

Third Meeting of the Working Group on the Protection Process

Monday 22 December 2014, 11:00 am

Minutes

Attendees:	Dr Bryan McMahon Aidan O'Connor Caitriona O'Brien Caroline Daly Dr Ciara Smyth Dan Murphy Martin McDonald Ray Minihan Eugene Quinn Greg Straton Madeleine Halpin Mary O'Sullivan Paddy Duffy Michele Clarke Noel Dowling Patricia Balatine Sophie Magennis Sue Conlan Tanya Ward Tim Dalton Michael Kelly Enda O'Neill Brian Merriman Tony Fallon Linda Keating Ultan Ryan	Chair Dept of Environment, Community & Local Government Dept of Education & Skills Office of the Attorney General Lecturer in Law, NUI Galway Office of the Refugee Applications Commissioner Office of the Refugee Applications Commissioner Jesuit Refugee Service SPIRASI Tusla Dept of Social Protection Dept of Justice & Equality Dept of Children & Youth Affairs Dept of Justice & Equality Dept of Public Expenditure & Reform UNHCR Irish Refugee Council Children's Rights Alliance Dept of Justice & Equality UNHCR Office of the Refugee Applications Commissioner Refugee Appeals Tribunal Dept of Justice & Equality Dept of Justice & Equality Refugee Appeals Tribunal Office of the Refugee Applications Commissioner Dept of Education & Skills NASC Dept of Public Expenditure & Reform Dept of Social Protection
Apologies:	Barry Magee David Costello Brian Power Fiona Finn Ronan Gallagher Jackie Harrington	

Documents:

Agenda Item 4 Invitations to experts – written/oral submissions

1 Minutes and matters arising

Minutes of the previous meeting (19 November 2014) agreed.

No matters arising.

2 Progress reports and emerging proposals

The Chair made a number of general remarks in relation to the three Thematic Groups:

- Ten meetings have taken place in all since the last plenary
- The level of engagement by members has been good and he urged Members to continue that level of engagement – he referred to the schedule of meetings which had been circulated for the New Year which is of necessity an intensive schedule in view of the Easter target date for finalising our report
- He urged all to make the most of the opportunity and submit papers on the issues before each thematic group in order to give shape to, and advance, the discussions. He emphasised that such papers should ideally include a thorough diagnosis of the problem they are seeking to address and identify solutions including the pros and cons of those solutions. He emphasised the need to identify pros and cons as any report coming out of the thematic groups for plenary will need to set out clearly the rationale for any proposal and, of course, the costs.

a. Theme 1 (Chair)

Improvements to the direct provision system (i.e. living conditions while in designated centres) aimed at showing greater respect for the dignity of persons in the system and improving their quality of life.

The Chair provided an update on the progress of the deliberations of Theme 1. Main points were as follows:

- Three meetings so far
- First meeting concerned with dealing with procedural matters and the scope of the work to be undertaken by the group which includes not only the issues set out in the agreed Work Programme but also the issues arising from the High Court judgment of 14 November 2014 in “CA and TA”. It was agreed that the issues arising from 'CA and TA' Judicial Review would be prioritised.
- The current position is that aspects of the judgment are still under consideration by the State. While RIA has informed the Group that it has still to decide if it wishes to appeal that part of the judgement dealing with the House Rules and the independent complaints mechanism it has brought proposals to the Group dealing with the signing-in procedure, the notification of absences and unannounced inspections.
- The issue of guests in private quarters is proving more challenging for a range of reasons including the large component of multi-occupancy rooms in the system. There is consensus that some restrictions are required but no proposal on the table as yet. For many Members the difficulty with coming up with a workable solution highlights deeper questions around the direct provision system, for example, should single rooms be the norm (particularly for vulnerable applicants), should there be a cap on the length of time that persons spent in direct provision or should some enhanced conditions apply after a period of time.

- The final issue arising from the judgment, the complaints procedure, has been the subject of considerable discussion. A key issue is how to add an independent layer to the procedure that would come into play when earlier stages of the procedure have failed. A number of papers have been submitted pulling together work already done in this area by other bodies and suggesting that the Ombudsman or Ombudsman for Children, as the case may be, would be the best fit for the role. In relation to the possibility of giving the Ombudsman (or Ombudsman for Children) the role as final arbiter the different positions of the Ombudsman and the Department of Justice in relation to whether the Ombudsman's remit already extends to direct provision has been discussed.
- The Ombudsman has written to the Chair and the Chair intends to take up his offer of a meeting early in the New Year.
- A number of alternatives to the Ombudsman have also been discussed including a panel of independent persons. Other possible models include those used in the prison system, the HSE, Tusla or in the case of complaints in relation to Social Protection entitlements
- Where matters stand is that RIA has undertaken to consider the papers before the Group and the suggestions arising from the discussions to date and come back with a proposal in due course.
- Apart from the issues arising from the judgment Theme 1 has had a preliminary discussion on accommodation for different family types. RIA has provided some useful information on improvements that are already well in train and has provided some information on the limitations that apply to any consideration of improvements to accommodation such as: the nature of the current stock, planning restrictions, the likelihood of resistance on the part of communities to new centres or substantial increases in size to existing centres, and the difficulties that any increase in the number of persons opting for direct provision would create in terms of pressure on beds, to identify a few.
- Members have briefly discussed whether additional rights (such as access to improved living conditions, such as private accommodation or self-catering should be granted on the reaching of milestones.
- The question of a cap, which implies a time limit that should or should not apply to length of time spent in DP as a whole, has been touched on.
- The Policy Statement from the Irish Human Rights and Equality Commission on direct provision was also discussed. That paper suggests that all families in direct provision should be moved out and that no new families should be accommodated in direct provision. Such a change would clearly have cost implications.
- In relation to the question of a cap there is consensus that this question cannot be considered in isolation from the work of theme 3 on the length of the determination process.
- A document containing suggestions for how the work of the group might be organised and also how the report that the Group will produce should be structured has been prepared in order to ensure that the work of the Group is focused and that the report coming out of the Group contains proposals that have a clear rationale.

In relation to how work would proceed the Chair said that he was of the view that the Group should not seek to bring forward interim recommendations to the Minister but should focus its efforts on compiling a report by the Easter target date – it has become clear that the issues before the Group are complex and interconnected and all proposals coming from the thematic formats will need to be considered by the plenary in the round having regard to costs etc. There is also the consultation process that is underway – any recommendations from the Group should await the outcome of that process.

b. Theme 2 (Chair)

Improved supports (e.g. financial, educational, health) for protection applicants aimed at showing greater respect for the dignity of persons in the system and improving their quality of life

The Chair provided an update on the progress of the deliberations of Theme 2. Main points were as follows:

- Three meetings so far.
- As with theme 1 first meeting was concerned with dealing with procedural matters, scope of the work to be undertaken by the Group, discussion on priority issues and so on.
- Over the course of the subsequent two meetings there have been productive discussions on financial supports, transitional supports and also healthcare and social inclusion issues.
- On financial supports there is a consensus emerging that the case for an increase to the weekly direct provision allowance is strong for both adults and children. The rate of payment has not been increased since it was introduced in 2000 and there have been calls from many quarters for an increase. The Group has considered a number of options as to how this increase might be calculated including using the CPI or matching the increases that have been made to the supplementary welfare payment over the last 14 years. The Group has also had a presentation from the Vincentian Partnership in relation to its work on a minimum essential living standard. The Group intends to come back to the issue of the DPA in the New Year.
- In relation to transitional supports for persons granted status the possibility of a one-stop shop has been raised and there was consensus that it would be useful to hear from the Office for the Promotion of Migrant Integration in relation to its experience with Programme Refugees. They are to be invited to make a presentation to the Group in the New Year.
- The HSE representatives presented an excellent paper to Theme 2 setting out how the HSE could input into the deliberations of the Working Group. The paper identified key issues in relation to the health and well being of persons who are in the protection system and how the HSE engages with their needs at present. It also proposed actions to be taken to address specific health related issues which have been identified at the meetings of this Group

At the request of the Chair the HSE highlighted some aspects of its paper including the progress in relation to the prescription charge – the HSE has taken

a decision that people in direct provision should not pay this charge. This system will be fully rolled out in January 2015. HSE outlined the consultation that it intends to undertake in January 2015 with health professionals to draw on their unique perspective. It also outlined its planned consultation with people who are LGBT within the system. This consultation will be led by Belong To and will be conducted in January with BeLonGTo asked to make a presentation to the Theme 2 Group in February 2015 in relation to the findings of the consultation process. The HSE also referred to the issue of mental health stressing that it was necessary to make a distinction between people who on arrival have pre-existing mental health issues and those who develop mental health issues in direct provision. It has plans to roll out mental health training for DP centre staff in 2015 and also intends looking at how the dispersal decisions can be more closely linked to health screening outcomes.

b. Theme 3 Sub-Group (Chair of the Subgroup)

Improvements to existing arrangements for the processing of protection applications with particular regard to the length of the process.

The Chair of the Subgroup provided an update on the progress of the deliberations of Theme 3. Main points were as follows:

- Four meetings so far – 17 member organisations. In addition, the Legal Aid Board has attended meetings as an expert. Engagement has been excellent by all.
- At its first meeting the subgroup agreed that its remit as set out in the agreed Work Programme covered 2 broad areas: 1. The reform of the asylum procedure including through the introduction of a single procedure and 2. Addressing the situation of applicants stuck long term in the existing system – the “legacy issue”
- The subgroup is mindful that at the first Plenary meeting, the Minister for Justice and Equality specifically asked for recommendation on how the new single procedure might be availed of by existing applicants.
- At the first meeting the subgroup considered the possibility of quick wins but as it explored the subject matter further it veered away from this approach for a number of reasons including the need to take account of the results of the consultation process in forming any recommendations, the need for recommendations to be robust and costed, and in order for recommendations to have integrity, their impact on persons within the protection system and on the various constituent parts of the system need to be identified. In short there were layers of complexity and interconnectedness in the system that the Subgroup could not overlook
- To aid the development of robust recommendation, the subgroup did 2 things
 1. developed a template to organise its work programme to the end of February. Under this programme we will examine the distinct phases in the protection process with a view to:
 - Setting out the core information in relation to that phase in the process.

- Mapping out the problems in each phase with a particular focus on children and vulnerable groups
- Mapping out the solutions proposed identifying the pros and cons of each one
- Identifying the baseline costs of the current system and the projected costs of proposals including human resources costs
- Setting out the consequences of the recommendations we make for persons currently in the system and for the system itself.

2. Met with D/PER to discuss the development of a model to set out current baseline costs and cost the proposals. The aim is to set out the key costing and governance implications of our recommendations in a format which will be agreeable to Government Departments, in particular D/PER. The model will be shared with Groups 1 and 2

- To date, the Subgroup have covered a number of substantive issues:
 - Positive developments at ORAC and RAT in relation to the clearing of the subsidiary protection backlog and the reduction in JRs. RAT has indicated its JR backlog will be cleared by the end of 2015 and with only 1 JR since February 2014 (using the new template), this could be a sustainable development.
 - Concerns about the 51% rise in applications from asylum seekers in the year to date and the backlogs that are now developing at ORAC and RAT.
 - Possible solutions for people at the end of the process who have spent the greatest length of time in the system. On this issue, papers have been received from JRS, NASC and the IRC/Doras Luimni.
 - The leave to remain process has been discussed and consensus reached that this should operate without prejudice to any existing protection application
 - Prioritisation has been discussed in terms of prioritizing long stay groups and/or vulnerable groups such as children and victims of torture
 - The need for transition supports and a communications strategy in relation to our recommendations have also been discussed.
 - Information has been received from INIS and they asylum agencies and additional information is being compiled.
- While discussions are at an early stage and are ongoing, at this stage it is clear that there has been convergence on a number of issues - there is an urgent need to address the situation of long stayers. The eligibility for any long stayer scheme should be on a rolling basis from an agreed duration. It should operate without prejudice to any existing protection application. The situation of vulnerable groups, especially children, requires urgent consideration and high priority. Liaison with Theme 1 which is considering a cap on length of stay in DP will be important.
- In addition, the group has been provided with some information about the new single procedure legislation and more information is expected in early January. The new law will bring in large scale changes including the return of

first instance decision making to the Department of Justice and the discontinuance of ORAC. The group expects to make recommendations in relation to the draft legislation.

- It has been agreed that the Law Soc, CSSO and Bar council will be invited to a January meeting to assist us in our consideration of solutions for the JR backlog

Other points arising

D/JE (RIA) in relation to the Theme 1 progress report said that it is working hard to improve conditions eg it is now the case that all families have access to their own bathroom). It also said that the scope for improvement arises from the numbers entering the system at present equalling the numbers leaving the system. In relation to the question of self-catering it would be necessary to define what that means – at present it refers to apartments blocks - communal kitchens might be another option but would take time. RIA is prepared to engage in such discussions to see what solutions can be identified bearing in mind physical limitations, planning laws and tendering processes. Addressing the underlying issue of the length of time that the determination process takes would go some way towards addressing accommodation issues.

It was acknowledged that the upward trend in asylum applications would result in increased costs even in the absence of any recommendations from the Working Group.

The Chair clarified that it was open to the Group to make recommendations for legislative change.

In relation to how the report of the Group would be prepared the Chair said that once discussions have matured enough in the thematic groups the proposals will be put before the plenary which will then consider all proposals in the round and finalise a report by Easter. In the case of Subgroup 3 the rapporteur will prepare a report for the plenary. A number of members referred to the importance of ensuring that any proposals from the thematic groups were formally submitted to the plenary in writing for consideration.

In relation to the question of making an interim report to the Minister it was accepted that it was not advisable to do so and that the focus should be on meeting the Easter deadline. There was, however, a lengthy discussion on whether the question of an increase to the DPA should be singled out and an interim recommendation made. The Chair cited the same reasons underpinning the decision not to proceed with an interim report for not singling out any proposal to increase the DPA. In particular he cited the importance of awaiting the outcome of the consultation process. Some members said that it was not necessary to await the outcome of the consultation process on this point as an increase would be of immediate practical benefit to residents and would be welcomed.

Other Members felt that tactically it would be inadvisable to single out the DPA, the Government would not bite but would wait for the full list of recommendations and expectations on the part of applicants would be raised and then not met. Alternatively the Government could latch on to the proposal and present it as the complete solution. In addition, some members referred to the need to have regard to the terms of reference including the cost implications and for the plenary to have regard to all proposals coming from the thematic groups in the round before finalising its list of recommendations. Making an interim recommendation could also raise expectations among residents that a further increase could be expected. There was no decision to single out the issue of the DP allowance. Theme 2 will return to the matter and bring proposals to the plenary in due course.

3 Consultation Process – update (Chair)

The Chair provided an update on the consultation process underway:

- The approved process includes a number of phases – a call for written submissions, followed by regional consultation sessions together with visits to centres, consultations sessions with particular groups of applicants including victims of torture, victims of trafficking or sexual violence and members who are LGBT, and finally oral submissions to a meeting of the Plenary.
- To date approximately 10 responses have been received by the Secretariat including a group submission from one centre.
- In relation to the consultation sessions the Chair thanked those Members who took an active part in developing the proposals and also those Members who have undertaken to assist in coordinating the sessions including the IRC, Spirasi.
- Ten regional sessions are planned and four sessions with particular groups of applicants including victims of torture, victims of trafficking or sexual violence and applicants who are LGBT. Doras Luimhni and BeLonGTo will assist with the sessions with victims of trafficking or sexual violence and applicants who are LGBT respectively.
- In order for the process to retain credibility among protection applicants these sessions will need to be completed by early February. That will be a challenge particularly in view of the necessarily intensive meeting schedule in place for the thematic groups. It will also require Members to make themselves available for a number of sessions.
- Five members of the Working Group will attend each session. In the event that the Chair is not available he will nominate another Member to act as chair. The Chair on the day will be assisted by a representative of a local support group who will act as facilitator of the discussion.
- A rapporteur will be appointed for each session and a summary report produced.
- With 14 sessions proposed in all this requires each Member to make themselves available for three sessions. The Chair urged all Members to indicate their preferred dates as quickly as possible when the schedule is circulated in order that the itineraries for the regional days can be finalised without delay.

IRC said that they would have the full list of dates by 6 January 2015.

UNHCR referred to the special children pack that had been prepared by the IRC as part of the written consultation process and thanked the IRC for their work. UNHCR also said that the informal “Children Group” is considering proposals for a separate consultative process with selected children in direct provisions centres - the proposal will draw on expertise within the Department of Children and Youth Affairs on conducting such consultations.

4 Invitations to experts – written/oral submissions (document for Item 4 Invitations to experts – written/oral submissions)

A number of general points were made relating to the importance of ensuring that only those whose contributions can add value to the Group’s deliberations should be invited to make oral submissions. Oral submissions are time consuming and there would be benefit in only inviting in bodies where the Group had identified particular questions on which their input would be welcome. It may be more appropriate and a better use of time if bodies were invited to make their submissions to the relevant Thematic Group.

Dr Geoffrey Shannon, Special Rapporteur on Child Protection and Ms Emily Logan, Chief Commissioner, Irish Human Rights and Equality Commission are to be invited to the next meeting.

Consideration of oral submissions from the HSE Health Screening Team (Balseskin Reception centre), the RCNI and the Immigrant Council of Ireland to be put on hold pending the outcome of the consultation processes underway. HSE said that it is engaging with BeLonGTo in relation to a consultation process with protection applicants who are LGBTI and that once that process is complete BeLonGTo could present its report to the Theme 2 Group.

In relation to contractors and managers of accommodation centres D/JE said that the contractors were very keen to make submissions to the Group - they take the view that change is inevitable and hearing from them would be useful.

UNHCR suggested that it would be useful to hear from the Ombudsman /Ombudsman for Children. The Chair indicated that he intended to take up an offer from the Ombudsman to meet in the New Year and that the matter of inviting the Ombudsman to make an oral submission could be taken up after that meeting has taken place.

The need to hear from housing experts in connection with discussions underway in the Theme 3 subgroup on dealing with persons who are in the system a considerable period of time was raised. Focus Ireland was suggested as a possibility and also those within D/ELG with responsibility for the Social Housing Strategy. D/ELG said that the matter of housing persons leaving direct provision on being granted status would fall to social housing providers in

particular local authorities. It was agreed that such presentations would be appropriate to Theme 2 which is examining the issue of transitional supports but that Theme 3 should also be kept informed. The Secretariat will make the necessary arrangements to invite Focus Ireland and representatives from D/ELG.

5 Communications

The Chair stated that the Secretariat would prepare (in consultation with the Chair) a progress report and post it to the Group's webpage.

The Chair reiterated the importance of the commitment given by all at the first meeting to treat the discussions as confidential; the importance of this arising from the need to manage expectations, preserve the integrity of the discussions and to ensure that members can engage with the discussions in a full and frank manner.

6 Next Meeting

The next meeting is scheduled for 29 January 2015. It is intended to be a full-day meeting.

7 A.O.B.

None.