

Submission to the Joint Oireachtas Committee on Justice and Equality on Direct Provision and the International Protection Application Process

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Introduction

Nasc, the Migrant and Refugee Rights Centre is a non-governmental organisation based in Cork. Nasc, the Irish word for ‘link’, empowers migrants to realise and fulfil their rights. Nasc works with migrants and refugees to advocate and lead for change within Ireland’s immigration and protection systems, to ensure fairness, access to justice and the protection of human rights. Our goal is to realise the rights of all migrants and refugees within Irish society.

Nasc was a member of the Working Group on the Protection Process and Direct Provision. The subsequent report, the Working Group Report on the Protection Process¹ (McMahon Report) contained 173 recommendations to improve the asylum process and the reception conditions to residents in direct provision accommodation. Nasc was an expert member of the Standards Advisory Group and advised on the development of National Standards for Accommodation offered to those in the Protection Process (National Standards).

Nasc has almost two decades of experience supporting refugees, asylum seekers and ethnic minority communities in Ireland. Through our free legal service, Nasc provides information, advice and support to over 1,300 people annually. Our policy and campaigning work are directly informed by our day-to-day experiences working with migrants, refugees, asylum seekers and ethnic minorities living in Ireland. In 2018 Nasc provided over 600 consultations to asylum seekers on issues ranging from living conditions and the right to work to residency applications. Nasc also conducts outreach to the five direct provision centres in Cork City and County.

¹ The Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers Final Report June 2015

Executive Summary of Recommendations

1. End the use of emergency accommodation for the protection application and in the short-term, ensure that any protection applicant being housed in emergency accommodation has first gone through an initial reception period in Baleskin Reception Centre, where they receive a medical screening, a vulnerability assessment, TRC Card, information and support on how to apply for a PPS number and a medical card.
2. The National Standards should be published and implemented in full.
3. The role of the Health Information and Quality Authority (HIQA) should be expanded and resourced to include the inspection and implementation of the standards.
4. A vulnerability assessment, as required by Article 21 of the recast Receptions Conditions Directive, should be implemented immediately.
5. The special reception needs of LGBT applicants for international protection should be taken into account in designating appropriate accommodation during the dispersal process. Special consideration should be given to safety within accommodation centres and access to LGBT support organisations in the locality.
6. Child benefit payments should be made available to parents or guardians of children in the international protection process.
7. Separated children who turn 18 prior to receiving a final decision on their international protection claim should be given the choice of remaining in foster care and should be eligible for aftercare services.
8. The European Communities (Reception Conditions) Regulations 2018 SI 230/2018 should be amended to include a grandfather clause providing for the right to work for applicants for international protection who, at the time of the commencement of the regulations on 30 June 2018, having received a first instance decision on their application for international protection were awaiting a final decision on their application.

9. Regulation 11(5) of the European Communities (Reception Conditions) Regulations 2018 SI 230/2018 should be amended to increase the duration of a labour market access permission from 6 months to 12 months.
10. Schedule 2 of the European Communities (Reception Conditions) Regulations 2018 SI 230/2018 should be amended to reduce the contribution payable by employed applicants for international protection towards the cost of their reception conditions.
11. The Department of Justice and Equality should work with other governments to remove barriers to employment including barriers to accessing a driving licence and opening a bank account.
12. 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.
13. The International Protection Office should be adequately resourced to ensure that applications are processed within six months.
14. An upper limit of time should be placed on the amount of time a person may spend in the asylum process. All persons awaiting decisions in 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 have their cases prioritised for accelerated decisions with a view to granting a residence permission.
15. To avoid a future build-up of people in the asylum process, a ‘rolling scheme’ should be introduced to review and prioritise the cases of asylum seekers once they reach five years in the protection process with a view to granting a residence permission in line with McMahan report recommendations.
16. All persons with deportation orders who have been in the system for five years or more from the date of initial application should have their deportation order revoked and leave to remain in the State granted. This can be done subject to ‘good character’ checks.
17. The Civil Legal Aid Board should be adequately resourced to provide early legal advice to protection applicants.

18. Ministerial Decision letters granting international protection be issued within a reasonable time and no later than 6 weeks from the date of receipt of the report from the International Protection Office or the decision from the International Protection Tribunal.
19. An independent International Protection Advisory Board should be established to monitor and report on the international protection process as a whole.
20. The International Protection Office should publish detailed reports on a monthly basis.
21. The Reception Integration Agency should publish detailed reports on a monthly basis.
22. Persons in Direct Provision who receive a residency status should receive the full Job Seekers Allowance Payment or any equivalent payment that they may be entitled to.
23. Persons with a residency status who are exiting Direct Provision should have access to a Homeless Housing Assistance Payment (HAP) in line with Section 2 of The Housing Act 1988 (as amended).
24. On a medium to long-term basis, the State should move from institutional direct provision style accommodation to own-door, self-contained, not-for profit model of reception.

The Context

We welcome the opportunity to provide submissions on Ireland's protection and reception systems to the Joint Oireachtas Committee on Justice and Equality. In light of the 20-year anniversary of the introduction of direct provision in 2020, it is both timely and necessary to re-examine current conditions and explore improvements and potential alternatives. There is also a new urgency to these discussions as over 500 asylum seekers including children are accommodated in inappropriate emergency accommodation settings like hotels or B&Bs around the country. It is imperative that Ireland creates a reception and a protection system capable of responding to the natural fluctuations in the numbers of people claiming asylum in Ireland.

In recent years there has been an increase in the numbers of people applying for international protection (asylum) in Ireland and a corresponding increase in the numbers of asylum seekers residing in direct provision accommodation. A total of 3,673² applications for international protection were made in 2018. As of May 2018, there were 6,115³ people living in the direct provision. While these numbers represent an upwards trend, they are not inconsistent with the numbers of people applying for asylum and the demand for accommodation in the mid-2000s. In 2008 there were 3,866 new applications for asylum and 7,002 people were living in direct provision accommodation.

In 2015, the Working Group to Report to Government and the Protection Process, of which Nasc was a member, published its report, commonly known as the McMahon Report. This report extensively examined both the living conditions and the legal determination process and made 173 comprehensive recommendations for reform of both reception conditions and the legal process. The McMahon Report was the most extensive examination of the lived

² International Protection Office, Monthly Statistical Report, December 2018 available at <http://www.ipo.gov.ie/en/IPO/IPO%20Statistics%20December%202019-FINAL.pdf/Files/IPO%20Statistics%20December%202019-FINAL.pdf>

³ Minister of State for Immigration, Integration and Equality, David Stanton TD, Parliamentary Questions, Written Answers, 08 May 2019, 448

experience for asylum seekers in Ireland. The report's recommendations, which were unanimously agreed, span issues from the minutiae of living conditions in reception centres, the provision of early legal advice, education and health care supports, transitional supports for those granted status to proposed solutions for persons five years or more in the system. The recommendations were multidisciplinary and included recommendations for implementations for numerous government departments including the HSE, Department of Education and Skills, Department of Children and Youth Affairs, Tusla and the Department of Social Protection as well as the Department of Justice and Equality. Many of the recommendations outlined below build on recommendations made in the McMahon Report.

In December 2017 Nasc published a Working Paper on the Progress of Implementation of the McMahon Report⁴ which found that implementation of the Report's recommendations had been slow and piecemeal, wait times for asylum interviews and decisions remained significant, conditions in centres remained inconsistent with some centres creating shared cooking facilities and larger living areas however other centres remained largely unchanged. Nasc's Working Paper contradicted the findings of the [Department of Justice and Equality's Third and Final Progress Report on the implementation of the Justice McMahon Report recommendations](#)⁵ which had stated that 98% full or partial implementation of the recommendations had been carried out. At that time, we found that we could only verify 20 of the recommendations as being fully implemented, 24 were partially implemented, and there was no progress in 44 of the recommendations. The introduction of a right to work for asylum seekers and the transposition of 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 (Reception Conditions Directive) were recommendations made in the McMahon report, and

⁴ Nasc Working Paper on the Progress of Implementation of the McMahon Report, December 2017 available at <https://nascireland.org/sites/default/files/Nasc-Working-Group-Report-Dec-2017.pdf>

⁵ Department of Justice and Equality, Third and Final Progress Report on the implementation of the Justice McMahon Report recommendations, July 2017 available at http://www.justice.ie/en/JELR/Pages/Third_and_Final_Progress_Report_on_improvements_to_protection_process

were undertaken following a successful Supreme Court challenge⁶ to the absolute restriction on access to the labour market.

One of the key recommendations of the McMahon Report was the establishment of an Advisory Group to develop National Standards for all direct provision centres. The Standards Advisory Group, of which Nasc was a member, convened in February 2017 and were tasked with creating a framework for the development of person-centred accommodation centres to improve quality of care and ensure consistency across centres and a framework for any future assessments including inspections. The National Standards have been agreed by the Department of Justice and currently rest with the Minister for final approval and publication. They are expected to be published in the coming weeks.

There has been sustained criticism of Ireland's system direct provision since it was introduced⁷. The calls for change have become stronger in recent years and we believe that we are now at a point where there is a public demand as well as an openness by the Department of Justice to move beyond repairing a broken system. There is an impetus now to overhaul the entire process, to create a reception system designed not just with the most basic housing and subsistence needs in mind but one that would meet the dignity and human rights of international protection applicants. We are aware that an entirely new, alternative reception system will take time to implement. This submission will propose short to medium term recommendations for improvements in both living conditions and the application process as well as making recommendations for a longer-term approach to a not-for-profit model of providing reception conditions.

⁶ N.V.H. v Minister for Justice and Equality [2017] IESC 35

⁷ By July 2001, 'Beyond the Pale: asylum-seeking children and social exclusion in Ireland' was published by Professor Bryan Fanning and Dr Angela Veale. This book identified many of the failings that still exist today.

1. Emergency Accommodation

Recommendation: End the use of emergency accommodation for the protection application and in the short-term, ensure that any protection applicant being housed in emergency accommodation has first gone through an initial reception period in Baleskin Reception Centre, where they receive a medical screening, a vulnerability assessment, TRC Card, information and support on how to apply for a PPS number and a medical card.

A recent Parliamentary Question⁸ revealed that there are almost 700 international protection applicants, including families and children, being accommodated in 19 temporary emergency accommodation settings, including hotels and B&Bs, throughout the country. Nasc is concerned about the isolation and lack of support for international protection applicants housed in these settings for all but the shortest periods of time. It is a matter of very serious concern that some individuals and families are being housed in these settings for up to nine months⁹ with a knock-on impact on appropriate supports including mental health supports and education. We were alarmed to learn that children for extended periods of time while in these temporary settings.

The use of emergency accommodation centres is a relatively recent development. Since peak capacity in 2008, the RIA has either closed or not renewed contracts for a number of direct provision centres. The reduction in capacity together with the difficulties for those who have gotten status in finding accommodation means that that RIA is generally operating either at full or over capacity. Under normal circumstances, the majority of newly arrived applicants for international protection are temporarily accommodated in Baleskin Reception Centre, a 320-bed unit in Dublin. This centre is particularly equipped as an initial reception centre. The average 4 week stay in Baleskin normally allows international protection applicants sufficient opportunity to complete and return initial international questionnaire, apply for a Temporary

⁸Minister of State for Immigration, Integration and Equality, David Stanton TD, Parliamentary Questions, Written Answers, 08 May 2019, 159

⁹ Ibid

Residence Card (TRC), apply for a PPS number, receive an initial health screening and emergency medical treatment arising from this and support in applying for medical card. There are also several orientation-based projects based in Baleskin including the very successful Jesuit Refugee Services [Failte project](#). This provides essential orientation and ‘move-on’ information to newly arrived international protection applicants.

Those who are moved directly into temporary accommodation settings or even those who are dispersed do not have access to these supports or services. Dispersal to either emergency accommodation or to a direct provision centre outside of an urban area prior to obtaining at least a TRC and a health screening can have profoundly serious consequences. Without a PPS number, an international protection applicant cannot avail of the daily expenses allowance or apply for a medical card. In recent months, Nasc has received a number of queries from distressed people who have no TRC and no PPS number. They have remained for months in Ireland without any financial assistance and are unable to get medical treatment for conditions like diabetes. Caught in a Catch 22 situation, they may not be able to afford to travel to the International Protection Office in Dublin to apply for their TRC which would assist them to apply for their PPS numbers and then medical cards. This is an avoidable situation which could potentially have profoundly tragic consequences.

2. National Standards for accommodation offered to people in the protection process

Recommendation: The National Standards should be published and implemented in full.

Recommendation: The role of the Health Information and Quality Authority (HIQA) should be expanded and resourced to include the inspection and implementation of the standards.

For almost two decades now the Direct Provision system has operated without independent oversight and regulation and it is one of the few residential settings in the country that operate in this way. The current inspection regime is limited to an assessment of compliance with

providers' contractual arrangements. The quality of accommodation provided and the physical conditions in centres vary greatly from centre to centre. One of the key recommendations of the McMahon report was the establishment of an Advisory Group to reflect Government policy across all areas of service in Direct Provision. These new National Standards would meet the minimum standards set out in:

- EASO Guidance on Reception Conditions: Operational Standards and Indicators;
- Directive 2013/33EU (the recast-Reception Conditions Directive);
- European Communities (Reception Conditions) Regulations 2018 (S.I. No 230/2018).

The Standards Advisory Group was convened on 06 February 2017 and a draft set of National Standards was published for public consultation in 2018. The National Standards have now been agreed by the Department of Justice and currently rest with the Minister for final approval and publication. They are expected to be published in the coming weeks.

The National Standards contain important requirements that are essential for the protection of family life and human dignity for all residents. They include a requirement for adequate cooking facilities and living spaces for families and important standards to protect the welfare of children in the centres. It is envisaged that providers will be given a two-year led in time to ensure compliance and that the standards will be fully operational by 2021. We recommend that the standards be published immediately to ensure that current providers have adequate time to ensure the centres are fully compliant. Early publication of the standards will also inform and provide a framework for any Approved Housing Bodies considering delivering an alternative model of reception and would greatly advance the current work being developed in this area.

Aligned to this recommendation is the need for a robust independent inspectorate to ensure compliance. Without an inspectorate the standards will rendered redundant. The inspectorate body should conduct unannounced inspections and publish all inspection reports. This will ensure a standardised level of care and protection across all centres. We agree with the

Children’s Rights Alliance recommendation that the Health Information and Quality Authority is the most appropriate body to undertake this role as it is an “independent authority that exists to improve health and social care services for the people of Ireland”. This would require an amendment of Section 8 of the Health Act 2007 to bring Direct provision under its remit. There is strong precedent here as HIQA’s role has expanded significantly since 2017.

3. Vulnerability Assessment

Recommendation: A vulnerability assessment, as required by Article 21 of the recast Receptions Conditions Directive, should be implemented immediately.

Recommendation: The special reception needs of LGBT applicants for international protection should be taken into account in designating appropriate accommodation during the dispersal process. Special consideration should be given to safety within accommodation centres and access to LGBT support organisations in the locality.

In response to the Supreme Court Decision in N.V.H¹⁰ the Government took the decision to opt into the EU recast Receptions Conditions Directive. This Directive sets down minimum standards for the reception of applicants for international protection across all Member States. This was a very welcome move as, for the first time, it placed Ireland’s direct provision system on a statutory footing. The Directive also grants additional rights, remedies and protections to protection applicants. Article 21 of the Directive places a legal obligation upon member states to take into account the special reception needs of vulnerable applicants when assessing their reception needs and to ensure that the requisite services are provided. The definition of vulnerability under the Directive is broad and includes, minors, unaccompanied minors, disabled people, victims of torture and victims of trafficking. Protection applicants, with their consent, are assessed with a view to identifying if they require a special reception need. Member States are required to carry out an assessment need within a reasonable period of time following an application for international protection. This is a continuous and ongoing

¹⁰ See *supra* 6

obligation as oftentimes vulnerabilities may emerge at a later date. The National Standards sets out a roadmap for the implementation of the assessment for all reception centres. The Directive has been in place now for almost a year and to date there is no vulnerability assessment in place. It is essential to ensure that the specialised needs of vulnerable applicants such as victims of trafficking, those who have been subjected to rape, torture, or other serious forms of psychological physical or sexual abuse are identified at the earliest possible stage so that the requisite supports can be put in place. The absence of this assessment may risk further harm and ongoing distress to this vulnerable group.

LGBT applicants for international protection can encounter particular challenges in shared accommodation settings. LGBT applicants for international protection report that they face harassment, homophobia or threats of violence in direct provision centres with others stating that they feel compelled to try to keep their sexual orientation or gender identity hidden. Those living outside of urban areas disclose that they feel isolated and unable to access LGBT support organisations or LGBT communities. Issues regarding safety are often exacerbated in shared-room accommodation settings where an LGBT international protection applicant may be assigned a room share with others from cultural or religious beliefs which are unaccepting or hostile toward LGBT people or in circumstances where transgender women are accommodated in male-only accommodation centres. The Irish Refugee Council described such situations as “effectively recreating the same persecutory environment that caused them to flee their country of origin in the first place.”¹¹

4. Children and young people

Recommendation: Child benefit payments should be made available to parents or guardians of children in the international protection process.

¹¹ Irish Refugee Council, Submission on the National LGBTI Inclusion Strategy, December 2018 available at <https://www.irishrefugeecouncil.ie/wp-content/uploads/2019/01/IRC-Submission-on-the-National-LGBTI-Inclusion-Strategy-2.pdf>

Recommendation: Separated children who turn 18 prior to receiving a final decision on their international protection claim should be given the choice of remaining in foster care and should be eligible for aftercare services.

There are approximately 1,600¹² children currently living in direct provision. This represents about a 70% increase since 2016. Dr Geoffrey Shannon, the Special Rapporteur on Child Protection, has raised concerns that many children are living in State-sanctioned poverty, “We are in a situation where we treat children in direct provision as being second-class citizens”.¹³ Child benefit is seen as an essential part of combatting child poverty and is of particular validity to families on the lowest incomes¹⁴ however, in 2004 the State discontinued the practise of paying child benefit payment to the parents of children in direct provision. The Vincentian Partnership for Social Justice estimated that in 2018 it cost €122 per week to provide a minimum socially acceptable standard of living for a child in Ireland over the age of 12.¹⁵ While recent increases in the daily expenses allowance for children, which now stands at €29.80 per week, are very welcome, they fail to address the financial shortfalls for parents struggling to meet the cost of raising a child in Ireland. From Nasc’s experience, parents consistently talk about their shame in being unable to provide snacks for their children, pay for school tours, replace school equipment or clothing. In our experience many of these families in direct provision rely on local community groups or their local chapter of St Vincent de Paul to meet their children’s basic needs. Reinstating child benefit payment to families in the international protection process would significantly alleviate hardship for these families.

Section 14 of the International Protection Act, 2015 provides that separated children entering the State fall under the remit of the Child and Family Agency. An equity of care principle

¹² Minister for Employment Affairs and Social Protection, Regina Doherty TD, Parliamentary Questions, Written Answers, 02 April 2019, 505&506

¹³ Irish Times, Lives in Limbo, August 8, 2018 available at <https://www.irishtimes.com/news/lives-in-limbo>

¹⁴ Social Justice Ireland, Briefing on Child Benefit and Child Poverty, July 2012

¹⁵ Vincentian Partnership for Social Justice, Minimum Needs of Older Children, April 2018 available at https://www.budgeting.ie/download/pdf/minimum_needs_of_older_children_vpsj_submission.pdf

applies to separated children, meaning they receive the same quality of care as any other child in Tusla's care until the child turns 18. Inevitably some children 'age-out' waiting for a decision on their claim to international protection. On turning 18 the outcomes for these young people can vary hugely. The official Tusla policy is that this cohort of young people should be accommodated in direct provision¹⁶ centre. However, legally Tusla has a discretion in whether or not to provide an aftercare service and on the nature of that service. This discretion means that there can be significant differences in the treatment of young people exiting care depending on the area that they are in and the length of time they have spent in the State.

5. Barriers to the right to work

Recommendation: The European Communities (Reception Conditions) Regulations 2018 SI 230/2018 should be amended to include a grandfather clause providing for the right to work for applicants for international protection who, at the time of the commencement of the regulations on 30 June 2018, having received a first instance decision on their application for international protection were awaiting a final decision on their application.

Recommendation: Regulation 11(5) of the European Communities (Reception Conditions) Regulations 2018 SI 230/2018 should be amended to increase the duration of a labour market access permission from 6 months to 12 months.

Recommendation: Schedule 2 of the European Communities (Reception Conditions) Regulations 2018 SI 230/2018 should be amended to reduce the contribution payable by employed applicants for international protection towards the cost of their reception conditions.

Recommendation: The Department of Justice and Equality should work with other government departments to remove barriers to employment including barriers to accessing a driving licence and opening a bank account.

¹⁶ HSE National Policy and Procedure Document for Aftercare Service Provision per Muireann Ni Raghallaigh & Liam Thornton, *Vulnerable Childhood, Vulnerable Adulthood: Direct Provision as Aftercare for Aged-Out Separated Children Seeking Asylum in Ireland (2017) 37(3) Critical Social Policy 386*

Nasc welcomed the decision by the Minister for Justice and Equality to introduce a broad right to work for international protection applicants. The European Communities (Reception Conditions) Regulations 2018 represented a marked improvement on the restrictive provisions contained in the Interim Administrative Schemes of the 08 February 2018. Unfortunately, the Regulations did not contain any transitional provisions and excluded those who had already received a first instance decision as of 30 June 2018 and who had not applied for an International Protection Self-Employment Permission issued under the administrative self-employment scheme established on 9 February 2018. These provisions left hundreds of people, those who had been in the system often for several years and had experienced the worst of the delays with the transition from the old regime to the single application procedure, without access to the right to work. Our recommendation proposed that the Regulations be amended to provide for a grandfather clause which would allow this cohort access to the labour market.

The European Communities (Reception Conditions) Regulations 2018 provide for the Labour Market Access Permission to have a duration of six months, or until such time as a final decision has been made in respect of the applicant's protection applicant. Nasc regularly receives phone calls from employers who do not understand what the labour market access permission is and who are wary of employing and investing in the training of someone who appears to have only six months permission to work. The short duration of the permission is damaging to the employment prospects of international protection applicants and is pushing them into low skill, low wage jobs.

The Regulations provided for reimbursement by international protection applicants of part of the cost of their reception conditions once they are employed. Despite the fact that to date, a method for collection of this fee has not been proposed, the prospect of the relatively high rate of reimbursement has spread fear and disquiet amongst those who are employed or want to be employed. In addition to paying income tax, PRSI and a Universal Social Charge, a person earning €600.01 per week is eligible for 100% of the cost of their reception conditions - €238 per week. This fee of €238 per week is irrespective of whether an applicant is accommodated in self-catering own door accommodation with access to cooking facilities, or sleeping in a

bunkbed in a shared room with several other adults in a rural area and incurring significant transport costs to get to the place of employment or whether that person is supporting their children. At this income level, the applicant is likely to no longer be receiving a daily expenses allowance and may no longer be considered eligible for a medical card. This method of calculation toward reception costs is regressive and off-putting and risks placing those with regular employment in a poverty trap.

Some of the barriers for applicants for international protection to employment are practical in nature and may not be exclusively within the remit of the Department of Justice and Equality to resolve. Two major recurring issues are access to driving licences and opening bank accounts. Presently, the Minister for Transport, Tourism and Sport has taken the position that Ireland does not consider asylum seekers to be ‘normally resident’ in the State for the purpose of applying for a licence.¹⁷ This flies in the face of the reality that applicants for international protection will likely spend several years in Ireland’s protection system until their applications are processed to completion. The inability to access or exchange driving licences has had a huge impact on the ability to find employment, particularly for those who are not living in large urban areas with reliable public transport infrastructure. The ability or inability to access a bank account is an issue that also presents frequently. There seems to be a significant variance of practice across different banks and even between different branches of the same bank, which causes huge frustration for people who simply want to open a current account so that they can deposit their wages. Neither of these issues are within the normal remit of the Department of Justice. This reinforces the need for an inter-departmental approach to examining issues which impact on applicants for international protection.

6. Cooking facilities in direct provision centres

¹⁷ Deputy Shane Ross, Dail Eireann Debate, 22 March 2019 available at <https://www.oireachtas.ie/en/debates/debate/dail/2019-05-22/8/>

Recommendation: 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.

The Office of the Ombudsman has stated that over 2018 and 2017, feedback from residents' feedback to his staff, was that residents' ability, or inability, to cook their own meals was the single most important issue for them.¹⁸ . This is also an issue which arises frequently in our legal service and our outreach to direct provision centres. Parents, especially of young children, have significant concerns about diet, the cultural appropriateness and the quality of the food provided by centres. The ability to cook and prepare food for a family is an intrinsic right and a core element of cultural expression. This recommendation is taken directly from recommendation 4.75 of the McMahon Report. Unfortunately, since the publication of the McMahon report progress on implementing access to food, cooking facilities has been slow and *ad hoc*.

As of December 2017, 15 of 33 accommodation centres currently under contract already have some form of personal catering ranging from - entirely self -catering options in Carroll Village to fully fitted kitchens in Athlone etc for reheating food and preparing breakfast - to communal cooking stations in Great Western in Galway and St Patrick's in Monaghan¹⁹. This still leaves the majority of centres without any access to cooking facilities. Even in those centres which do provide cooking facilities, there are issues with access to food to cook. Some centres have shops, more do not. The National Standards will set down minimum requirements with regard to access to cooking facilities and food however, there is a two-year lead-in time before all centres are expected to be fully operational.

7. Length of Time in the System

¹⁸Office of the Ombudsman, *The Ombudsman & Direct Provision: Update for 2018, 2019*

¹⁹ See *supra* 4

Recommendation: The International Protection Office should be adequately resourced to ensure that applications are processed within six months.

Recommendation: An upper limit of time should be placed on the amount of time a person may spend in the asylum process. 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 have their cases prioritised for accelerated decisions with a view to granting a residence permission.

Recommendation: To avoid a future build-up of people in the asylum process, a ‘rolling scheme’ should be introduced to review and prioritise the cases of asylum seekers once they reach five years in the protection process with a view to granting a residence permission in line with McMahan report recommendations.

Recommendation: All persons with deportation orders who have been in the system for five years or more from the date of initial application should have their deportation order revoked and leave to remain in the State granted. This can be done subject to ‘good character’ checks.

The single most important issue for applicants for international protection we meet at Nasc, is the length of time that they spend in the asylum process and incidentally, in the direct provision system. This is borne out consistently in interviews, focus groups and reports with applicants for international protection. Delays in the application process lead to anxiety and uncertainty for applicants. The introduction of the single application procedure with the commencement of the International Protection Act, 2015 (2015 Act) on 31st December 2016 was supposed to allow for asylum applications to be dealt with more expeditiously, within 6 months. Thus far, this processing target has not been met. When the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT) were abolished on 31st December 2016, 1,550 asylum and 400 subsidiary protection legacy cases from ORAC and a further 1,800 legacy cases from the RAT were transferred to the International Protection Office. This created the conditions for significant backlogs of cases to arise in the IPO immediately. At present, the median processing time for an initial decision is 15 months.

Additional resources need to be allocated to the International Protection Office to reduce the wait time for processing.

As of February 2019, there were 642²⁰ people living in direct provision for 4 years or longer. Of those, 142 of those had been living in direct provision for 7 years or longer. It is not clear how many of those 142 have been issued with deportation orders and if so, how long those deportation orders have been in place. In many of the ‘long-stay’ cases we see, it is clear that the deportation order is all but unenforceable because of their country of origin, or age or ill health of the individual.

There is an urgent need to address the backlog in the international protection processing system and to provide a resolution for those who face an indefinite period of time living in Ireland, often in direct provision, with no legal immigration status. There is a clear precedent in our recent past for doing so. The recommendations made above echo recommendations made in the McMahon Report in 2015. Although these recommendations were not implemented in the manner outlined in the report, over 1,000 people in the process including those with unenforced deportation orders were regularised through an ‘informal’ scheme. This opportunity to regularise an immigration status and move out of direct provision to live in the community has had a profoundly positive impact on those individuals.

8. Early Legal Advice

Recommendation: The Civil Legal Aid Board should be adequately resourced to provide early legal advice to protection applicants.

In 2015, in anticipation of the introduction of a single procedure for international protection applications, the Irish Refugee Council Independent Law Centre published A Manual on Providing Early Legal Advice to Persons Seeking Protection. This sets out a best practice

²⁰Minister of State for Immigration, Integration and Equality, David Stanton TD, Parliamentary Questions, Written Answers, 19 February 2019, 288

model for the provision of early legal advice. “Early legal advice (ELA), or ‘frontloading’, involves intensive work over a short space of time. A lawyer may only have approximately three or four weeks to take instructions, complete an application form, draft and read back a personal statement and to collate and submit relevant evidence. This is a challenging task and it requires trust and rapport to be established between the representative and the client in a relatively short space of time.”²¹ The Manual sets out 9 steps from preparing a client to meet with their solicitor in pre-appointment preparation to a post-decision consultation and planning. The reality of the service offered to international protection applicants preparing their application falls radically short of this best practice model. The Civil Legal Aid Board is drastically under-resourced and unable to provide a service of this nature.

In Nasc’s experience most applicants for international protection are referred to a Private Practitioners International Protection Panel. A private solicitor who is referred a client through the Civil Legal Aid Board can expect a flat fee of €730 for provision of legal services at first instance in relation to an International Protection application (for asylum and subsidiary protection) including an application for permission to remain in the State for one client. A fee reduced fee of €365 is payable for the application of a spouse. It is our experience that many applicants are simply not receiving meaningful advice prior to submitting their application and attending their interview and many of the more experienced solicitors say that they cannot afford to take cases at the rate offered. It is not uncommon that applicants complete their questionnaires without any scrutiny by a legal practitioner. It is also not uncommon for applicants to be unaware of the facility to apply for Civil Legal Aid or how to contact the civil Legal Aid Board for legal representation.

Practically, the failure to adequately resource Early Legal Advice results in costs to the state and to the lives of those applying for international protection. The lack of frontloaded early legal advice results in poorer quality applications being made, which are to result in refusals and subsequent appeals. This results in costs to the State in terms of the resources used in

²¹ Irish Refugee Council, A Manual on providing Early Legal Advice to Persons seeking Protection, 2015

hearing appeals and potential judicial reviews as well as accommodating and providing for the reception needs of applicants for the extended time period. The applicant is more likely to be traumatised from the emotionally and mentally draining process.

9. Delays in issuing International Protection grants

Recommendation: Ministerial Decision letters granting international protection be issued within a reasonable time and no later than 6 weeks from the date of receipt of the report from the International Protection Office or the decision from the International Protection Tribunal.

Protection applicants who have been deemed to be in need of protection in Ireland are issued a letter from the International Protection Office informing them that the Office will recommend to the Minister that the applicant be declared a refugee or a person in need of subsidiary protection. Section 47 of the Act requires that the Minister shall give a refugee or subsidiary protection declaration as soon as possible after the Minister has received the positive report of the International Protection Office, or the positive decision of the IPAT, recommending that the applicant be granted either a refugee or subsidiary protection declaration.

Nasc regularly sees people who have waited for several months and in some instances up to six months from the date of recommendation from the IPO to receiving a letter. This issue has been highlighted in a number of recent parliamentary questions. The delays in issuing a formal declaration to protection applicants is a source of unnecessary distress to people as they are unable to move out of direct provision and get on with their lives. This has consequences for the applicant in terms of delaying their access to education, health, and employment supports, and prevents their transition into life in the community. It is the cause of undue distress and delay.

The Minister has stated that “[f]ollowing the issue of a recommendation letter from the IPO, necessary due diligence must be carried out before a declaration of refugee or subsidiary protection status issues.”²² The Minister’s comments that “due diligence” is again performed by the INIS prior to the issuance of a ministerial decisions letter granting status, infers that there is now an extra step for international protection applicants. Applicants must now initially satisfy the IPO, have their applications approved before proceeding to another stage, where the INIS reviews the decision of the IPO before a decision letter is ultimately issued. It is unclear why this review process is in place. Whilst the International Protection Act 2015 does permit the Minister to refuse to issue a refugee and/or subsidiary protection declaration once the International Protection Office has made a positive recommendation, he can only do so in very exceptional and limited circumstances.²³

This presents a number of issues, both in practice and in law. As noted above, the vast majority of international protection applications continue to go considerably beyond the 6 month timeframe before a first-instance recommendation is issued. With this additional step that the Minister refers to, applicants are now made to wait for another indeterminate period while the IPO’s decision is scrutinised further by the INIS. We believe that this represents another unnecessary delay in an already flawed international protection process and is flawed in terms of its inexpedience and unfairness.

10. Establishment of an Independent Advisory Board

Recommendation: An independent International Protection Advisory Board should be established to monitor and report on the international protection process as a whole.

²² Minister of State for Immigration, Integration and Equality, David Stanton TD, Parliamentary Questions, Written Answers, 08 May 2019, 499

²³ Section 47(3)(a) of the International Protection Act 2015 sets out the only grounds under which the Minister may refuse to give a refugee declaration to a an applicant who is a refugee, namely in circumstances where there are reasonable grounds for believing the refugee to be a danger to the security of the State or the refugee has been convicted a particularly serious crime and constitutes a danger to the community of the State.

Traditionally the accommodation and care of applicants for international protection, in addition to the processing of international protection applications is seen to lie predominantly within the remit of the Department of Justice and Equality. This ignores that the input of other State departments and agencies are critical to the everyday lived experiences of applicants for international protection. There is no body or agency with the remit to take a cross-departmental approach to the delivery of the reception needs of international protection applicants.

With the commencement of the International Protection Act, 2015, the International Protection Appeals Tribunal became the only statutorily independent body with a direct remit over any aspect of the international protection system or reception process. The Office of the Refugee Applications Commissioner (ORAC) which had been statutorily independent was replaced by the International Protection Office (IPO) which is part of the Department of Justice. There is not, as yet, an independent complaints person within RIA assigned to handle any complaints falling outside the purview of the recast-Reception Conditions Directive or an independent inspection authority assigned to direct provision centres. The Office of the Ombudsman has no remit over the international protection application or appeal process.

A key strength of the McMahon Working Group was that it included representatives from a wide range of Government Departments. An independent Advisory Board modelled on the Working Group on Direct Provision and the Protection Process would have the advantage of being able to take a holistic high-level overview of all aspects of the system, identify policy and systems failures, including the identification of backlogs, best practice and make recommendations. The remit of the Advisory Board should include an examination of the other State departments' and agencies roles in the provision of services to international protection applicants. The Department of Health, Department of Housing, Planning and Local Government, Department of Education and Skills, Tusla, Department of Employment Affairs and Social Protection all have important roles in the provision of services to international protection applicants and their contributions should be critically assessed.

An independent advisory board of this sort would not be without precedent, The Refugee Act, 1996 was amended in 1999 to include provision for the establishment of an independent Refugee Advisory Board²⁴. The Board's statutory remit required the board to prepare a report every two years which would be presented to the Minister for Justice and Equality and laid before both houses of the Oireachtas. 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 Board was never in fact established, and the Refugee Act, 1996 has since been revoked and replaced by the International Protection Act, 2015. The McMahon Report recommended in section 3.360 that a similar body be established and be given the necessary flexibility to consider all matters relevant and related to operation of the system. Unfortunately, this recommendation has not been implemented.

11. Transparency

Recommendation: The International Protection Office should publish detailed reports on a monthly basis.

Recommendation: The Reception Integration Agency should publish detailed reports on a monthly basis.

There is a concerning trend that less information is made publicly available by government agencies regarding asylum seekers and their accommodation. It is very difficult for civil society, NGOs or other State Departments to make informed policy and other decisions within an information vacuum and it is a move away from good practice for the State to stop publishing accurate and up to date data. The Reception and Integration Agency (RIA) normally publishes its statistics on direct provision accommodation on a monthly basis. These monthly reports contain information on the numbers of people accommodated in direct provision accommodation, number of self-catering places, bed space information etc. The RIA's last

²⁴ Section 11(b) of Immigration Act 1999

monthly report available on the RIA website is from October 2018²⁵. There is no publicly accessible, disaggregated data on direct provision capacity and bed space available for 2019.

Since the establishment of the International Protection Office (IPO) there has been a significant decrease in transparency. Although the IPO continues with its predecessor's practice of publishing monthly statistics on its website, the available figures are far less comprehensive. Currently only 3 tables are published on a monthly basis namely, the number of applications for international protection in the year to date, the number of applications for international protection in that month disaggregated by type of application, and finally, a disaggregation of the applications for international protection in the year to date by the top 5 nationalities. Previously the Office of the Refugee Applications Commissioner (ORAC) released all the above information as well as detailed activity breakdowns which included information on the outcomes of applications, determinations made under the Dublin III Regulations, the number of prioritised cases. Further, unlike the ORAC the IPO does not publish its own annual report. ORAC's Annual Report for 2015²⁶ was 78 pages in length, whereas the annual statistics for the IPO are contained within the Irish Naturalisation and Immigration Service (INIS) Annual Report. In the INIS 2017 Annual Report²⁷ just one page is dedicated to 'Applications for International Protection'

12. Transitioning from Direct Provision

Recommendation: Persons in Direct Provision who receive a residency status should receive the full Job Seekers Allowance Payment or any equivalent payment that they may be entitled to.

²⁵ For a list of the monthly reports available from the Reception Integration Agency, please see <http://www.ria.gov.ie/en/RIA/Pages/Statistics>

²⁶ Annual Report of the Office of the Refugee Applications Commissioner 2015, available to view at <http://www.orac.ie/website/orac/oracwebsite.nsf/page/publications-main-en>

²⁷ Immigration in Ireland, Annual Review 2017, available to view at <http://www.inis.gov.ie/en/INIS/Pages/publication-annual-review-2017>

Recommendation: Persons with a residency status who are exiting Direct Provision should have access to a Homeless Housing Assistance Payment (HAP) in line with Section 2 of The Housing Act 1988 (as amended).

As of the 28th April 2019 the number of people residing in direct provision accommodation with a status was 686²⁸. Once a person has received a residency status they are required to leave Direct Provision as that accommodation is no longer available to them and the provisions in the Reception Conditions Directive no longer apply. Residents are informed of this in writing by the RIA once residency has been granted. People moving from direct provision face additional hurdles in securing housing in an already squeezed housing market. They will not have a history of renting in the State and may be without references. Once a permission is granted, residents can apply for a relevant Social Welfare payment, for example Job Seekers Allowance or One Parent Family Benefit. However, they will only receive the same rate of payment as the daily direct provision living allowance of €38.80. This places an additional barrier on those with residency as oftentimes they cannot afford to travel to view properties that are available to rent. Given the current housing shortage, especially in urban areas, residents with a permission cannot afford to travel outside their immediate area to find private rented accommodation. This severely limits their chance of securing housing. Receiving the full allowance would greatly assist residents in their search for accommodation, help them to secure accommodation quicker and move out into the community. This in turn would free up capacity within the centres and reduce the need for the use of emergency accommodation for asylum seekers entering the process.

There is great uncertainty and a lack of consistency amongst Local Authorities when it comes to assessing the eligibility of those with a residency status for what is known as a Homeless Housing Assistance Payment or Homeless HAP. Homeless HAP was introduced in recognition of the unique challenges facing homeless families in securing accommodation. It provides a

²⁸ Minister of State for Immigration, Integration and Equality, David Stanton TD, Parliamentary Questions, Written Answers, 08 May 2019, 500

suite of supports, including deposits to secure accommodation, access to the Place Finders Service, which is a targeted service provided by Local Authorities to assist families to secure accommodation. Those who qualify for a Homeless HAP can also be entitled to up to a 50% increase in rent levels in the Dublin area. The qualifying condition for access to Homeless HAP is that the applicant must be considered homeless. Many Local Authorities do not consider those with a permission and a written requirement from the RIA to leave the direct provision centre they are occupying, as homeless. Homeless is defined under Section 2 of the housing Act 1988 as:

A person shall be regarded by a housing authority as being homeless for the purposes of this Act if:

(a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or

(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in *paragraph (a)*, and he is, in the opinion of the authority, unable to provide accommodation from his own resources.

As those with a status are required by the RIA to vacate the accommodation, it is our view that people exiting direct provision can be deemed to be *de facto* homeless as they cannot remain in occupation of the accommodation. Additionally, we would also contend that direct provision can be considered an “institution” under section 2(b) and given the fact that residents subsist on a weekly payment of €38.80 per week residents with status will, in all likelihood be unable to provide accommodation from their own resources. We therefore submit that people leaving direct provision meet the qualifying criteria and should be considered homeless by Local Authorities and granted access to the Homeless HAP. This would greatly assist those leaving direct provision with a status to secure accommodation.

13. Alternative Reception Systems

Recommendation: On a medium to long-term basis, the State should move from institutional direct provision style accommodation to own-door, self-contained, not-for-profit model of reception.

Our current model of reception has faced widespread and sustained criticism and there is a general recognition that it has to change, The Department of Justice have continuously defended the model and have stated that no other model has been proposed. We would encourage the Government to proactively explore other models of reception and direct engagement with housing experts in this regard would be a welcomed first step.

We agree with both the Refugee Council and the Irish Council for Civil Liberties contention that responsibility for the provision of reception to protection applicants should not be under the aegis of the Department of Justice. Their expertise does not lie in the provision of housing and social care and brings with it a culture of control and containment. The current crisis in our Direct Provision System has accommodation provision at its core and we need to adapt a housing model of provision of reception. The Reception and Integration Agency (RIA) is currently responsible the procurement and overall administration of State-provided accommodation and ancillary services for applicants for international protection. Their website, however, makes it abundantly clear that RIA is not directly responsible for the delivery of services such as health, education and welfare to asylum seekers and refugees or their integration needs. What is required is a cross-departmental or whole of government integrated approach to the delivery of reception to protection applicants as the needs that need to be addressed and provided for are multifaceted and cut across a number of Government Departments. A new entity should be established which could be attached to the Department of Housing the Planning and Local Government, and could include Tusla, the Department of Social Protection, the HSE, and The Department of Enterprise and Jobs. Similar approaches are commonly employed by other jurisdictions such as Canada and Australia to address key social issues. This would ensure the coordinated integrated response to the reception needs of protection applicants. As the Irish Refugee Council have suggested, the existing budget for

Direct Provision, which may now reach €100 million, should be ringfenced and transferred to the general housing budget.

Proactive steps need to be taken to move from an institutional for-profit model of reception. As priority the current procurement model with its focus on large institutional type settings must change to one that allows for smaller housing self-contained units. Contract duration and lead in times need to be longer to attract not for profit actors like Approved Housing Bodies who have huge expertise in the provision of housing and social care to meet the complex social needs of protection applicants that are currently not been met by private for profit providers. All accommodation provided should be own door self-contained accommodation situated in the community and must respect and vindicate the human rights of protection applicants.