

Nasc submissions to the Direct Provision Advisory Group

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Overview:

We welcome the opportunity to engage with the Advisory Group and provide a shortlist of the key issues Nasc believes should form part of the Advisory Group. A copy of Nasc's submissions to the Joint Oireachtas Committee which comprehensively sets out the main issues/challenges with the current process can be found [here](#).

While this document contains short-term suggestions aimed at mitigating current defects in direct provision and overcoming accommodation shortages, it is our position that direct provision in its current form should end and we should begin to move to an alternative, sustainable model over a defined timetable. The challenges and recommendations offered in this paper are reflective of the issues we see in our legal service.

The Advisory Group has a unique opportunity to articulate, for the first time, the larger objectives of the Irish protection and reception systems. Is it simply to fulfil our legal obligations under the Refugee Convention, the International Protection Act 2015 and the recast Reception Conditions Directive or, is there scope to be more ambitious and frame the discussion of the Advisory Group around how we can best achieve the effective integration and social inclusion of asylum seekers from the date of arrival? We believe that this Advisory Group presents an opportunity to move beyond repairing what Nasc believes to be an unsustainable system, to creating a reception system designed with the needs, dignity and human rights of international protection applicants at its heart.

Ireland's current Migrant Integration Strategy excludes applicants for international protection. This results in the absence of a clear framework to achieve integration and social inclusion for people seeking asylum in Ireland. This policy position, by its very nature, excludes the role that local communities can play to effectively engage with asylum seekers and to support positive and effective integration. This, in our view is a fundamental flaw in our integration policy which creates a vacuum which creates a reactive as opposed to a proactive approach to integration. It embeds the notion that asylum seekers are outside of Irish society unless and until they receive a residence permission or refugee status.

We are also conscious that this Advisory Group has been constituted at a time when there is a crisis in accommodation for those entering our State to apply for protection. It is arguable that emergency accommodation and direct provision have never been so oversubscribed or so controversial. It is impossible to divorce consultations about the reform of our reception and protection systems from the real urgency to find short-term accommodation solutions however, it is imperative that this does not become the sole lodestar for this Advisory Group.

Short term challenges:

a. Community engagement/ liaison & opening new centres:

The present reliance on emergency accommodation has been exacerbated by the repeated failure in attempts to open direct provision centres in locations across the country. One frequently cited reason for local opposition has been the 'lack of engagement or consultation' with local communities prior to centres being formally announced or opened. Ignoring or poorly managing genuine concerns about infrastructure and resources including school places, medical care, dental care, employment and accommodation, can have a serious and sustained impact on the way in which both asylum seekers and direct provision centres are viewed. It is imperative that genuine and good faith concerns are listened to at the outset of the process, and reassurances about resources are provided.

There is potential to look at examples of good practice in combatting negative community responses in different sectors. One case in point is that of wind energy. In the face of costly and lengthy delays

arising from local opposition to proposed turbine farms, a Code of Practice was developed for community engagement. The project proposer is obliged to nominate a 'Community Liaison Officer' and the engagement with the community forms part of the planning process. During the engagement process a strong emphasis is also placed on the economic opportunities that development can bring.

"The promoter shall submit an annual report to the local authority of all communications and information provided, queries received, responses to same and recording if these are ongoing or resolved, which will be published on a dedicated register available online. A local Authority will take into consideration their performance of these obligations when deciding on new applications by the promoter elsewhere in the county or on repowering applications."¹

A similar approach could be taken here with engagement with the local community required as part of the tendering process. Those who are considering tendering could be encouraged to talk to schools etc about resource needs, source supplies locally from local businesses, connect to local volunteer organisations etc. and build support from key local stakeholders in advance of a decision being made on the tender.

b. Combatting racism and challenging disinformation

It has become evident that there is now a 'playbook' for opposing new emergency or direct provision centres which has been refined over the past 12 months and is being replicated at each new proposed location. This type of organised anti-asylum seeker/migrant rhetoric is relatively new to Ireland and we need to examine how we can regain control of the narrative and actively prevent this disinformation from taking hold, particularly in local communities.

In the Reuters Digital News Report (Ireland) 2019², 37% of the sample "agree that immigration threatens our national culture." We cannot passively rely on the media to correct disinformation, given that an increasing number of young people rely on social media as their main form of news information. Currently, both the State and civil society are responding in an ad hoc, reactive manner and sometimes disjointed manner to this threat. Civil society needs to be adequately resourced to work with local communities in a proactive and comprehensive manner and to combat disinformation online. This may be through targeted digital media adverts, monitoring Facebook or other social media pages which promote hateful rhetoric. While this may not be within the scope of this Advisory Group, it necessarily forms part of the environment in which this discussion is taking place.

c. Emergency Accommodation:

The use of emergency accommodation is deeply problematic, and we welcome the government's commitment to ending the use of emergency accommodation as soon as possible. Emergency accommodation has proved to be costly in both financial and human terms. The stories that have emerged from emergency accommodation centres of asylum seekers being moved from their accommodation for weddings (see [here](#)) to anecdotal accounts of being segregated from hotel guests or patrons or having curfews imposed by management at the centres, have rightfully attracted widespread criticism.

For so long as emergency accommodation is being used, we need to ensure that before anyone is allocated accommodation in emergency accommodation, they have been issued with a Temporary

¹ Department of Communications, Climate Actions and Environment, Code of Practice for Wind Energy Development in Ireland, 21 December 2016 available at

<https://www.dccae.gov.ie/documents/Code%20of%20Practice%20community%20engagement.pdf>

² Kirk, Culloty, Kearns, Suiter, Reuters Digital News Report (Ireland) 2019, June 2019 available at

<https://www.bai.ie/en/increase-in-number-of-irish-media-consumers-concerned-about-fake-news-on-the-internet-reuters-digital-news-report-2019-ireland/>

Residence Card (TRC), a PPS number and ideally a medical card. Several cases have been brought to Nasc's attention of international protection applicants who have been not been issued with TRCs or PPS numbers prior to being moved and who have not been able to access their Daily Expenses allowance (weekly €38.80 allowance) or medical services. In one such case, the person contacting us was diabetic and did not have access to medication. If this were resolved, this would have a material impact on the experience of emergency accommodation.

It is worrying to us that the Department of Justice have been unable to provide data on the numbers of international protection applicants who have yet to receive TRCs or PPS numbers.

d. Failure to Implement the Vulnerability Assessment

Ireland is currently breaching its obligations under the recast Reception Conditions to conduct assessments to identify special reception needs for international protection applicants and assign accommodation and other resources accordingly. Currently, a basic medical needs assessment is carried out in some instances however it fails to encompass the scope of the assessment required under Article 21 of the recast Reception Conditions Directive. Nasc has been contacted by several international protection applicants who have been assigned accommodation that is inappropriate to their needs. These failures impact on the health and wellbeing of asylum seekers.

In one such instance, an applicant for international protection was moved from one accommodation centre where they had access to counselling for sexual violence to another centre which was far removed from any sexual violence services. In another case a pregnant woman who was under the care of perinatal psychiatrist for mental health difficulties and was required to attend at a maternity hospital regularly for scans due to other issues with the pregnancy was moved to a centre on the other side of the country where the nearest maternity hospital was an hour away and did not have a specialist perinatal mental health service.

The High Court has already shown its willingness to impose damages where the State has failed to meet the material reception needs of international protection applicants.³

e. National Standards for Direct Provision centres

For almost two decades now the direct provision system has operated without independent oversight and regulation. The current inspection regime is limited to an assessment of compliance with the providers' contractual arrangements e.g. food hygiene inspections. The quality of accommodation provided and the physical conditions in centres vary greatly from centre to centre. It varies from own door accommodation to several adults sharing bedrooms.

The National Standards, a key recommendation of the McMahon Report, have been published. The National Standards commit to the introduction of a national and independent inspectorate to carry out inspections against the National Standards. However, this has yet to occur. A clear roadmap for implementation is needed. NGOs have widely called for the Health Information and Quality Authority (HIQA) be given this remit and resourced accordingly. Legislation would be required to expand HIQA's remit.

f. Processing times for protection applications

The international protection process has contributed to the dysfunction in the reception system. At the time the International Protection Act 2015 was enacted, it was projected that first instance decisions would be issued within 9 months. However, although the average processing times have

³ X & Anor v Minister for Justice and Equality [2019] IEHC 133

fallen in recent months, it remains significantly higher than the 9 month goal. We also continue to see significant delays, of six months and over, in the time between receiving a positive recommendation from the International Protection Office and a grant letter from the Minister. It is unclear why such delays are taking place, and it appears contrary to previous assurances by the Minister for Justice and Equality that these delays were being addressed.⁴

Long Term Challenges:

a. Decentralisation of the International Protection Office

The process of applying for international protection is an inherently stressful one for the applicant. The applicant has very little access to reliable information as access to legal advice through the Civil Legal Aid System is so heavily circumscribed because of funding restraints. Applicants have informed us that the logistics of having to travel to Dublin for interviews, to obtain TRC card renewals or to consult with legal representatives can be time-consuming and stressful. It may take several hours, or in some cases an overnight trip, to travel to Dublin for an interview. Applicants are often required to pay upfront for bus or train fares and then seek reimbursement on production of the used ticket. This is not always affordable particularly for those who need to travel multiple legs of a journey to get to their destination. The issue of finding appropriate childcare arises while attending intending interviews, particularly for single parents who need to overnight in Dublin.

We understand that the International Protection Office are holding interviews in decentralised locations including Cork and Tipperary already. We would recommend that this practice be rolled out further to more locations across the country. Two models that could be looked at here are the Residential Tenancies Board or the Social Welfare Appeals Office, which travel widely across the country on a very regular basis. There is no reason why this could not be replicated in protection process. There also appears to be no reason why TRCs could not be renewed and issued by post to people residing outside the Dublin area.

b. Alternatives to Direct Provision

As noted at the outset of this paper, Nasc believes that the system of direct provision should end. We understand that this may take time to achieve and any new system must be carefully designed to ensure we create a reception system designed with the needs, dignity and human rights of international protection applicants at its heart. A 'whole of government' approach is required to ensure that the needs of children, education needs, health and welfare needs etc are met.

Nasc believes that it is fundamental to the dignity of international protection applicants that they should have access to own-door accommodation, whether that is in a small residential setting or independent accommodation. It is important that it is acknowledged that there is no one size that will fit all in terms of accommodation needs. We also need to ensure that applicants for international protection have access to English language classes, medical services and other supports and that the location of accommodation should be decided assessed to ensure access to these services.

Under the recast Reception Conditions Directive, we need to be able to respond to the different needs of international protection applicants. In some circumstances, residential accommodation settings may be more appropriate. We hear from some elderly international protection applicants or international protection applicants who have disabilities that living in a residential setting with

⁴ Minister for Justice and Equality, Deputy Charlie Flanagan, Parliamentary Questions, Written Answers, 08 May 2019, 499,

additional supports available would be optimal for them, particularly at the beginning of the process while they become accustomed to living in Ireland. We recommend a blended approach to accommodation based on the needs of international protection applicants.

The current model of procurement, which is weighted towards private, for-profit, large-scale accommodation providers should also be re-examined. We should incentivise not-for profit, housing providers to become involved in the provision of accommodation services and begin to move away large congregated settings. Between January and October 2019, the State spent in excess of €18 million on emergency accommodation for international protection applicants. However, we have yet to invest in providing alternative models of accommodation. Nasc recommends that consideration should be given to purpose-built state-owned accommodation, with requisite services and supports to be provided in partnership with expert bodies, both statutory and non-statutory.

c. Extension of the Right to Work

Nasc welcomed the decision by the Minister for Justice and Equality to introduce a broad right to work for international protection applicants following the NHV case⁵. 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. Many of these people remain in the protection system a year later and still do not have the right to work. Nasc recommends that the Regulations be amended to provide for a grandfather clause which would allow this cohort access to the labour market.

⁵ NHV v Minister for Justice and Equality [2017] IESC 35