

# Second Meeting of the Working Group on the Protection Process

Wednesday 19 November 2014, 11:00 am

## Minutes

<b>Attendees:</b>	Dr Bryan McMahon Aidan O'Connor	Chair Dept. Of Environment, Community & Local Government
	Brian Power Barry Magee Caitriona O'Brien Dr Ciara Smyth Dan Murphy Eugene Quinn Fiona Finn Greg Straton Jackie Harrington Madeleine Halpin Mary O'Sullivan Martin McDonald Michele Clarke Noel Dowling Paddy Duffy	Dept. Of Education & Skills Refugee Appeals Tribunal, Chairman Dept. Of Education & Skills Lecturer in Law, NUI Galway
	Patrick Lynch Reuben Hambakachere	Jesuit Refugee Service Ireland NASC SPIRASI Dept. Of Social Protection Tusla Dept. Of Social Protection Refugee Applications Commissioner Dept. Of Children & Youth Affairs Dept. Of Justice & Equality Dept. Of Justice & Equality
	Ronan Gallagher	Health Service Executive IRC Core Group of Asylum Seekers and Refugees Dept. Of Public Expenditure & Reform (DPER)
	Sophie Magennis Sue Conlan Tanya Ward Tim Dalton	UNHCR Irish Refugee Council Children's Rights Alliance
<b>Apologies:</b>	David Costello  Michael Kelly Caroline Daly	Office of the Refugee Applications Commissioner Dept. Of Justice & Equality Office of the Attorney General

## Documents:

- 2013 Reception & Integration Agency Annual Report
- A sample of a generic state owned centre contract
- A sample of a generic privately owned accommodation centre contract
- RIA statistics on direct provision centres
- Proposal by Chairman on how to engage with protection applicants in direct provision
- Consultation with DP Residents – JRS Ireland Proposal
- Brief outline of high court judgment of 14 November 2014 in 'CA and TA Judicial Review as prepared by Gareth Wells, Chief State Solicitors Office
- Asylum Procedures (and associated legislative references) and a schematic of the process

Note: An Information note from the Department of Education and Skills setting out the position in relation to education provision for person in the protection process referred to during the meeting was circulated in soft copy following the meeting.

### **Item 1 Minutes of Previous Meeting**

The minutes were agreed subject to two amendments arising from comments from UNHCR and JRS.

### **Item 2 CA and TA High Court Judicial Review Judgement**

#### **Presentation by Noel Dowling, Principal Officer, Reception and integration Agency**

##### ***Key points of presentation:***

- Brief outline prepared by Gareth Wells, Chief States Solicitors Office and circulated to the Group relates to the unapproved judgment and is a summary of the judgment and does not constitute legal advice
- The approved version will be published on the courts.ie and can be circulated to Members at that time
- Two issues raised in the proceedings, viz relating to the right to work and the UN Convention on the Rights of the Child were not decided as they are the subject of separate legal proceedings
- Judgment identified **three main grounds** from the applicants' claim:
  1. Did direct provision breach the applicants' fundamental human rights?
  2. Is the direct provision scheme as an administrative scheme in breach of Article 15.2.1 of the Constitution?
  3. Is the direct provision allowance ultra vires the Social Welfare Consolidation Act 2005?
- In relation to 1. the Court found that direct provision not to be a form of inhuman or degrading treatment but stated that it reached its conclusion on the basis on which the case was pleaded – the applicants not having submitted oral evidence. The Court found some of the Houses Rules unlawful including the signing in procedures; notification of absence from the centre; right of management to conduct unannounced inspections of rooms; and the prohibition on guests in private quarters. RIA will consider these finding and take them into account. RIA added that the House Rules were not dictated by RIA but were drawn up by Working Groups in 2003 and 2010 which included NGO representation. The Court also found that an independent complaints handling procedure was required. RIA noted that the current procedure has been a significant bone of contention with RIA as final arbiter and must be addressed quickly – the key issue being one of practicality (including cost) rather than principle - who or what would provide the necessary independence – suggestions from the Group would be welcome.

- In relation to 2 the Court rejected the applicants' arguments that the Government had acted unlawfully by operating direct provision without a legislative basis
- In relation to 3 the Court found that the direct provision allowance of €19.10 per adult and €9.60 per child is legitimate and not ultra vires the Social Welfare Consolidation Act, 2005.

### ***Points arising from discussion of Members***

#### ***Other summaries of judgment***

Reference was made to other summaries online e.g. Liam Thornton - Direct Provision in the Irish High Court: The Decision

<http://humanrights.ie/immigration/direct-provision-in-the-irish-high-court-the-decision/>)

#### ***Nature of judgment/manner in which case pursued***

IRC stated that the case turned on its facts and was judged on how it was pursued - the Court had disallowed the admission of two reports on the basis that they did not constitute oral evidence - one from the ESRI and another from Geoffrey Shannon, the Special Rapporteur for Children. IRC added that it was the view of the judge in the case that the system may be unlawful but not on the facts of the case as presented.

Dr Ciara Smith suggested that the judgement gives an indication of how future cases could be pursued - it was not necessarily a negative judgement and some positives could be taken from it.

RIA mentioned that the case was not the first but the third, the first two having been withdrawn by the applicants themselves. The case was given priority by the Court and such priority might not be given to further cases.

#### ***Appeal***

IRC indicated that no decision had yet been taken on whether the judgment would be appealed.

#### ***Complaints procedure***

- The IRC stated they that they have made suggestions in the past and would submit a report to the Group through the Secretariat.
- Children's Rights Alliance said that in devising a new complaints procedure it would be useful to look at good examples such as Tusla, the Ombudsman for Children, HSE etc. and how/whether they could work for asylum seekers. The Chair requested CRA to compile a list of such examples and forward it to the Secretariat.
- IRC Core Group stated that one of the difficulties with the current procedure is that a complainant is not consulted before a decision is taken on the complaint.

#### ***How to proceed***

The Chair stated that whatever the uncertainties about the judgment there were some certainties - direct provision is not ultra vires and the House Rules and the complaints procedure must be addressed. In relation to the House Rules and guests not being allowed in private areas the judgment finds that this is disproportionate but does not state where the balance should be struck - can it mean that anyone can enter any room at any time of the day/night? This issue must be teased out and should be discussed by the appropriate meeting formation.

Mr Dalton suggested that it was to be assumed that the Court was drawing an analogy hotels or apartment complexes.

The Chair stated that he did not think there should be no rules on the issue of guests in private areas but that the rules should be proportionate and appropriate.

Mr Murphy referred to the judgment which found the rules disproportionate to their objective – what was that objective – health and safety? Any review needs to start from the objectives. The Chair agreed that whatever changes are proposed must be appropriate to right for the accommodation centres and ensure the safety of residents – referring to previous media reports of some prostitution - the Chair suggested that no rules could create a risk of exploitation. Any recommendations must be pragmatic; the group must use a common sense approach.

In response to a suggestion from JRS it was agreed that the House Rules would be discussed by the Theme 1 meeting format. The complaints procedure will also fall to be considered under Theme 1.

### **Item 3 Discussion and agreement on a general approach to engaging with**

- a) protection applicants in direct provision**
- b) protection applicants outside direct provision**
- c) providers of services in direct provision including staff**

#### **a) protection applicants in direct provision**

The two proposals before the Group were discussed. The Chair presenting his proposal which he indicated had been prepared by the D/JE at his request said the proposal which was based on the regional breakdown used by RIA for its interagency meetings and which identified 9 accommodation centres as the venues for the regional consultative sessions was intended as a pragmatic approach; advance notice should be given of the sessions; NGOs active in the region could assist in choosing up to 30 residents to participate in each session; the 30 residents would need to be representative of the centres in terms of size etc. The Chair said that in his experience applicants wish to discuss their personal cases – it would be important to make it clear that the Group was charged with considering general matters.

JRS stressed that the Group was being closely watched by applicants and the consultations should happen in a timely manner. Referring to their paper JRS suggested the residents could be asked to discuss the challenges they face, their suggestions for improvements, their experience of the process; also suggested that a template could be drawn up for written submissions to reflect the terms of reference. JRS outlined that its proposal was based on 4 regional sessions with 64 residents in total; and that participants should be representative of all family types i.e. single women, single men, lone parents, families etc. The proposal also envisaged oral submissions to the plenary group.

There was agreement that the consultation process would involve written submissions, regional consultation sessions and visits to centres and oral submissions to a plenary at a later stage.

In terms of the venue for regional consultation sessions it was agreed that some meetings would be held in accommodation centres, others would be held in buildings used by the local NGO or similar organisation with the decision being taken on a location by location basis.

On the question of selecting applicants to participate in the oral process it was suggested that local NGO groups /residents group in accommodation centres could facilitate in the selection of persons or groups.

UNHCR said it was important to be respectful of voices which have been documented already i.e. separated children, women in centres. The group should collate previous research and review them.

Spirasi suggested that it could arrange a special meeting with victims of torture living inside and outside direct provision in a safe environment.

It was suggested that the Secretariat could bring forward a revised proposal taking account of the two papers. IRC proposed that it would work on a proposal in conjunction with JRS and Nasc.

### ***Children***

Tusla (also Dr Smyth, IRC) called for a special interest group to be established to consider issues relating to children as they have particular needs. UNHCR suggested that in order to maintain a focus on children each of the meeting formats/ subgroup should include a member with a special interest in children. Following a suggestion from the D/CYA it was agreed that members with an interest in children and with special reference to the UN Convention of the Rights of the Child and the Child Care Act 1991 would meet and develop a proposal.

### ***Letter to some Members***

It was noted a letter had been received by some Members (7 from a show of hands) calling for them to resign and allow protection applicants to sit in their place. It was agreed that the Working Group would not respond itself but that Members could respond. The letter was signed by four individuals and was

accompanied by a petition. IRC stated that some of the residents who were asked to sign the petition attached to the letter were not aware of the full content of this letter and on becoming aware of the content did not wish to be associated with it. In view of this any response should be addressed to the four main signatories.

### ***Report from the Rape Crisis Network (RCN)***

A report sent to members of the Working Group from the RCN and in particular the fact that it referred to sexual harassment of residents by staff of accommodation centres was raised. Mr Dalton/Spirasi referred to the RCN's desire to meet the Group. RIA stated it had not been made aware of any such allegations and took all such matters very seriously. The Chair agreed that such allegations were not a topic for the Working Group but the Gardaí.

### **b) protection applicants outside direct provision**

D/JE informed the Group that it had preliminary figures of persons within the protection process but living outside the direct provision system which he would circulate to the Group once they had been verified of persons. The preliminary figures pointed to approximately 3,800 persons, (3,300 adults and 500 children) but it was not possible to say definitively that they are living in the State. Of this number 1,400 have a subsidiary protection claim only a majority of whom have not responded to correspondence issued to them in the last year. D/JE suggested that other Departments may be in a position to provide numbers of protection applicants outside of direct provision but D/ES stated that their Department did not collect that type of data.

The Chair asked how the Group could make contact with this cohort of protection applicants suggested an advertisement in the national paper. Nasc suggested speaking to residents who have friends in the community still in the protection process. IRC suggested that it could arrange a meeting with Crosscare, and they could invite protection applicants living in the community to attend. IRC Core Group suggested making contact with the different churches/pastors/church leaders, and they could inform applicants living in the community of the working group and their remit.

In terms of the type of response the Group could expect Nasc stated that if they were not subject to a deportation order they would be likely to engage.

### **b) providers of services in direct provision including staff**

RIA suggested that contractors and managers could be invited to make a presentation to a plenary session at a later stage in the process.

Spirasi suggested that it would be useful to meet with persons working in the centres e.g. kitchen and household staff, persons with regular contact with residents such as CWOs, GPs and the wider circle of professionals, the RLS, the Health Screening Team in Baleskin etc.

Children's Rights Alliance suggested getting an expert to speak on children e.g. Geoffrey Shannon, Special Rapporteur on Child Protection.

The Chair also suggested that it would be useful to hear from mental health professionals working with protection applicants.

#### **Item 4, Background/factual information required by group.**

D/JE indicated that it would provide a report on the number of persons within the system and the stage at which they are at. In response to an enquiry from Spirasi, the D/JE undertook to provide the copies of the documents submitted to the round table discussion.

D/ES referred to the information note that it had prepared setting out the position in relation to education provision for person in the protection process including in relation to access to third level [Note: paper not received in sufficient time to circulate in advance of the meeting]. D/ES said that in seeking to assist those in the protection process access third level there were a number of considerations to be taken into account including the cost to the Exchequer – D/PER would need to be in a position to commit additional resources if recommendations in this area are adopted. In addition, the comparative position as against the UK and other EU Member States would need to be considered eg UK approach not dissimilar to ours – asylum seekers charged as international students and can be charged the full cost. Changes in one EU Member State can impact on another Member State, therefore consistency any proposals with immigration policy will need to be considered. Dr Smith said that she would resist the suggestion that easing the fees situation for protection applicants would act as a pull factor unless some quantitative evidence was available. It was agreed that this issue required further discussion.

UNHCR suggested that any papers submitted to the Group should go through the Chair and that the person submitting it should make clear whether the document was intended for circulation to the whole Group, the sub-group etc. UNHCR also said that the priority should be to identify what the problems are in the system and suggested that if any of the Government Departments/Offices had data or information pertinent to the work of the Group they should provide it as soon as possible. UNHCR noted that that there was a lot of information already compiled and an outline document should be created with hyperlinks and a brief explanation to the said documents.

D/SP stated that it was finalising a paper on the social welfare supports available to protection applicants (as agreed at the first meeting) and would submit this to the Group. D/SP gave some background to the supports as follows:

- asylum seekers are not generally eligible for social welfare payments as they do not satisfy the habitual residence condition,
- the direct provision payment administered by D/PS was introduced in 2000 - £15.00 per adult and £7.50 per child and was in line with the hospital comfort payment,

- in 2013 the Department paid out €3.8 million (€73,000 per week) in the direct provision allowance and €1.1 million in exceptional needs payments i.e. clothes, prams, buggies etc. to persons in direct provision,
- other payments made to residents in direct provision included, the back to school clothing allowance paid between July and September- €100 for a child in primary school and €200 for a child in secondary school is the current rate of the allowance. Payment totalling €136,000 was made to persons in direct provision in respect of this allowance in 2013,
- the hospital comfort payment is now, depending on the circumstances, between €30.00 and 35.00 per week, although this has changed as some social welfare payments were previously not paid while a person was in hospital .

JRS referred to work that it had done on options for increasing the direct provision allowance – basing an increase on the CPI would result in a payment of €26.42 per adult while using the % change to social welfare payments would lead to €38.74.

D/SP also stated that the Government had announced, as part of Budget 2015, that they would be paying a Christmas bonus of 25% to persons in receipt of a long term social welfare payment i.e. payments being made for 15 months and over. Government has also approved payment of Christmas bonus for persons in receipt of a direct provision allowance payment who will receive a double payment, which will be paid in the first week in December.

The Children's Rights Alliance queried why child benefit was taken from asylum seekers. D/SP explained that asylum applicants already in receipt of the benefit at the time that the habitual residency requirement came into being retained their entitlement but that the entitlement was removed for future applicants.

#### **Item 5 Meeting formats – membership**

The Chair requested Members to contact the Secretariat as soon as possible indicating which meeting formations (Theme 1, 2 or 3) they (or a nominee) wished to attend. The Chair also emphasised that there was no issue if an organisation wished to be represented on more than one meeting formation. In response to a query as to whether a nominee to one of the meeting formations could be from outside the organisation the Chair said this could not be permitted - the organisations represented on the Working Group had been selected by the Minister and no additions could be made.

He requested all Members to engage in a pro-active manner in the deliberations of the various meeting formations, and for everyone to have their voice heard. He also requested that procedures should be informal and that where consensus could not be reached on an issue, all options should be brought to the Plenary – the meeting formations are to report to the Plenary which is the decision-making body. The format of the meetings of the Theme 3 Subgroup will be decided by the Chair of the Subgroup.



**Item 6 Meeting Schedule**

In relation to the indicative schedule of meetings previously circulated by the Secretariat the Chair requested that any conflicting dates should be discussed with other Members of the meeting formats/subgroup and brought to the attention of the Secretariat.

**Item 7 AOB**

None.