

## **Nasc Proposal on RIA House Rules and Complaints Procedure**

### **Introduction:**

Nasc is an NGO based in Cork working to respond to the direct needs of all migrants, including refugees, asylum seekers and their families. Nasc was founded in 2000 in response to the introduction of the Government's policy on dispersal and the establishment of the Direct Provision System which resulted in an increase in the numbers of asylum seekers moving to Cork. At that time there were no services in the city to address the needs of this vulnerable population. Nasc, through our legal clinics, provides information, advice, and support to over 1,000 migrants and their families annually living in the Cork area. We have over fourteen years experience working in the immigration and protection systems, and our contribution to this process is directly informed by the issues that present in our legal clinics and through our direct work with asylum seekers at all stages of the process.

Nasc welcomes the opportunity to offer a proposal to reform aspects of the Reception and Integration Agency's (RIA) House Rules and Procedures as a part of the scope of the work to be undertaken in Theme 1 of the Working Group on the Protection Process. Aspects of the House Rules, including: signing in procedures, notification of absence from the centre, unannounced inspections of rooms, guests in rooms and the complaints procedure, were recently deemed unlawful by High Court Justice Mac Eochaidh in his decision in *C.A. and T.A (a minor) v Minister for Justice and Equality, Minister for Social Protection, the Attorney General and Ireland* (14 November 2014). This makes them a high priority when looking at overall improvements to the living conditions in direct provision.

Although we believe significant improvements could be made to the RIA House Rules and Procedures overall, and specifically in the areas outlined by Justice MacEochaidh, we will focus the majority of the recommendations of this proposal on the introduction of a fair and objective independent complaints procedure.

### **Analysis of the High Court Judgment:**

This High Court decision is a landmark ruling as it is the first time that State treatment of asylum seekers has received such a degree of judicial scrutiny. The conditions imposed upon asylum seekers residing in direct provision centres through the Reception and Integration Agency's (RIA) House Rules were scrutinised in depth by the Court. The judge found in favour of the applicants' arguments in relation to some of the requirements contained in the House Rules that asylum seekers are required to comply with when living in direct provision accommodation centres.

The Court found that the bedroom of the asylum seeker in this case constituted their home, as this is how it is defined in the House Rules, and was therefore protected by the Irish Constitution and the European Convention on Human Rights. The judgement contains what could be interpreted as

damning findings in relation to how the daily lives of asylum seekers are monitored by the Reception and Integration Agency. The judge found that unannounced room inspections, daily sign-in and notification of intended absence requirements along with the complete ban on having guests in one's bedroom were found to be disproportionate and unlawful.

The Court's findings in relation to the RIA House Rules can only be welcomed as it finally vindicates the views that many asylum seekers have continually expressed. Over the years, Nasc has heard many complaints from residents about how onerous the sign in requirements are and the feeling that it produces, as if the resident is in a prison. We have also heard cases where the documentation that needs to be filled out to request an absence is withheld from a particular resident when they do not get on well with a member of staff. Nasc has assisted numerous asylum seekers who have become homeless as a result of their failure to comply with the daily sign in requirements and have heard first hand from asylum seekers over the years about how isolated they feel within the current system due to the current policies. This is exacerbated by the feeling that there is no privacy, which comes from the knowledge that one's room can be inspected by staff at any time without warning. The issue of guests is one that residents raise on a regular basis – the restrictions on having guests, the reportedly arbitrary reasons for denying access to guests. Residents are generally made to feel that they have no control over or rights around their personal lives. Many of these complaints are never officially made, as there is little faith amongst residents in the current complaints mechanism, which will be discussed in more detail below.

What becomes clear from the issues we hear from residents is that there is no consistency, either within a particular centre or across centres, in the treatment of residents and the application of the House Rules. In addition, through interactions with residents and outreach to centres in Cork City, it has become clear to us that there is very little fundamental knowledge or awareness of the House Rules amongst residents. Despite claims from centre management that booklets are being given to residents upon entry into the centre, there does not appear to be any mechanism in place for ensuring that residents are cognizant of what the rules and procedures are in any substantive way. While it could be the place of NGOs to contribute to residents' knowledge about their rights, in our experience, access to the centres by NGOs is limited by RIA; we must get permission from RIA to access the centres, get approval for what information we give people, and are supervised by centre management when conducting outreach sessions. And this permission has not been readily given. Residents' ability to access NGOs who wish to visit the centres to provide support and ensure residents' rights are protected and vindicated must be ensured.

No matter what changes are made to ensure the legality of the House Rules, oversight of how the rules and procedures are applied across the reception system is essential, as is a mechanism for ensuring that real and transparent awareness of the rules and how they impact residents are made available.

### **Issues with the Existing Complaints Procedure:**

The Court also found that the current lack of an independent complaints mechanism was unlawful. Justice Mac Eochaidh stated that it was not acceptable that RIA would be the final arbitrator in a dispute between residents in their homes and a commercial accommodation provider, as RIA is the author of the House Rules and in a commercial relationship with the provider. This is an extremely welcome development and something that Nasc has long advocated for. Independently and as a part of the NGO Forum on Direct Provision, Nasc has long highlighted the failures in the existing complaints procedure and called for a complaints mechanism to be independent of RIA.

In our experience many asylum seekers have been afraid or unwilling to voice any complaints about their treatment in direct provision. If an issue affecting a resident's security or health and welfare arises then the resident has no option but to raise it first with the management of the individual centre and then with RIA. Asylum-seekers are reluctant to complain and this reluctance stems more often than not from a belief that they would be targeted by the management of the centre or RIA. Another reason we hear that residents do not complain is the fear that it may somehow negatively impact their protection application or result in some other form of punishment, such as a punitive transfer. We are aware of several instances of punishment or punitive transfers occurring, the most recent public example being the transfer of several residents after a protest in Mount Trenchard in Limerick this past year. This is despite the RIA House Rules stating that a complaint will not in any way relate to a protection application or result in punishment. These issues only further substantiate our contention that the vast majority of residents are not fundamentally aware of their rights under the House Rules.

In addition to residents' fears preventing them from making complaints, in our experience, the complaints system is in and of itself dysfunctional. Residents report to us that they see no reason to complain because they believe nothing would come of it, and having supported residents in making complaints to RIA, we have noted several cases where no resolution was offered. When we have supported residents in making complaints we have found a number of cases where centre management and RIA are not following their own complaints procedure. For example, if centre management make a complaint against a resident, the resident should receive a copy of the complaint and the opportunity to respond. Serious complaints against a resident can result in a transfer or expulsion; clients have reported to us not receiving this documentation thus giving them no avenue to defend themselves. Further, a real opportunity to make or respond to a complaint must be vindicated; that is, RIA must make an effort to ensure that when giving a resident an opportunity to make a complaint or to respond to a complaint made against them that that opportunity can be effected and realised. If a resident cannot read or write in English, the entire complaints procedure as it currently stands is effectively useless. In addition, we have supported clients in making complaints where the response from RIA is to seek centre management's version of events, and forward that documentation on to the resident as if that constitutes a resolution to the complaint. No decision by RIA is made and the complainant is left unsatisfied and with no right to appeal or access to an independent arbitrator, the complainant has no recourse.

While we acknowledge that many day to day complaints must and should be dealt with by centre management and should not require either intervention by RIA or an independent arbitrator, centre management must be supportive of these complaints and document them so that the complainant can see that the matter is being treated seriously. When a serious or confidential matter arises, residents must have the right to supersede the centre management and go to RIA or directly to an independent arbitrator if they wish to seek a resolution, and must be supported by RIA in this process. They must also be ensured the right to appeal a decision made by RIA, to have an oral hearing outside of the centre, to have legal or other forms of representation (e.g. an NGO representative), to be given the opportunity for mediation if required, and the option to take their case to the Ombudsman if they have exhausted all of the internal complaints procedures. Residents must be encouraged to complain, given support by RIA in the processing of the complaint, and given real assurances that their complaint will be processed effectively and fairly, without punishment and without it impacting their protection application.

#### **Recommendations for an Independent Complaints Procedure:**

The introduction of an independent complaints mechanism that is in line with fair procedures and the principles of natural justice is a necessity. This mechanism must be at least partially independent from RIA to ensure complaints are objectively heard. NGOs including ourselves and those involved in the NGO Forum on Direct Provision, FLAC (Free Legal Advice Centres), and the Office of the Children's Ombudsman have all made recommendations in the last several years on how to improve the complaints procedure and to remove RIA as the final arbitrator in complaints made about accommodation centres by residents.

FLAC's report, *One Size Doesn't Fit All* (2008) notes that 'the referral of complaints to the RIA may indicate that the process is not independent due to the contractual nature of the RIA's relationships with the centre manager or a general manager of a number of centres' (p. 37). The report recommends that there should be a dedicated section in RIA, separate from the administration of direct provision, to ensure that the complaints procedure is sufficiently independent. The report also suggests the option for a review of decision by a more senior official. The report notes that the right to fair procedures and due process for all people currently residing in the State is protected in the Irish Constitution as well as in Article 6 of the European Convention on Human Rights and must be applied in the development of a just and fair complaints procedure. Both of these instruments require a fair hearing before an impartial arbitrator. The report recommends that in cases where the issue may have a serious impact on the resident, such as a transfer or expulsion, the resident must be given an opportunity to appeal a decision made by RIA and have an oral hearing.

Nasc would argue that the resident must also then have the right to take a case to the Ombudsman if they continue to be dissatisfied by the response to their complaint from RIA. The Office of the Ombudsman of Ireland has published guidelines to assist public bodies in developing 'efficient and

credible internal complaints handling systems’.<sup>1</sup> These guidelines include an emphasis on a commitment to the system from management and staff and training on how the system would work. The essential features of a good internal complaints system include:

- Accessibility
- Simplicity
- Speed
- Fairness and independence
- Confidentiality and impartiality
- Effectiveness
- Flexibility

As noted in the above section, the existing complaints system is not accessible in a meaningful or real way, it is not independent and it is not effective.

In addition, the Office of the Children’s Ombudsman, under former Children’s Ombudsman Emily Logan, has called on the State on numerous occasions to be allowed to take over the remit of handling complaints from children living in direct provision. Former Ombudsman Emily Logan did the same in relation to adult residents of direct provision while she was in the Office of the Ombudsman. The OCO makes clear in their 2012 *Report on the Children’s Ombudsman Act 2002*<sup>2</sup> that they believe that remit already exists under the current Ombudsman Act, but that this belief is not shared in principle by the Department of Justice. The OCO report recommends the following amendment to the Ombudsman for Children Act 2002:

For the avoidance of doubt, section 11(e)(i) should be amended to clarify that the exclusion regarding the administration of the law in the area of asylum, immigration, naturalisation or citizenship relates solely to decisions taken by the relevant authorities in accordance with statutory procedures for determining whether a person is entitled to a particular status. (p. 15)

We would argue this should be extended to the Ombudsman’s Act as well so that reception conditions fall clearly and squarely within the remit of both the Ombudsman and the Children’s Ombudsman. The Ombudsman could then act as the independent arbitrator on complaints where the complainant has not been satisfied with how the complaint was handled by centre management or RIA. Residents should also be given direct access to the Ombudsman when they believe their complaint will not be fairly dealt with internally or if there are specific confidentiality or other conditions that demand it.

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<sup>1</sup> Available at: <https://www.ombudsman.gov.ie/en/publications/guidelines-for-public-bodies/the-ombudsman%27s-guide-to-internal-complaints-systems/>.

<sup>2</sup> A report by the Ombudsman for Children on the operation of the Ombudsman for Children Act, 2002 (March 2012).

Previous Minister for Justice Alan Shatter made significant reforms to the prison complaints procedure, identifying prisoners as being in a 'particularly vulnerable position and they must have access to a credible complaints system that deals with genuine complaints in an open, transparent and independent way'.<sup>3</sup> The 2012 report produced by Judge Michael Reilly, Inspector of Prisons, on the suggested model for a Prisoner Complaints Mechanism<sup>4</sup> could provide an excellent template for developing an effective and impartial complaints system that would include oversight by an independent, outside investigator.

In 2013, the NGO Forum on Direct Provision made recommendations to RIA on changing the complaints procedure to include the following (with some more recent amendments and clarifications):

1. A separate RIA complaints unit headed by a senior official on secondment from Dept of Social Protection or Dept of Health. The complaints staff should not be staff of Dept. of Justice.
2. Head of Complaints is not involved in any of the other activities of RIA (e.g. transfers / allocation / allowances) or protection or leave to remain applications.
3. The Head of Complaints should have the authority to alter the original decision if the circumstances suggest that this is warranted, to award redress in appropriate cases and to determine the parameters within which other staff might have the authority to provide redress.
4. The Complainant should have the option of requesting a formal investigation from the Ombudsman or Children's Ombudsman if they are unhappy with the result of the RIA complaint process. Legislative change may be required to clarify the Ombudsman's remit in this area.
5. The complaints mechanism should be well publicised in a variety of languages – public meetings, via NGOs, posters.
6. Possible to make complaints anonymously and online, simple form, either to manager or directly to RIA.
7. Residents should feel encouraged to give feedback; they should believe that it is worthwhile complaining and they should be assured that they will not be victimised as a result of any complaint they make. Complaint should not be visible on RIA client file.
8. The examination should have regard not only to the rules governing the scheme but also to considerations of equity and good administrative practice, customer service principles, as

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<sup>3</sup> Press release: Minister Shatter announces new prisoner complaint procedures, 8 August 2012, available at: <http://www.justice.ie/en/JELR/Pages/PR12000240>

<sup>4</sup> Judge Michael Reilly, Suggested Prisoner Complaints Model for Irish Prisons, Office of the Inspector of Prisons 2012.



well as fairness and transparency. In particular, the principles outlined in the Ombudsman's Guide to Standards of Best Practice for Public Servants (circulated with his 1996 Annual Report) should be taken into account.

9. Residents can expect to receive:

- a fair hearing if necessary (outside of their hostel), a right to appeal, and a clear explanation of the outcome even if it is not favourable to them;
- an appropriate remedy where it is found that they were not treated fairly or properly, and;
- an assurance that other people will be spared the adverse effect which complainants may have suffered.

10. The remedy should aim, in so far as this is possible, to restore the complainant to the position he or she would have been in had things not gone wrong. In many instances, a letter of apology may be sufficient. Perhaps some form of mediation may be necessary. In some cases a detailed explanation of the basis for the action or decision may be needed. In other cases a change in procedures which would benefit clients generally may be appropriate.

11. Where a complaint has been resolved in favour of a complainant, the result should be noted for reference in similar cases. If a particular issue becomes a regular source of complaint, a review of the operation of the relevant scheme should be undertaken. The complaints unit should build up data on the operation of different schemes and the volume of complaints so that accurate feedback can be given.

Beyond the complaints mechanism, residents should also have the right to regularly input into the workings of their particular centre through regular 'House Meetings' where conditions and issues could be raised, with a RIA representative present if necessary and an NGO representative if requested by residents. In addition, residents should have easily available outlets for making anonymous complaints to centre management, such as a comments board. A lot of the day to day issues could be dealt with through these fora and would never need to become an official complaint. In addition, inspections of centres are currently carried out by RIA and a company contracted by RIA; they should be carried out by an official, independent body such as HIQA. Input from residents should be sought and recorded at every inspection.