Sun

The Register should be faxed to **01-4183220** or e-mailed to riaregisters@justice.ie

APPENDIX I: Official Register (Clause 1.3)

FORM 2 OF 5 FORMS: VACANCIES

Accommodation Centre: **[PREMISES]**

Contractor / Manager:

Contact Telephone Number:

Week Ending: / / 201__

(PLEASE TYPE IN OR USE BLOCK CAPITAL LETTERS)

ROOM No	Bed Type	Free Spaces	Single / Family	If Single: Male / Female	If Sharing preferred Nationality	Comment

Notification of any new vacancies should be faxed to **01-4183220** or e-mailed to **riaregisters@justice.ie**

APPENDIX I: Official Register (Clause 1.3)

FORM 3 OF 5 FORMS: NEW ARRIVALS

Accommodation Centre: **[PREMISES]**

Contractor / Manager:

Contact Telephone Number:

Week Ending: / / 201__

(PLEASE TYPE IN OR USE BLOCK CAPITAL LETTERS)

NAME	NATIONALITY	TRC Ref. No	DATE OF ARRIVAL

Notification of any new arrivals should be faxed to **01-4183220** or e-mailed to **riaregisters@justice.ie**

APPENDIX I: Official Register (Clause 1.3)

FORM 4 OF 5 FORMS: DEPARTURES

Accommodation Centre: **[PREMISES]**

Contractor / Manager:

Contact Telephone Number:

Week Ending: / / 201__

(PLEASE TYPE IN OR USE BLOCK CAPITAL LETTERS)

NAME	NATIONALITY	TRC Ref. No	DATE OF LEAVING	COMMENT; NEW ADDRESS; REASON FOR LEAVING

Notification of any new departures should be faxed to **01-4183220** or e-mailed to **riaregisters@justice.ie**

APPENDIX I: Official Register (Clause 1.3)

FORM 5 OF 5 FORMS: RECONCILIATION

Accommodation Centre: **[PREMISES]**

Proprietor/Manager:

Week Ending Sunday: / / 201__

(a.) Capacity (as per contract): **[CENTRE CAPACITY]**

(b.) Current Occupancy:

(c.) Current Useable Vacancies:

(d.) Unavailable:

e.g. room occupied by Family (i.e. unused beds in family room), maintenance etc.

Total (b + c + d): **[CENTRE CAPACITY]**

Signed:

Date: / / 201__

Reconciliation sheets should be kept separate from the main register and should be faxed to **01-4183220** or e-mailed to riaregisters@justice.ie

APPENDIX II: Furnishing of Accommodation Unit (Clause 3.4)

Each accommodation unit or bedroom shall have:

- a television with the following channels as a minimum with a reasonable choice:- (e.g.). RTE 1; Network 2; TV3; TG4; BBC 1; BBC 2; ITV and Channel 4;
- at least one electrical outlet suitable for the attachment of electrical equipment;
- an effective means of heating capable of maintaining, when required, a room temperature of 20° Celsius; and
- one or more fitted smoke alarms, and fire evacuation advice notice.

Each bedroom shall contain furniture, fittings and equipment of good quality condition, for sleeping and for storage, including hanging of clothing.

Each bathroom area, whether or not en-suite to a bedroom, shall contain a bath or shower of approved manufacture which shall be fixed complete with all plumbing for the continuous supply of hot and cold water and the disposal of waste. Bathrooms and toilets shall have an effective system of natural or artificial ventilation and shall be equipped with the usual accessories e.g. mirror, towel rail, clothes hooks, bath mat, seat and a clean and ample supply of toilet requisites e.g. soap, shampoo, toothpaste, toilet paper, etc.

APPENDIX III: Menu List (Clause 5.2)

BREAKFAST:

Must include: Eggs, and

- Minimum choice of 3 cereals, e.g. muesli, cornflakes, porridge, branflakes, crisped Rice, wheaten breakfast biscuits, and
- Choice of 2 Juices, e.g. orange, grapefruit, cranberry, apple, and
- Selection of Fruit
- Milk / Tea / Coffee / Toast / Brown and White Bread / Rolls / Selection of spreads / selection of jams and preserves.

LUNCH:

Must include:

- Starter- salad options / soup, and
- Choice of 2 light main courses, one hot and one cold option to vary daily,
- Vegetarian option,

DINNER:

Must include:

- Choice of 2 starters, (one hot and one cold), and
- Choice of 3 Main Courses (to vary daily) to include a meat dish, a fish dish and a vegetarian dish, and
- Dessert / yoghurt, and
- Tea / coffee / milk / soft drink beverage / drinking water

NB

1. It is recommended that rice, as well as potatoes and chips, be served with all main dishes at lunch and dinner.
2. Where applicable, a selection of baby foods and yoghurts must be on display and available.

APPENDIX IV: Needs of Young Children (Clause 5.5)

The following items, at a minimum, should be made available in meeting the needs (including nutritional needs) of young babies and children resident at the Centre:

- 1.1 Facilities to encourage and promote breastfeeding including appropriate display of signage.
- 2.1 Infant Formula - an arrangement in line with the recommendations outlined in the Infant Feeding Guidelines should be put in place for the distribution of infant formula.
- 2.2 The Contractor must request residents to sign a consent form for changing infant formula.
- 2.3 Infant food - in line with the recommendations outlined in the Infant Feeding Guidelines.
- 2.4 Access to fresh water (for the preparation of infant formula)
- 2.5 Sterilizers (sufficient for the number of infant children)
- 2.6 Kettles (for boiling water)
- 2.7 Fridges
- 3.1 Facilitate special dietary needs of children and provide appropriate menus for children. Staff preparing food for children should be familiar with the Department of Health & Children guidelines for preschool services and primary schools. If necessary, staff should receive specific training and/or guidance from local health professionals.
- 4.1 Cots
- 4.2 An emergency supply of disposable nappies.

APPENDIX V: Payments (Clauses 8.2, 8.4)

Contractor	[CONTRACTOR]
Premises	[PREMISES]
Term	[TERM]
Start Date	[START DATE]
Finish Date	[FINISH DATE]
Capacity	[CENTRE CAPACITY]
Rate per person per day (inclusive of VAT)	[RATE PPPD]
Additional Capacity Rate per person per day (inclusive of VAT)	[ADDITIONAL RATE PPPD]
Daily Rate (inclusive of VAT)	[DAILY RATE]
Payable every four weeks (inclusive of VAT)	[28 DAY RATE]
Total amount payable from [START DATE] to [FINISH DATE] (inclusive of VAT)	[TOTAL PAYABLE]

Dated the day of 2014

Signed for and on behalf

of the **MINISTER FOR JUSTICE & EQUALITY**

Signed for and on behalf

of **[CONTRACTOR]**

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