



# **What are the alternatives to our broken Direct Provision system?**

February 2019

**Direct provision is already a chapter in Ireland's dark history of institutional living. More of the same fails us all.**

Direct provision is broken, condemned by politicians across the political spectrum, international organisations and, most importantly, by residents themselves. Geoffrey Shannon, the special rapporteur on child protection, called for it to be abolished in his recent annual report. Its failures have been vividly demonstrated through Melatu Uche Okorie's book *Hostel People* and the TV show *Taken Down*.

**So how do we end direct provision, what is the alternative and how do we get there?**

Minister of State for Justice David Stanton repeatedly says he has not heard of a better system. These are some ideas.

In short, we need to shift to long-term, strategic thinking, and away from a reactive "managed emergency"-style system that relies on private operators. Even in the middle of the housing crisis solutions exist.

We then have to accept that providing asylum and accommodation is a positive and important part of being a modern democracy that respects human rights.

An average of 2,290 people per year have claimed asylum in Ireland over the last 10 years. This is an entirely manageable number, but the majority have no means to pay for accommodation or family to rely on. Around 61,100 people have been accommodated in direct provision since 2000. If direct provision ends, something has to take its place.

Responsibility should be shifted away from the Department of Justice. It does not have the knowledge of housing or sufficient power and influence in housing policy circles.

The budget and control of accommodation for people seeking asylum should be ringfenced but mainstreamed into wider housing policy. Housing experts should be consulted and sought for input. Philanthropy, faith groups, developers and business should also be encouraged to become involved. Partnerships and consortiums that leverage the unique attributes of each will be crucial.

### **Bolt-on services**

Non-profit housing bodies should be incentivised to become providers of accommodation, with other organisations providing bolt-on services. Social housing funding streams, such as the capital assistance scheme, should be amended to allow for asylum accommodation to be a small percentage of social housing developments.

Tenders for asylum accommodation should also be designed to attract the interest of these housing bodies. Longer contract duration, with funding for capital and conversion costs, should be introduced.

Tenders should also allow for longer lead-in time. Currently providers are required to provide accommodation at short notice, which puts off bodies that may require time to convert properties. The tenders should also be sufficiently broad to accept different types and sizes of accommodation so we move away from congregated settings.

The government has built only three accommodation centres in 18 years. The majority of existing centres were originally designed for other purposes. The State should procure fit-for-purpose accommodation to meet particular needs. This will be a cost-saver in the long term: in 18 years over €1.2 billion has been paid to private providers of accommodation. Spending money on providing people with asylum is a good thing, but it should be done strategically to the benefit of people and the public.

## Living space

Adequate living space is crucial, and will distinguish any new system from old. Own-door accommodation and self-catering facilities to ensure autonomy, privacy and dignity are a necessity. These sound like big asks but are achievable if planned.

New standards on direct provision point us in the right direction, but are based around the current system of grouping people together in centres. We should start with the vision of what we want and work backwards rather than incremental improvements to an existing system.

Accommodation should be within reach of an urban centre with transport links available. Local communities took the lead in offering welcome and support, as demonstrated in Merville and Roskilly, after attacks there. But some centres are too far from the essential services that a person in the asylum process needs to access.

A matrix that considers issues like local services and accessibility to Dublin should be developed to test whether a particular area is appropriate.

Direct provision is more than accommodation. Changes, many involving little or no spend, can improve the system. The migrant integration strategy should be extended to include people seeking asylum from their arrival. Scotland has successfully implemented this model under the New Scots strategy. The strategy should also be amended to include actions on housing.

Supports and services should be available to assist people to transition from accommodation when they have regularised their status. Some 700 people currently live in direct provision but cannot leave because of the housing crisis.

A broader right to work is also needed. Only around 6 per cent of people in direct provision are working. Through work people can become independent and move on.

### **Asylum procedure**

Delays continue to afflict our asylum procedure. Claim asylum tomorrow and you will be waiting for at least 12 months before being called for an asylum interview, and there is a backlog of around 4,000 cases.

Delays could be reduced by streamlining the application procedure, more resources given to the International Protection Office and more legal advice at the beginning of the procedure to have people recognised as refugees quicker.

Direct provision is already a chapter in Ireland's long and dark history of institutional living. Now is the time to think big and change. More of the same fails us all.



**SUBMISSION TO JOINT OIREACHTAS  
COMMITTEE ON JUSTICE AND EQUALITY**

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## A. Executive Summary

Efforts to improve Direct Provision since the publication of the McMahon Report in 2015 have been slow and patchy in nature. While some improvements have been made (increase in Direct Provision allowance, the introduction of the, albeit, limited right to work, modest expansion of self-catering facilities) in the experience of the Irish Refugee Council, the challenges faced by residents in Direct Provision remain enormous. We meet people each day who are worn down by a system which, taken cumulatively, makes ordinary life impossible for long periods of time. In our view, changes to the system must begin with a much more radical vision for an alternative way to accommodate people who seek protection in Ireland. The fact that Geoffrey Shannon, the special rapporteur on child protection, has called on Ireland to abolish Direct Provision and that the Ombudsman has said it is not a suitable long-term solution for those waiting on an protection claim, should alone be enough to bring about wholesale change. We should start with the vision of what we want and work backwards rather than incremental improvements to an existing system.

There are 6,497 people living in Direct Provision as of April 2019. This is a modest and manageable number for the State, yet the way in which we accommodate people creates substantial cost to the State. Our reliance on the private market has failed. It has meant a decrease in supply at a time of rising demand has pushed the State towards the costlier option of emergency hotel accommodation and has left people arriving in Ireland isolated and distressed in hotel rooms around the country.

The system isn't working for anyone, but there are alternatives. Persistent criticism of Direct Provision has been met with the response that better alternatives do not exist. While it will take time to properly design and implement an alternative system, there are numerous models for better accommodating people while they wait for their application.

No reception system will be adequate while delays continue which is why a new system for reception must also consider the need to properly resource the international protection system so that delays are drastically reduced.

The Irish Refugee Council works every day with people living in the Direct Provision system. The lived experience of residents should be the start for considerations of change. The length of time spent waiting, the indefinite nature of that wait, the overcrowding, the inability to cook or live a normal family life, the idleness, the isolation, the difficulty accessing services – all of these combine to make Direct Provision a very difficult, and in many cases, a very painful experience.

The Irish Refugee Council is calling on the Government to begin a process of review with the goal of designing an alternative reception system for international protection applicants so that Direct Provision can end.

**Nick Henderson**

**CEO, Irish Refugee Council**

## B. Introduction

This consultation is timely and important. It presents an opportunity to look at ways to move forward from the current Direct Provision system and to radically improve our approach to the accommodation of people seeking international protection while also recognising that Direct Provision should not be seen in isolation from the international protection process itself.

The current accommodation conditions of people seeking international protection in Ireland are made worse by the time they spend living there. When a person arrives in Ireland and requests protection, they are immediately confronted with a system which is barely functioning. Leaving aside the political arguments about Direct Provision, the indisputable fact is that the system is broken. It has not worked - it is not working - and it cannot continue in its current form. Not only is it failing, most importantly, the people seeking protection in Ireland, it is failing the State and the taxpayer by costing millions each year, all of which is paid to private actors.

Reliance on the market to solve social problems only works if there are private actors in the market who are willing to supply to the State. The current crisis is multi-faceted and complex which has impeded the State's ability to respond to it. The lack of forward, strategic planning at policy level has made Ireland's approach to accommodation reactive in nature and deficient in outcome.

The problems with Direct Provision are well-documented but to summarise them briefly:

1. Long processing times leading to lengthy and indefinite delays;
2. Inappropriate and substandard accommodation;
3. Lack of sufficient care services and supports.

The current system relies on short-term contracts with private providers who tend to have little or no background or expertise in human rights and social care, leaving them frequently unable to meet the social needs of the people they are accommodating.

People are accommodated, without any choice, in remote, isolated spaces where there are few services available and they have nothing to do for indefinite amounts of time.

People are given insufficient information about their rights and entitlements and wait for years with no update on their application for protection.

People often receive no or insufficient legal advice and, in many cases, do not fully understand the protection process or what's expected of them as applicants. To receive refugee status, you must meet a legal test: a well-founded fear of persecution for reason of race, religion, nationality, political opinion, or membership of a particular social group.<sup>1</sup> This test is complicated by extensive case law around the definition of refugee. Without knowing the grounds on which you are being tested, it is very easy to not disclose relevant information. Adequate legal advice and assistance can assist people to make the strongest application possible.

In Direct Provision, people live in cramped conditions, sharing a small living space with strangers. They are unable to transfer to other accommodation except in the most exceptional cases. Mental illness goes undiagnosed and underlying conditions are often exasperated by the sheer frustration of spending long periods of time in limbo, as well as the lack of privacy and the absence of a space to call your own. It cannot be surprising that in such settings, interpersonal difficulties develop with other residents as well as staff and management. Management in many centres are, primarily, commercial operators of hotel accommodation and are not qualified to respond adequately to the social needs of the residents. They also cannot be expected to fulfil what is a public law obligation on the State to vindicate the human rights of all people seeking protection.

Conditions in Direct Provision accentuate existing difficulties a person is experiencing when they arrive in Ireland seeking protection. It can lead to people leaving Direct Provision, preferring to sleep on couches or sleep rough rather than continue to live in conditions they find insufferable in centres. With the lack of bed capacity in current Direct Provision centres, the Irish Refugee

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<sup>11</sup> <https://www.unrefugees.org/refugee-facts/what-is-a-refugee/>

Council has seen a large increase in people presenting as homeless and seeking to re-enter Direct Provision. People in this situation live in dangerous and precarious situations where they can be easily exploited as they have no entitlement to any social welfare or housing outside of Direct Provision. People seeking asylum are specifically excluded from social welfare entitlements as they cannot pass the habitual residency requirement. The only State support is provided through the mechanism of Direct Provision. People who apply to be readmitted to Direct Provision and are refused for a lack of bed space face destitution. The Irish Refugee Council has successfully assisted people in this situation to access supports but we are gravely concerned about the unknown number of people who have not come forward to seek help.

As of May 2019, due to the lack of bed space in the Direct Provision estate, there are 687 people living in 19 emergency accommodation locations around the country, including 88 children.<sup>2</sup> The situation for people living in emergency accommodation is particularly acute.

At the end of the international protection process, people who receive refugee, subsidiary protection or leave to remain status often struggle to transition out of Direct Provision and to set themselves up independently. Nothing in their experience of Direct Provision prepares them for life in Ireland. It does the opposite, creating a culture of institutionalisation and dependency in which even the most positive and energetic person loses motivation and hope in the face of a system which continually dehumanises them.

The need for transition and integration supports has contributed to delays exiting Direct Provision for people with status, but there are also administrative barriers and difficulties accessing private rental accommodation. This is in part due to the shortage of accommodation generally, but also due to administrative barriers, as well as discrimination and stigma.

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[https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee\\_of\\_public\\_accounts/submissions/2019/2019-04-18\\_correspondence-cronan-goodman-private-secretary-to-secretary-general-department-of-justice-and-equality-32r002102-pac\\_en.pdf](https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2019/2019-04-18_correspondence-cronan-goodman-private-secretary-to-secretary-general-department-of-justice-and-equality-32r002102-pac_en.pdf)

Direct Provision cannot continue. Ireland needs to urgently change our approach to the reception and accommodation of people seeking protection. We look forward to working with policymakers in future on the design of a new reception system, which is rights-led, efficient, and fair.

Changes to our current system will take time and a realistic timescale will be important to ensure that the design of a new system produces a real departure from the current Direct Provision model.

The Irish Refugee Council calls on the Government to provide adequate funding and capacity to allow the Department of Justice —in conjunction with other, relevant government departments and agencies — to begin the work of designing a new fit-for-purpose reception system for applicants for international protection. This process should involve consultation with current and former residents of Direct Provision, as well as relevant civil society organisations.

The Irish Refugee Council believes that the current Direct Provision system should be phased out and replaced with a system of reception which does the following:

1. Adopts a rights-led approach by ensuring that the basic dignity and human rights of every person are the primary concern of the State.
2. Allows every person a minimum space of their own or with their family, within which their privacy is guaranteed and they can cook autonomously.
3. Supports and enables people by treating them respectfully and providing them with information about the protection process, their rights, entitlements and obligations, so that they will feel empowered rather than institutionalised.
4. Ensures that people can engage properly and fully in the international protection process and that their accommodation arrangements consider this need.

5. Prioritises integration and fosters an inclusionary approach to accommodation which prepares people for a life in Ireland, instead of assuming a negative conclusion to the application process.

## C. Recommendations for a new protection system

The following are a summary of recommendations and ideas for improving the Irish protection system. Many involve no spend, those that do, we submit, are likely to be a cost saver in the medium to long term.

1. Implement the vulnerability assessment required by the Reception Conditions Directive and the Reception Conditions Regulations 2018. This will help ensure reception needs are met and providers of accommodation and other services have information about people's reception needs.
2. Reduce delays by increasing staffing and training in the International Protection Office. Refugee status determination is a critically important function of a modern state and resources and support should reflect this.
3. Opt in to the revised Asylum Procedures Directive which includes the obligation to conclude the initial protection procedure within six months of the lodging of the application.
4. Respect and implement existing law. Several provisions (right to health, education, information) of the European Communities (Reception Conditions) Regulations 2018 have, in certain cases, not been implemented.
5. Introduce a system of training and regulation for interpreters. Poor interpretation undermines the process.
6. Increase the provision of early legal advice, all protection applicants should receive at least 10 hours of assistance in preparing their application. This is widely recognised as improving the protection process.
7. Introduce child benefit for people in the asylum process, free travel pass to allow people to travel to appointments in Dublin (rather than the ad hoc discretionary system) and monitor the daily expenses allowance.

8. Shift the accommodation of people seeking protection away from the Department of Justice. Move it to the Department of Housing with a ring-fenced budget or create a new entity.
9. Embed human rights obligations in contracts with accommodation providers using Section 42 of the Irish Human Rights and Equality Commission Act 2014.
10. Own-door accommodation, within communities, with the option of self-catering should be mandatory going forward.
11. A matrix should be developed that considers issues like local services and accessibility to Dublin to test whether a particular area is appropriate. Local communities can provide a welcome but many existing centres are remote and isolated.
12. Implement the National Standards for protection accommodation and mandate an independent enforcement and inspectorate body.
13. Move to non-profit delivery of accommodation by involving Approved Housing Bodies. To do this, amend the procurement process to allow for smaller clusters of accommodation (currently a provider must provide for 50 or more people which perpetuates congregated living). Give providers a longer lead in time to provide accommodation. Allow for conversion and capital costs to be included in bids and give longer contracts to increase certainty.
14. The State should build accommodation. This will save money in the long term and maintain greater control over capacity.
15. Broaden the right to work. Only 14% of the adult population of Direct Provision is working. Work reduces dependency.

16. Change the Migrant Integration Strategy to include people seeking protection. The 'New Scots' strategy from Scotland is a template for this approach.
17. Streamline the process of leaving Direct Provision by: reducing delays of the Ministerial Decision Unit in giving declarations of refugee status; create a process for Direct Provision to be given as a reference address; grant full welfare allowance on recommendation of refugee status; extend Homeless HAP and consider a temporary extension of priority categories on social housing lists.
18. Enact the International Protection (Family Reunification) (Amendment) Bill 2017.
19. End the practice of moving aged-out unaccompanied minors into Direct Provision on reaching eighteen
20. Conduct an annual, independent, review of the protection process which includes consultation with people in the process, supporting organisations and lawyers practicing in this area.
21. End forced deportations. Returns should be based on: fair and consistent protection procedures that properly assess whether a person is entitled to international protection; fair, voluntary, humane return procedures, and fair and transparent relations with third countries based on international human rights law and standards including post return monitoring.
22. Ratify the UN Optional Protocol to the Convention Against Torture, (OPCAT) and create a national preventative mechanism.
23. Allow for independent and open investigation by an independent inspectorate of deaths in protection accommodation to identify facts and circumstances and to identify any shortcomings or failings which may have occurred.

24. Inter departmental and cross departmental approaches to protection should improve. The International Protection Office (IPO), the International Protection Appeals Tribunal (IPAT), the Legal Aid Board (LAB), the Reception and Integration Agency (RIA), the Ministerial Decisions Unit (MDU) of the Irish Naturalisation and Immigration Service (INIS), An Garda Síochána (AGS) and Coroner's Service are all under the aegis of the Department of Justice and Equality but they could work in a more cohesive way to the benefit of people in the system and also their own missions.

## D. Principles for a New Approach

### Principle 1: Determining accommodation needs & identification of vulnerability

In order to assess the needs of people on arrival in Ireland and to ensure their basic requirements are met, it is necessary to first accommodate people in a Reception and Orientation Centre. This will allow for an orderly, centralised approach to establishing the varying levels of vulnerability and need in the population arriving. It ensures that on arrival, people are immediately in a supportive environment where information is available, trained staff are on-site, and they have an opportunity to orient themselves on immediate arrival in the State.

While living in a Reception and Orientation Centre, a vulnerability assessment must be carried out in line with Reception Conditions Regulations 2018<sup>3</sup> and the Reception Conditions Directive (recast)<sup>4</sup>. This would allow the State to identify the special accommodation needs of people presenting with vulnerabilities and make special provision for accommodation where necessary.

Induction should also include access to health care on site, applying for a PPS number in order to access a weekly allowance, basic language courses, and an information pack in a language they can reasonably understand explaining their rights and entitlements in Ireland, as well as their obligations.

Failure to identify a person's particular accommodation needs on arrival may lead to a deterioration in a person's physical and mental health, and reduce their ability to effectively engage with the protection process. Ireland has no identification procedure in place for the assessment of special needs, either in the context of Direct Provision or as part of general international protection

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<sup>3</sup> <http://www.irishstatutebook.ie/eli/2018/si/230/made/en/print>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0033>

procedures, which runs counter to numerous national and international recommendations to the Irish government.<sup>5</sup>

**Good Practice Example:** In France, authorities are obliged by law to identify vulnerability during the initial interview with the applicant.<sup>6</sup> Officers conducting the interview are specially trained on identification of special needs. The assessment takes the form of a separate vulnerability-assessment interview conducted on the basis of a questionnaire. Any findings are added to the applicant's file, and taken into account in the allocation of accommodation and the decision making process on their case.

**Recommendations for DP Alternative:** Everyone seeking protection in Ireland should be accommodated first in Baleskin, or a similar reception centre, for induction information purposes, to ensure they have a PPS number and can access immediate health care, as well as to facilitate a vulnerability assessment. An identification mechanism must be established at an early stage in the protection procedure to identify any special accommodation and procedural needs.

## **Principle 2: Physical space appropriate to meet peoples' needs**

Much criticism of Direct Provision focuses on the physical accommodation space, namely that centres are not fit for long-term accommodation, especially for families with children and people with particular vulnerabilities.<sup>7</sup> The physical space in which a person is accommodated should reflect both their general and specific needs. This must be in line with fundamental rights central to human dignity, such as access to appropriate food, recreation, education

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<sup>5</sup> See eg: Working Group Report, pp. 194-196; Irish Human Rights and Equality Commission Submission to CEDAW, p. 117; UN Committee against Torture Concluding Observations on Ireland, July 2017, Art. 12 (b).

<sup>6</sup> Forum Refugies – Cosi, Asylum Information Database (AIDA) – France Country Report, 2016, p. 79.

<sup>7</sup> See generally: Working Group Report, pp. 162-164; S Arnold, State Sanctioned Child Poverty; L Thornton, Direct Provision and the Rights of the Child in Ireland (2014).

and financial autonomy (either through employment or a suitable financial allowance).

The physical space must ensure privacy and, for families, fully respect their right to family life. There are numerous models for accommodating people, all of which allow for these two basic requirements. For example: units containing three/four own-door bedrooms with a shared living space and kitchen.

**Good Practice Example:** In Austria, people seeking protection may access special reception facilities suited to their specific needs where they or a social worker/legal representative make a request.<sup>8</sup> People seeking protection are included under the State's *Basic Care Laws* which provide for anyone with special accommodation needs in Austria, such as people with medical conditions or disabilities. Furthermore, some reception centres provide cooking facilities for residents.<sup>9</sup> Where food is provided, regulations oblige management to ensure that meals take account of religion, culture and other dietary requirements.<sup>10</sup>

**Recommendation for DP alternative:** Own-door accommodation, within communities, with the option of self-catering should be mandatory going forward. Physical living space should meet people's needs and requirements. Accommodation should have amenities that allow a basic level of independent living such as independent cooking and recreational facilities.

### Principle 3: Autonomy and Integration

Key to ensuring a person's mental wellbeing while in the protection process, as well as ensuring their transition out of the protection procedure afterwards, is an accommodation system that promotes personal development and integration into the host society. In Ireland, people live in isolation from the

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<sup>8</sup> AIDA Austria Country Report (2016)

<sup>9</sup> AIDA Austria Country Report (2016).

<sup>10</sup> Fundamental Rights Agency, *Oversight of Reception Facilities* (September 2017), p.9.

[file:///Users/user/Downloads/fra-2017-september-monthly-migration-report-focus-oversight\\_en.pdf](file:///Users/user/Downloads/fra-2017-september-monthly-migration-report-focus-oversight_en.pdf)

community in situations of forced idleness. As many Direct Provision Centres are situated in rural locations, it is difficult for people to engage with the local Irish community and due to visiting rules in many centres, it is difficult for local communities to, access Direct Provision centres.

**Good Practice Example:** Connecting civil society initiatives with protection seeker accommodation centres can promote integration and peoples' self-reliance.<sup>11</sup> The Lighthouse project in Spain helped migrant women to integrate by creating spaces for connection with local women.<sup>12</sup> The project also offered training and links to educational, medical and social services. In Germany, the *Asylothek* project is a volunteer-run library for asylum seekers, which offers languages courses and general information.<sup>13</sup> A core component of their work is the provision of information about rights and responsibilities, and courses on Germany's value system.

**Recommendation for DP Alternative:** 9. A matrix should be developed that considers issues like local services and accessibility to Dublin to test whether a particular area is appropriate. Local communities can provide a welcome but many existing centres are remote and isolated. Links should be made between the accommodation centre and the local community to introduce opportunities for integration and personal development.

## **Principle 4: Transparency and independent oversight of accommodation facilities**

Key to demonstrating compliance with international human rights standards is full transparency in relation to accommodation management, which allows for deficiencies to be addressed. With the exception of the Working Group process and report there has been little independent, systemic scrutiny of Direct Provision or Ireland's approach to accommodation of people seeking protection generally.

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<sup>11</sup> How Civil Society Organisations assist Refugees and Migrants in the EU: Successful experiences and promising practices from the 2016 EESC Civil Society Prize (2016). <http://www.eesc.europa.eu/resources/docs/ge-02-17-304-en-n.pdf>

<sup>12</sup> See homepage here (in Spanish): [www.fundaciolasalutalta.org/que-fem/far/](http://www.fundaciolasalutalta.org/que-fem/far/)

<sup>13</sup> See homepage here (in German): [www.asylothek.de](http://www.asylothek.de)

**Good Practice Example:** In Austria, the Ministry of the Interior is responsible for national oversight and standard-setting of reception conditions, whereas provincial governments oversee reception centres at the local level. Each centre hosts a Ministry representative, who is responsible for ensuring each centre meets federal standards. The Austrian Ombudsman Board has power to investigate cases of maladministration and conducts monitoring visits in its role as National Preventative Mechanism as assigned under the Optional Protocol to the Convention against Torture (OPCAT).

**Recommendations for DP Alternative:** The organisation responsible for management of the centre must conduct regular evaluations and quality assurance assessments to quickly identify and address any emerging issues. An independent third party inspectorate must be in place to assess the implementation of National Standards. Ireland’s ratification of OPCAT may provide additional avenues for independent oversight. In addition, the recommendation of the McMahon Report that there be an annual review of the protection process, with a view to making recommendations to guard against any future backlogs, has not yet been implemented.

## **Principle 5: Supporting Transition out of Accommodation Centre**

Protection accommodation should only ever be a temporary measure and residents must be properly supported to make their eventual transition out of the protection system. In Ireland, research has indicated that the protracted length of time spent in Direct Provision makes it incredibly difficult to transition to independent living.<sup>14</sup> Along with the measures set out above regarding integration and autonomy, people should be fully-supported in their transition out of protection accommodation.

**Good Practice Example:** Belgian group, ORBIT, supports people during the first stages of residence in Belgium, which includes providing refugees with support in the search for housing, they work with employers to give refugees

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<sup>14</sup> M Ni Raghallaigh, M Foreman, M Feeley, Transition from Direct Provision to Life in the Community – the experiences of those who have been granted refugee status, subsidiary protection or leave to remain, (2016).

and migrants a fair chance in employment opportunities, and bring together third-country nationals and host communities to foster mutual understanding.<sup>15</sup>

**Recommendation on DP Alternative:** Supports must be provided to assist people move to independent living. Streamline the status process and reduce delays at the Ministerial Decisions Unit. Accept Direct Provision centres as an address for social welfare claims from people with status to allow them access their entitlements. Grant full welfare allowance on recommendation of refugee status to assist people to prepare for independent living. Extend Homeless HAP. Issue a medical Card and DP allowance for people who choose not to enter DP but who may otherwise require some access to State supports in order to reduce the number of people entering Direct Provision. Consider a temporary extension of priority categories on social housing lists.

## E. Alternative Models

There are numerous different models to meet accommodation needs. These vary depending on the level of intervention and associated supports required. Many people seeking international protection are highly able and independent people who have minimal support needs. Others have a specific vulnerability which, again, varies in degree depending on their circumstances. With this in mind, there is likely to be no one-size-fits-all model appropriate to meet every person's needs. A range of different accommodation types should be considered.

The following are three models identified as possible alternatives to the current Direct Provision system:

- 1. Expand current social and protected housing stock** – Accommodation of asylum seekers would be provided on a local level by local authorities, with overall responsibility and oversight resting with a cross-departmental agency comprising Justice and Equality, Health, and Social Protection.

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<sup>15</sup> See homepage here: [www.orbitvzw.be](http://www.orbitvzw.be)

The benefits of this model are:

- (a) Integrated living with local population;
- (b) Access to social supports on-site where needed;
- (c) Ownership remains with the State;
- (d) In the event that the population of people seeking protection falls, the accommodation is immediately available for other groups of people requiring supported accommodation.

A challenge to this model includes the need to increase the current social housing stock to accommodate a further population of approximately 6,500 people. This could be overcome by long term planning to build accommodation. For example, the Government could commit to building 600 units each year from 2020, with planning and approval commencing in 2019. This initial outlay would be outweighed by long term saving rather than an annually recurring outlay to private operators.<sup>16</sup>

- 2. Cluster model** – Recognising the varying support needs of people seeking protection, this model employs a cluster system where different types of accommodation are provided depending on needs. This would involve a main accommodation centre for people with low support needs living largely independently. Proximate to this central hub, a number of smaller homes would accommodate people with similar vulnerabilities or special needs.

For this model to succeed, the standard of accommodation in the main centres would need to include own-door accommodation, access to cooking facilities, and recreation spaces. The location of such centres should also be proximate to large urban centres and have adequate public transport links.

- 3. AHBs build or convert existing sites** – This model would involve housing associations participating in the current tendering process with a view to

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<sup>16</sup> See Eoin Ó Broin, 'Direct Provision system is broken – let's fix it', Sunday Business Post, 25 November 2018

implementing a rights-led, not-for-profit basis accommodation model for international protection applicants.

The Irish Refugee Council have engaged with several AHBs to pursue implementation of this model. There are however a number of barriers in practice to AHBs participating in the current tendering model. These include:

- The current that the model requires tenderers to have accommodation of more than 50 beds or over, this risks perpetuating congregated living.
- Contract lengths (2 years with an option to extend for 24 months) may also not give enough certainty to providers.
- Conversion or build costs which were added to a tender cost, and which would result improved quality provision, may result in the tender being unsuccessful compared to lower bids from incumbent commercial providers.
- Many of these bodies are involved in ongoing, extensive work meeting existing social housing needs.

We believe these barriers are surmountable if the procurement process is altered.

## **F. Minimum Standards for Accommodation**

### **A. Physical Space – Self-Catering Units**

A longstanding criticism of Direct Provision has been that it has involved congregated settings. The HSE have described congregated settings as where 10 or more people with a disability live together in a single living unit or are placed in accommodation that is campus based. In most cases, people are grouped together and often live isolated lives away from the community, family and friends. Many experience institutional living conditions where they lack basic privacy and dignity.<sup>17</sup> Given this criticism, and Ireland's history of institutional living, we recommend that accommodation for single individuals

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<sup>17</sup> [Time to Move on from Congregated Settings A Strategy for Community Inclusion](#), Health Service Executive, June 2011

should house no more than a maximum of 10 people except in circumstances where a larger grouping is appropriate. It is concerning that the Reception and Integration Agency are procuring<sup>18</sup> for accommodation of more than 50 beds as this risks perpetuating congregated settings.

Suitable living space for international protection applicants must offer both privacy and autonomy. To achieve this, the accommodation model must comprise self-catering apartment units and must meet the current regulatory standards around living space. The storage needs of residents must also be considered.

Where possible, each apartment should accommodate a maximum of 4 single adults, with individual rooms for each single person. Accommodation should also have regard to circumstances where the health needs of a particular individual change. For example, a single woman who becomes pregnant may require more space and privacy.

Families should be accommodated in a private apartment unit or, at a minimum, together in a shared accommodation unit of adequate size. The accommodation unit would include one shared kitchen, living space, and bathroom for 4-6 people.

## **B. Location**

The location of accommodation will be integral to its success. In order to ensure access to education, employment and services, accommodation will need to be within commutable distance from an urban centre. Transport connections will be an important aspect of this to ensure residents are not cut off from the rest of the community.

## **C. On-site Supports**

It is vital that staff working with residents are adequately experienced and trained to meet the specific needs of people who may be particularly vulnerable or have particular social needs based on their life experiences to

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<sup>18</sup> Multisupplier Framework Agreement for the provision of premises, available on E-Tenders

date. For specialised support, regular medical, psycho-social supports and legal clinics should be available on-site.

#### **D. Transparent, Independent Complaints and Inspections**

The Offices of the Ombudsman and the Ombudsman for Children have jurisdiction to investigate complaints from residents in direct provision. Currently, there is a low level of awareness around the complaints mechanism and low engagement with the complaints process as a result. Oversight is enormously important to ensuring standards of service are high. The best way to achieve this is through an independent inspectorate which does not place the burden of raising issues on individual residents. Instead, the inspectorate should be empowered to launch its own investigations and to assess the system as whole.

A rights-focused accommodation model must also ensure the dignity of residents is safeguarded by ensuring that due consideration is given to the voices of people living in accommodation. A forum for discussion and feedback must be provided to residents.

#### **E. Commitment to National Standards**

At present, draft National Standards for Accommodation are at an advanced stage and near completion. A set of national standards applying equally to all accommodation centres would ensure that a minimum level of comfort and dignity is in place for everyone seeking protection in Ireland. As a baseline, these standards should be considered as part of the delivery of alternative accommodation and care for residents. The Irish Refugee Council commented on these Standards and recommended improvements<sup>19</sup>.

#### **F. Integration and Transition Support from the Outset**

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<sup>19</sup> Irish Refugee Council, [Submission On The Draft National Standards For Direct Provision Centres](#)  
3 October 2018

The physical conditions of accommodation for people seeking protection in Direct Provision needs to vastly improve, as does ensuring other basic needs are considered and supported.

An alternative model must involve wraparound supports to ensure that integration and transition support begins from the moment an applicant seeks international protection. This must include specialist care for vulnerable groups, as well as supports for people seeking to access education and the labour market.

The Irish Refugee Council advocates a model of ‘integration from day one’ as the correct approach to people seeking international protection in Ireland. This model has been successfully implemented in Scotland via ‘New Scots: refugee integration strategy 2018 to 2022’.<sup>20</sup> The current approach is to treat all money spent on the protection process as wasted money, rather than an investment in upholding our human rights obligations and providing a dignified experience for people while they wait for their application to be processed.

The policy approach should be to ensure the needs of vulnerable people are met and to support independent and autonomous living through targeted investment, in anticipation that a person will remain in Ireland at the conclusion of the protection process, instead of the current assumption that they will not.

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<sup>20</sup> [New Scots Refugee Integration Strategy 2018 – 2022](#), Scottish Government, 10 January 2018

## G. The International Protection Process

### I. Delays

The benefits of the introduction of the single procedure under the International Protection Act 2015 have, so far, not borne fruit for a number of reasons. Most notably, this includes the decision to begin each existing application again from the beginning under the single procedure.

In addition, lack of adequate staffing and resources at the International Protection Office and the International Protection Appeals Tribunal have slowed down the process. Interviews have been cancelled at short notice due to a lack of available staff members which leaves applicants in limbo, unsure when their interview will be rescheduled.

Added to this, delays at the Ministerial Decisions Unit have led to people waiting up to one year for their refugee or subsidiary protection recommendation to be confirmed by the Minister for Justice. After receiving the letter from the Ministerial Decisions

In the event of an applicant bringing judicial review proceedings, the slow progress of court proceedings acts as a further source of delay. In addition, people seeking protection are treated differently in judicial review proceedings: separate list in High Court, higher test and shorter time limits and limited right of onward appeal (See Illegal Immigrants Act 2000). This must be addressed as the delays in processing applications hugely impact on time spent in Direct Provision and the harm caused by extended periods of time in such a

#### **Recommendation:**

- Properly staff, train and resource the International Protection Office.
- Ensure the International Protection Appeals Tribunal is properly staffed.
- Implement a six month time limit for a first instance decision as standard practice.
- Opt in to the Asylum Procedures Directive (recast) which requires decisions to be made within six months and also creates an assessment to establish if the applicant is in need of special procedural guarantees, this will complement the vulnerability assessment in the Reception Conditions Directive.

## II. Early Legal Advice

The lack of investment in early legal advice<sup>21</sup> for people in the international process leads to a high level of appeals. The benefit of early legal advice is that people have assistance from the beginning completing the questionnaire and preparing for their interview. They have the benefit of legal advice at an early stage which allows them to fully understand the application process, what is expected of them, what is required from them, and the proofs they must meet.

When combined with quality decision-making, the early legal advice model ensures that people have a fair opportunity to properly establish their claim for international protection. A fair, efficient process which ensures applicants have access to quality legal advice and quality decision-making will reduce the likelihood of appeals. Early legal advice prevents situations where applicants only disclose pertinent and important testimony at appeal stage when they have had the benefit of greater legal advice.

Important information about a person's experience may not be communicated due to the traumatic and private nature of the experience and an applicant not understanding that the traumatic event is key testimony for their protection application. With the early legal advice model, this is less likely to happen because there is time for a lawyer to explain to the person seeking international protection the importance of disclosing such information. There is also time to build a relationship with a lawyer or caseworker which facilitates disclosure.

The current system produces a situation where legal advice prior to submitting the questionnaire and attending interview is either not availed of (because people are unaware of their rights) or is not adequate (because legal aid is so limited).

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<sup>21</sup> Irish Refugee Council, [A Manual on Providing Early Legal Advice to Persons Seeking Protection](#)

This means that the applicant only gets to properly engage with the process at appeal stage. Not only is this distressing for applicants, it can lead to erroneous findings on credibility grounds at appeal stage. It also delays the amount of time a person spends in Direct Provision, entailing further expense for the State.

### **III. Increased Legal Aid**

The need for an early legal advice model is linked to the need to invest in legal aid, particularly at pre-interview stage.

To put it in context, only 11% of the Legal Aid Board's civil legal aid budget is spent on advice for international protection applicants. For these people, their future safety and welfare turns on a legal process with which they are unfamiliar.

International protection is a fundamental international human rights obligation which the State must vindicate. Legal advice, which is reliant on the availability of legal aid, allows an applicant to make the best application they can. It is necessary for applicants to properly and fully exercise their basic human rights.

The appeal process and judicial review proceedings, which arise due to errors in the appeal process, are also costly for the State. In the long run, it does not save exchequer funds to deny sufficient access to legal advice at the early stages of the process, because the state ultimately pays to remedy errors which often result from the absence of adequate legal aid. Investment should be frontloaded with adequate legal aid provided from the beginning of the international protection process.

#### **Recommendation:**

- Invest in early legal advice as model for fair, efficient international protection application process with each applicant receiving at least 10 hours of advice and assistance.
- The Irish Refugee Council's manual on early legal advice is a template for how all protection applications should be prepared.

#### **IV. The protection process, special procedures, and the Common European Asylum Procedure (CEAS)**

Various, many small, amendments to the protection procedure would bring significant improvements. The Irish Refugee Council would encourage the Government to consider opting into the Asylum Procedures Directive (revised)<sup>22</sup> in order to align our protection laws with minimum, common standards across the EU. This would introduce a six month limit for the processing of claims at first instance and would also introduce a requirement to adopt special procedures where needed for vulnerable clients who require accommodations in the application process.

Ireland only participates in some of the second phase CEAS measures. Opting into the full CEAS would ensure that Ireland has a voice in reforming and improving common EU laws on protection, while also ensuring that we align our laws with the rest of the EU following the exit of the UK.

##### **Recommendation:**

- The International Protection Office should phase out the use of the long questionnaire. This can be a difficult document to navigate and has to be translated which can be time consuming and cause delays.
- All interviews should be tape recorded so as to ensure the interview record can be checked and verified. This will also increase confidence in the interview process in circumstances where the legal representative cannot attend the interview.
- Give applicants a copy of the interview record at the end of the personal interview.

#### **V. Family Reunification and Transition**

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<sup>22</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection [2013] OJ L 180/60.

Family reunification rights need to be expanded to keep families together. The current definition of a family excludes children over 18. If a refugee is over 18, it excludes their parents. For LGBT refugees, it excludes their partners (many countries of origin do not recognise same-sex marriage). It excludes grandparents, older siblings, aunts and uncles, and anyone who may have acted in loco parentis. This denies the reality of many family set-ups, as well as failing to recognise family structures which may differ depending on cultural context.

The pain caused by family separation cannot be overstated. It is impossible for people to move on and begin full, new lives in Ireland in circumstances where their loved ones remain in danger.

Furthermore, the twelve month limit on family reunification applications places enormous pressure on people who have newly received their refugee status to be in a position to provide for dependent family members. For people trapped living in Direct Provision due to the unavailability of housing, they have to apply for family members to reunify despite the reality that they have nowhere to house them. The twelve month deadline forces people to apply before they have time to properly establish themselves in Ireland.

Furthermore, it's not currently possible to apply for social housing until family members have arrived in the country. As a result, a refugee can only apply for housing for themselves and family members already in Ireland. Only when their family arrive in Ireland can they then apply for larger accommodation. This creates situations of overcrowding or homelessness. It can be easily remedied by allowing a person with refugee status to apply for housing for reunifying family members, before they arrive in Ireland.

**Recommendation:**

- Enact the International Protection (Family Reunification)(Amendment) Bill 2017
- Reform existing process for family reunification to allow for forward planning. Currently, applying for housing and social welfare provision can only commence when the person arrives in Ireland

There are currently almost 700 people stuck in Direct Provision although they have received status to remain in Ireland. This is due to a number of factors, most pertinently difficulties accessing housing. For people with refugee and subsidiary protection status, they are in the same situation as Irish citizens seeking to access housing. However, the traumatic experiences which brought them to Ireland, as well as their experience of Direct Provision, the lack of existing support networks, language barriers, and the bureaucratic nature of accessing public services in Ireland make it enormously difficult to establish a new life in Ireland.

**Recommendation:**

- Provide intensive support services for people receiving status and moving out of Direct Provision to ensure they are able to access housing and other entitlements.
- Maintain availability to transition supports for a minimum period of eighteen months after receiving status where needed.

Currently, minors who arrive in Ireland unaccompanied are referred to the Separated Children Seeking Asylum Unit and placed either in foster care or residential care for minors. When they reach 18 years, those young people whose international protection applications remain under consideration are usually moved from that accommodation to Direct Provision. They then have no additional aftercare supports. This differs from other children in care who receive aftercare services including access to or support with suitable accommodation up until the age of 21, or 23 if they are in full-time education. Difficulties presented by the practice of moving aged-out minors, who are often very vulnerable, into Direct Provision accommodation are well documented.<sup>23</sup> Aged-out unaccompanied minors should be provided with the same aftercare supports as other young people in care at 18 and should not be accommodated in Direct Provision while they wait for their application to be processed.

**Recommendation:**

- Ensure that separated children seeking protection receive equity of care with other children leaving care, and that they receive aftercare services.

## **H. Annex 1: opening address to Justice Committee, 29 May 2019**

Thank you for the invitation to present to the Committee this morning.

The Irish Refugee Council helps people seeking asylum. We give information, provide early legal advice, help people to access employment and education, help young people and accommodate more than 70 people who have left Direct Provision through our housing project. We also advocate for improvements in the asylum process. It has been a consistent call of the Refugee Council that Direct Provision should end.

Moreover, politicians across the spectrum, international bodies, other NGOs and most importantly people living in Direct Provision have called on it to end.

There are countless articles, reports and testimonies of what is wrong with this system.

The fact that Geoffrey Shannon, the special rapporteur on child protection, has called on Ireland to abolish Direct Provision and that the Ombudsman has said it is not a suitable long-term solution for those waiting on an asylum claim, should alone be enough to bring about wholesale change. Direct provision is already a chapter in Ireland's long and dark history of institutional living.

Unfortunately, we believe the system has worsened in recent months, particularly in the context of emergency centres. A grave concern we have is that the short term emergency situation becomes entrenched and the makes the implementation of change harder.

If Direct Provision ends, something has to go in its place. The bottom line of a new system should be own door accommodation, the opportunity to cook for oneself, to live in a community.

We think this new model could be agreed upon quite easily. And, from discussions with the new head of RIA, I do believe they are open to real change. However we believe the bigger challenge lies in how that new model is

delivered. It is doubtful that existing providers can deliver that model nor can the current procurement process.

The system is broken, and it's costing too much for too little – we know that it needs to change. So how do we get to a new system?

Firstly, we should consider accommodation of people seeking asylum a housing issue. Not to draw from existing funds for housing but to take a housing policy approach. The Department of Justice is not equipped to design policy like this and it should not lie with them.

Secondly, we should use the budget that exists but to do so more strategically. The government has built only three accommodation centres in 18 years. The majority of existing centres were originally designed for other purposes. The State should procure fit-for-purpose accommodation to meet particular needs. This will be a cost-saver in the long term. Aidan O'Driscoll, Director General of the Department of Justice and Equality said to this committee weeks ago that the spend on Direct Provision in 2019 will likely reach €95 to €100 million this year. In 18 years over €1.2 billion has been paid to private providers of accommodation. Spending money on providing people with asylum is a good thing, but it should be done strategically to the benefit of people and the public.

Thirdly, and linked to this is fundamental criticism of the system so far has been that it has been reliant on for profit actors. Private providers are not social workers, or public servants: they can't and aren't meeting the complex social needs of the people living in their centres – that is a public obligation on the State.

We have many housing in bodies in Ireland, that are non-profit, work to a particular mission and have different strengths and expertise. We believe that AHBs are best placed to provide accommodation.

For this to happen the procurement process has to change: longer lead in time, longer contracts, funding for capital costs and a reduction in the number of people a body should accommodate. Current procurement models require any provider to accommodate 50 or people. The feedback we have had is that this

risks replicating congregated living and it is difficult to procure buildings they may not be able to source buildings of this size.

Fourthly, direct Provision isn't just about the bricks and mortar. Reduce delays in the system by giving resources to decision makers, increase legal aid at pre-decision stage so applications are better prepared. Make the right to work broader. Allow for integration from day one.

Fifthly, there needs to be greater engagement on this issue from all Government departments. Moreover, the Department of Justice could work better within itself. Often the Department of Justice does not work in synchronicity. Six bodies: the International Protection Office (IPO), the International Protection Appeals Tribunal (IPAT), the Legal Aid Board (LAB), the Reception and Integration Agency (RIA), the Ministerial Decisions Unit (MDU) of the Irish Naturalisation and Immigration Service (INIS), are all under the ambit of the DOJ but they could work better. To give an example: the LAB isn't supported enough to ensure everyone has a well prepared applications to the IPO. This can mean more complicated appeals for the IPAT to deal with. If someone is recognised as a refugee then there are delays in the MDU which mean that people spend longer in the Direct Provision system which means the system becomes overcrowded which puts pressure on RIA. Even then there are not enough appointments so the person struggles to get an appointment to get a Residency Card. At each step, there are hurdles, requiring intensive interventions and supports. It doesn't need to be this difficult, but systemic change is key. There needs to be increased transparency and clearer channels of communication.

Our submission will go in to the above in more detail.

Thank you,

Nick Henderson, Chief Executive Officer, 27.05.2019

## I. Annex 2: What are the alternatives to our broken direct provision system?, Irish Times 12.02.2019

Direct provision is broken, condemned by politicians across the political spectrum, international organisations and, most importantly, by residents themselves. Geoffrey Shannon, the special rapporteur on child protection, called for it to be abolished in his recent annual report. Its failures have been vividly demonstrated through Melatu Uche Okorie's book *Hostel People* and the TV show *Taken Down*.

So how do we end direct provision, what is the alternative and how do we get there?

Minister of State for Justice David Stanton repeatedly says he has not heard of a better system. These are some ideas.

In short, we need to shift to long-term, strategic thinking, and away from a reactive "managed emergency"-style system that relies on private operators. Even in the middle of the housing crisis solutions exist.

Housing experts should be consulted and sought for input. Philanthropy, faith groups, developers and business should also be encouraged to become involved

We then have to accept that providing asylum and accommodation is a positive and important part of being a modern democracy that respects human rights.

An average of 2,290 people per year have claimed asylum in Ireland over the last 10 years. This is an entirely manageable number, but the majority have no means to pay for accommodation or family to rely on. Around 61,100 people have been accommodated in direct provision since 2000. If direct provision ends, something has to take its place.

Responsibility should be shifted away from the Department of Justice. It does not have the knowledge of housing or sufficient power and influence in housing policy circles.

The budget and control of accommodation for people seeking asylum should be ring-fenced but mainstreamed into wider housing policy. Housing experts should be consulted and sought for input. Philanthropy, faith groups, developers and business should also be encouraged to become involved. Partnerships and consortiums that leverage the unique attributes of each will be crucial.

### **Bolt-on services**

Non-profit housing bodies should be incentivised to become providers of accommodation, with other organisations providing bolt-on services. Social housing funding streams, such as the capital assistance scheme, should be amended to allow for asylum accommodation to be a small percentage of social housing developments.

Tenders for asylum accommodation should also be designed to attract the interest of these housing bodies. Longer contract duration, with funding for capital and conversion costs, should be introduced.

The government has built only three accommodation centres in 18 years. In those years, over €1.2 billion has been paid to private providers of accommodation

Tenders should also allow for longer lead-in time. Currently providers are required to provide accommodation at short notice, which puts off bodies that may require time to convert properties. The tenders should also be sufficiently broad to accept different types and sizes of accommodation so we move away from congregated settings.

The government has built only three accommodation centres in 18 years. The majority of existing centres were originally designed for other purposes. The State should procure fit-for-purpose accommodation to meet particular needs. This will be a cost-saver in the long term: in 18 years over €1.2 billion has been paid to private providers of accommodation. Spending money on providing

people with asylum is a good thing, but it should be done strategically to the benefit of people and the public.

### **Living space**

Adequate living space is crucial, and will distinguish any new system from old. Own-door accommodation and self-catering facilities to ensure autonomy, privacy and dignity are a necessity. These sound like big asks but are achievable if planned.

New standards on direct provision point us in the right direction, but are based around the current system of grouping people together in centres. We should start with the vision of what we want and work backwards rather than incremental improvements to an existing system.

Accommodation should be within reach of an urban centre with transport links available. Local communities took the lead in offering welcome and support, as demonstrated in Merville and Rooky, after attacks there. But some centres are too far from the essential services that a person in the asylum process needs to access.

Some 700 people currently live in direct provision but cannot leave because of the housing crisis

A matrix that considers issues like local services and accessibility to Dublin should be developed to test whether a particular area is appropriate.

Direct provision is more than accommodation. Changes, many involving little or no spend, can improve the system. The migrant integration strategy should be extended to include people seeking asylum from their arrival. Scotland has successfully implemented this model under the New Scots strategy. The strategy should also be amended to include actions on housing.

Supports and services should be available to assist people to transition from accommodation when they have regularised their status. Some 700 people currently live in direct provision but cannot leave because of the housing crisis.

A broader right to work is also needed. Only around 6 per cent of people in direct provision are working. Through work people can become independent and move on.

## **Asylum procedure**

Delays continue to afflict our asylum procedure. Claim asylum tomorrow and you will be waiting for at least 12 months before being called for an asylum interview, and there is a backlog of around 4,000 cases.

Delays could be reduced by streamlining the application procedure, more resources given to the International Protection Office and more legal advice at the beginning of the procedure to have people recognised as refugees quicker.

Direct provision is already a chapter in Ireland's long and dark history of institutional living. Now is the time to think big and change. More of the same fails us all.

# “Powerless”

Experiences of Direct Provision During the Covid-19 Pandemic  
August 2020

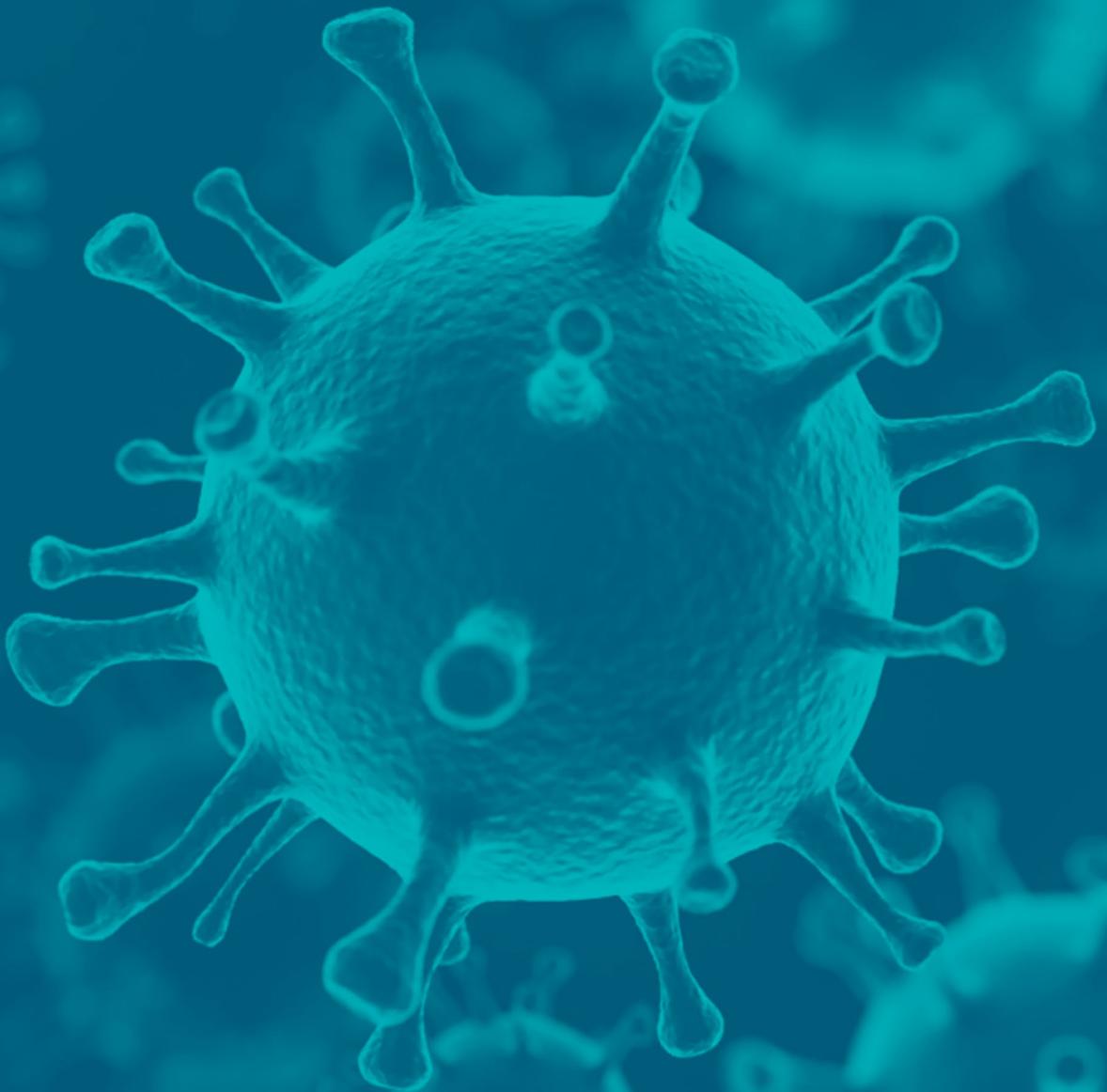


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Section 1

# Introduction



**This report details the findings of a survey of people's experiences of Direct Provision during the Covid-19 pandemic. It aims to provide a picture of what it is like to live in the Direct Provision system at this time.**

While the Covid-19 pandemic has limited the choices we make in our lives, it has highlighted in new ways the problems of Direct Provision and further entrenched the lack of agency of people living in the system.

One of the strategic goals of the Irish Refugee Council is that the direct voice of people living in Direct Provision is heard and the experience of those affected is amplified. In this respect, it is the qualitative responses to the survey that are most striking and give a picture of what it was like to be in the eye of the storm at the height of the pandemic.

The most striking theme of responses was fear and trepidation caused by an inability to control what happened to them during the pandemic. Sharing essential living spaces exposed people to a greater risk of contracting the disease. Parental responsibilities and challenges increased. The Direct Provision 'daily expenses allowance' came under greater pressure. Concerns about the future of their protection application were heightened.

Meanwhile, the pandemic continues and Direct Provision and emergency centre accommodation, after nursing homes and meat processing factories, are particularly vulnerable to outbreaks as demonstrated by the outbreaks in centres in County Kildare. Issues and problems identified by respondents in this report still exist and are likely to do so for the foreseeable future. People living in Direct Provision, because they live in an at risk congregated setting through no fault of their own, also remain subject to significantly tighter controls around movement and quarantine than other members of society.

Despite the majority of feedback to the survey being negative, some respondents state that centre management helped them during this period and took extra steps to ensure their safety. The majority of respondents also stated that they had received adequate information about the pandemic.

Looking back on policy decisions made during the pandemic, it is hard not to come to the conclusion that there are two standards during the pandemic. One for the general public, where social distancing is encouraged and another for people in residential settings such as Direct Provision, where sharing of intimate space is implicitly accepted.

Blame for this lies in the past as much as the policy decisions of today. For too long, Ireland has deemed institutional accommodation settings such as Direct Provision as acceptable. One silver lining of the pandemic should be that congregated settings are no longer acceptable, except when strictly necessary.

The case for ending Direct Provision is more compelling than ever, and the recently agreed programme for government commits to ending it. We hope this report will be read by all policy makers involved as a salient reminder of the problems with the current system and the need to implement a new type of accommodation as soon as possible. Whatever replaces Direct Provision will also have to be, as far as possible, pandemic proof. We also hope this report will be a useful resource in any historical analysis or reporting on Ireland's experience of the Covid-19 pandemic.

This report was written and edited by Vikki Walshe and Nick Henderson, and designed by Eamonn Hall. The Irish Refugee Council are very grateful to Rethink Ireland for their support in preparing and publishing this report.

The report is dedicated to people living in Direct Provision, in particular to the men and women who played their part doing essential work during the pandemic particularly in nursing homes but also in hospitals and as cleaners and shop assistants.

I would also like to publicly thank the staff and volunteers of the Irish Refugee Council who have worked so hard during the pandemic. It is a privilege to work alongside them. Annex 3 of the report highlights some of the work the organisation has undertaken during the pandemic.

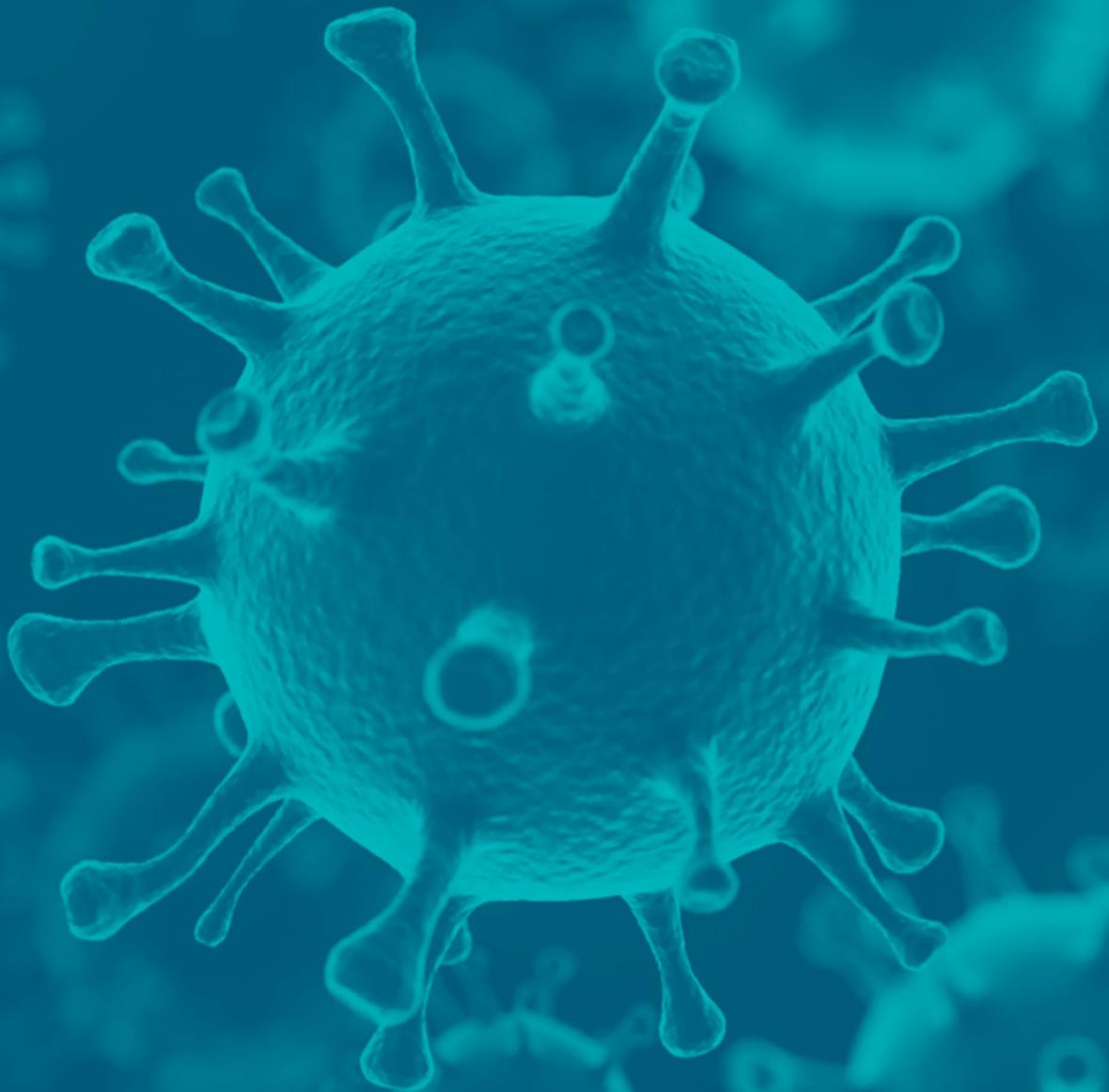
**Nick Henderson,**

Chief Executive Officer, Irish Refugee Council

*August 2020*

Section 2

# Survey Methodology



The survey was established online using Google Forms. It was circulated to and completed by those living in Direct Provision through a network of people who use the Irish Refugee Council's services as well as other support organisations' networks. The survey was also shared publicly online via the Irish Refugee Council's social media channels for approximately two weeks prior to closing. It was not translated, due to lack of resources in translating qualitative responses back to English. However, in the introduction to the survey, a link was provided to Google Translate so that a respondent could translate any questions in to their language.

After identifying and eliminating 23 duplicate responses, there were 418 unique respondents to the survey. The number of people living in Direct Provision and emergency accommodation as of 26 May was 7,700. Therefore, approximately 5.4% of the population of people living in Direct Provision and emergency accommodation completed the survey.

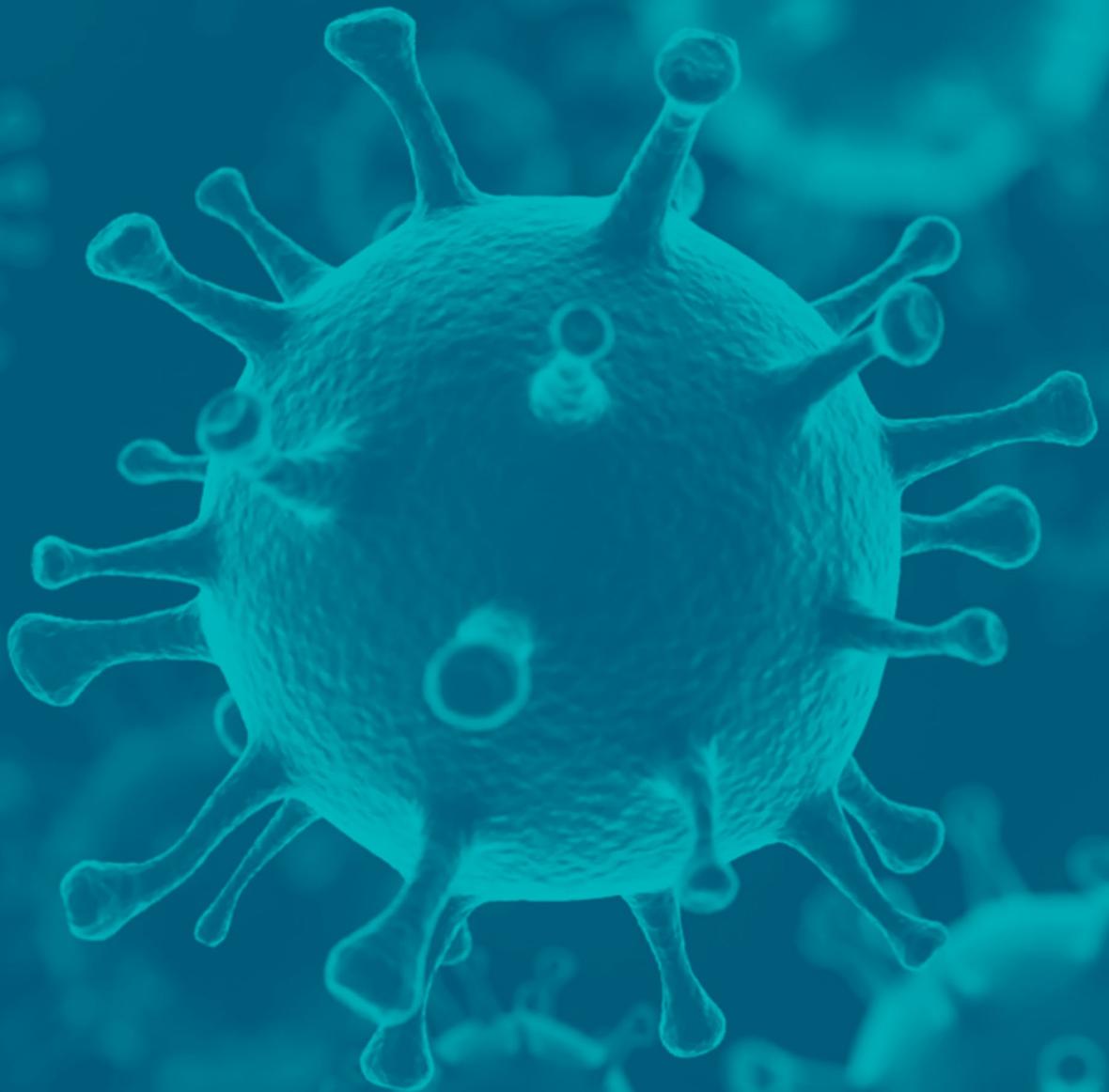
There were respondents from 38 Direct Provision centres, 22 emergency accommodation centres and three hotels that people were moved to during the pandemic. There are approximately 84 locations where people seeking protection are currently accommodated. Therefore, there were respondents from approximately 63% of all locations.

It is important to emphasise that, as a survey based on a relatively small proportion of the wider population, this report does not represent itself as a definitive representation of everyone's experience during the pandemic. In addition, the survey was live from 1 April to 7 June and people's experiences and situations may have changed during this time. For example, healthcare workers living in Direct Provision were given the opportunity to move out of their accommodation into temporary accommodation for the duration of the pandemic.

The survey collected both quantitative data in the form of responses to binary questions and multiple choice tick box questions and also qualitative data in the form of written responses. Any personal data contained in the quotes which would allow a person to be identified has been removed.

Section 3

# Executive Summary



This report is broken down into five sections in alignment with the survey's key questions and responses; Safety and Space During the Covid-19 Pandemic; Mental Health, Stigma and Racism; Children, Schooling and Parenting; Supports and Recommendations. The report also contains several annexes. Annex 1 is a chronology noting some of the key dates relating to Direct Provision and the pandemic. Annex 2 are copies of key pieces of correspondence. Annex 3 is a summary of the work done by the Irish Refugee Council during the pandemic. Annex 4 is an overview of responses to social distancing and cleaning measures being implemented in Centres. Annex 5 is a copy of the survey itself. Some of the key report statistics are:

### **RESPONDENT NUMBERS AND LOCATION**

- 5.4% of the population of Direct Provision completed the survey between 1 April and 7 June
- Respondents were from 63% of all Direct Provision and emergency centre locations across Ireland

### **SPACE DURING THE COVID-19 PANDEMIC**

- 55% of respondents felt unsafe during the pandemic
- 50% of respondents were unable to socially distance themselves from other residents during the pandemic
- 42% of respondents stated they shared a room with a non-family member
- 46% of respondents shared a bathroom with a non-family member

### **WORK**

- 19% of respondents who were working had lost their employment due to the Coronavirus crisis

### **THE DIRECT PROVISION DAILY EXPENSES ALLOWANCE**

- 85% of respondents stated that the daily expenses allowance of €38.80 was not enough to live on

### **INTERNET CONNECTIVITY**

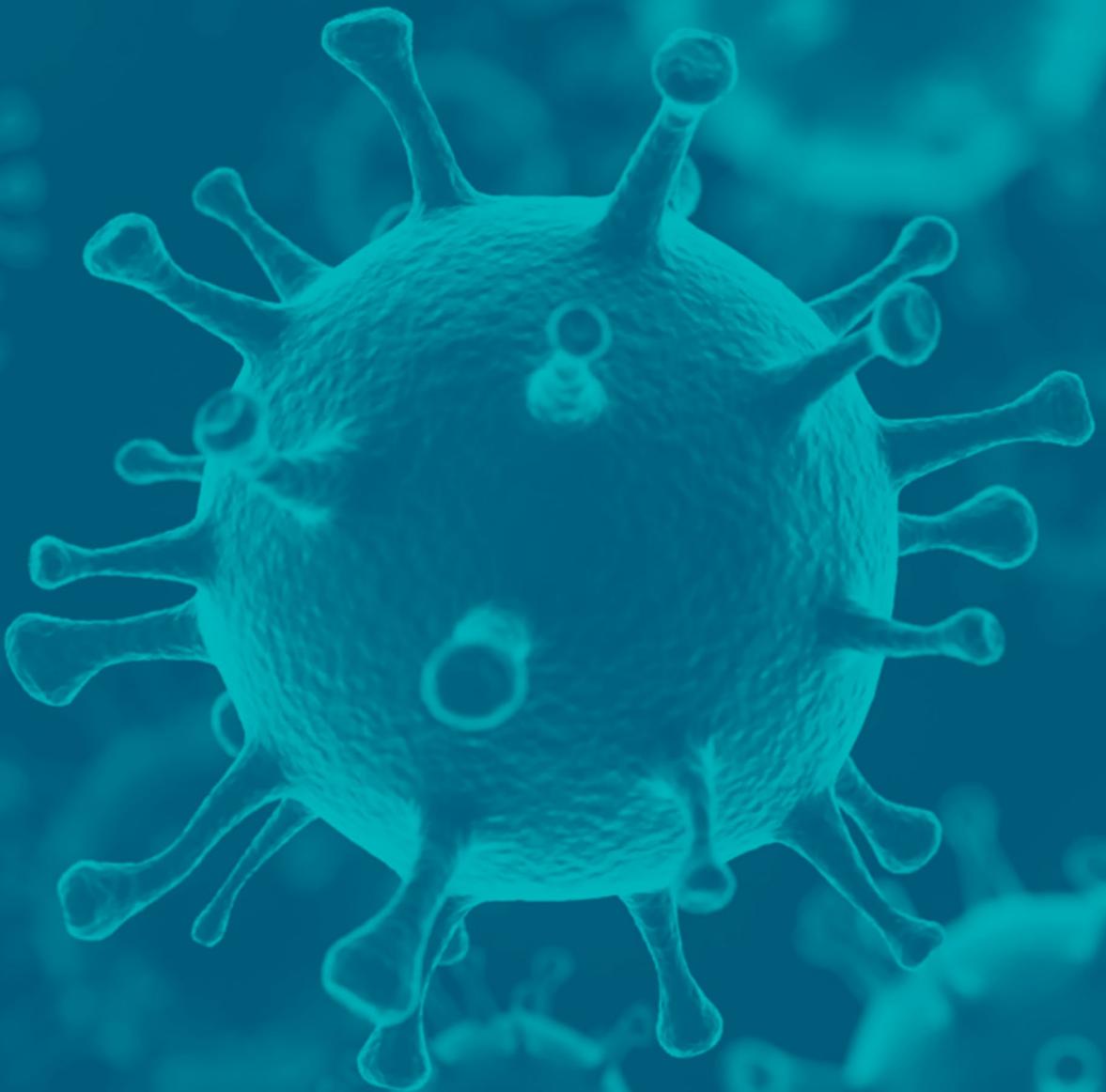
- 63% of respondents had access to a reliable WIFI connection

### **PUBLIC HEALTH INFORMATION**

- 85% of respondents stated they felt that they had received enough information about Covid-19
- 78% have had access to sanitizer

Section 4

# Safety and Space During the Covid-19 Pandemic



## INTRODUCTION

The survey began by asking respondents if they felt safe where they were living during the crisis. Over half of respondents to the question, 55.7% of 396 respondents, stated that they did not feel safe. Several factors seemed to influence whether people felt safe, in particular the number of people they were sharing accommodation with and what type of accommodation they were in.

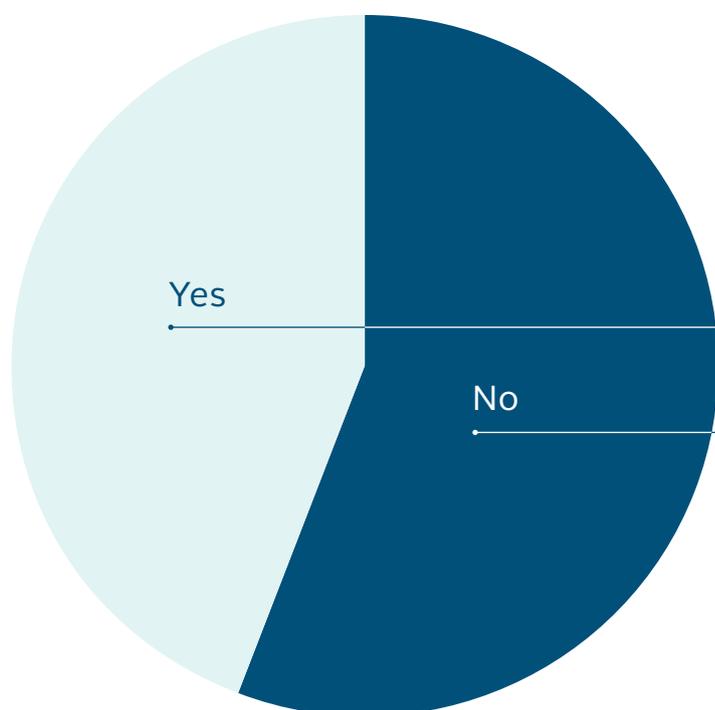
Respondents were asked to say where they lived, picking the location from two lists, one for Direct Provision accommodation and one from emergency accommodation. A greater percentage of people (55%) living in Direct Provision stated they felt unsafe compared to those in emergency accommodation (45%). This difference could be due to hotel style accommodation being more suitable for social distancing.

Respondents who felt unsafe were asked what made them feel unsafe and what concerns and worries they had. A lack of space that prevented them from being able to social distance was of most concern to respondents. In particular, the inability to keep up adequate social distancing of 2 metres between themselves and other non-family or household members in accordance with HSE guidelines. Just under half of respondents, 49.7% of 395 respondents, stated they were unable to 'socially distance' themselves from other people.

*“No one is safe in Direct provision. We share kitchens, rooms, toilets.”*

*“It’s Direct Provision, we are sharing...what scares me is the fact we come last.”*

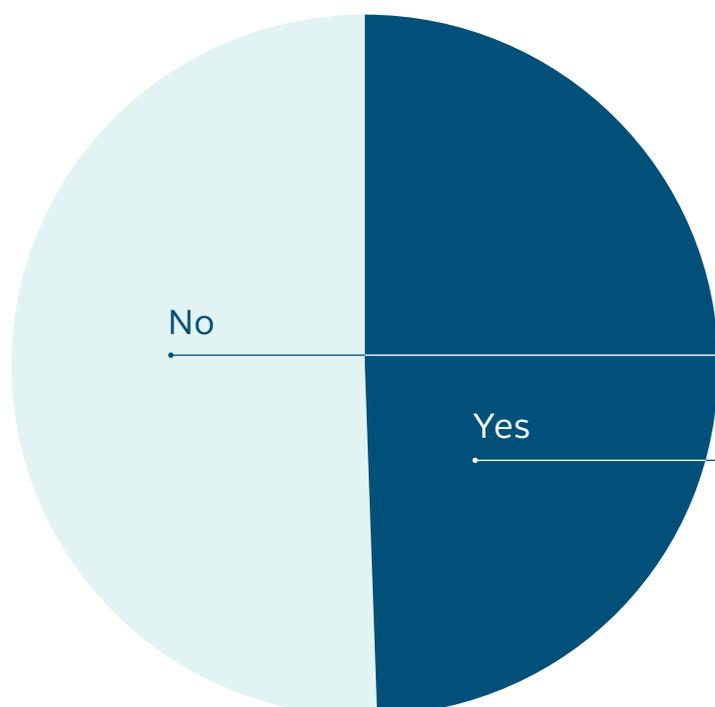
*“This place is packed, people are coming in everyday and they bring them here and put us at risk of corona. I feel like our well being is not important to them. We share the same canteen, a lot of people share bathrooms and toilets. The truth of the matter is we are at risk of dying more than anyone else.”*

**Question**

Do you feel safe where you're living during this crisis?

44.3%

55.7%

**Question**

Are you able to socially distance yourself from other people in your centre?\*

49.7%

50.3%

\* Social distancing means keeping a space of 2 metres between you and other people. We understand that this may not be possible in many Direct Provision centres.

*“We live in a much crowded place, we have to share rooms (minimum three people) and toilets, we have a small shop downstairs that is too small, in the corridors there’s like a thousand doors you have to open before reaching your room. There’s no way you can stay in the room without going out, the cooking stations are far away from the rooms and you have to go outside to get to the toilet. It’s very hard to lock kids aged (3-11) in these small rooms.”*

*“We could only tackle this virus using social distancing but in the centre there isn’t any social distancing. Living [with] three / four people in the room is not [the] proper way to avoid this virus in my opinion. So staying [in] Direct Provision is not very good in this time because if one get the virus then it can be easily spread out.”*

*“Plenty [of] adults and children living under the same roof, people share a lot [of] facilities that may not allow proper social distancing. If one person gets infected it will be hard to control the spread no matter the measures taken.”*

*“Social distancing is impractical especially in the kitchen, laundry & dining place.”*

*“We are powerless, just sitting ducks waiting to die.”*

## **SHARED BEDROOMS**

42.1% of 391 respondents shared a room with one or more non-family member. Of the 223 respondents to the question about how many people they shared a room with, 39.2% shared with 1 other person. 36.5% shared with two people. 15.3% stated that they were sharing with 3 people. 5% of respondents stated they were sharing with four people. One respondent stated they were sharing a room with 11 people.

The number of people each person shared a room with seemed to have an influence on whether they felt safe. 71% of respondents who shared a room with three or more people felt unsafe compared with 51% of respondents who shared a room with one person feeling unsafe.

### **‘MOVE THE VULNERABLE OUT’ CAMPAIGN**

From the beginning of the pandemic, many organisations and individuals campaigned for vulnerable people to be moved out of Direct Provision, highlighting the particular risk the pandemic posed to them.<sup>1</sup>

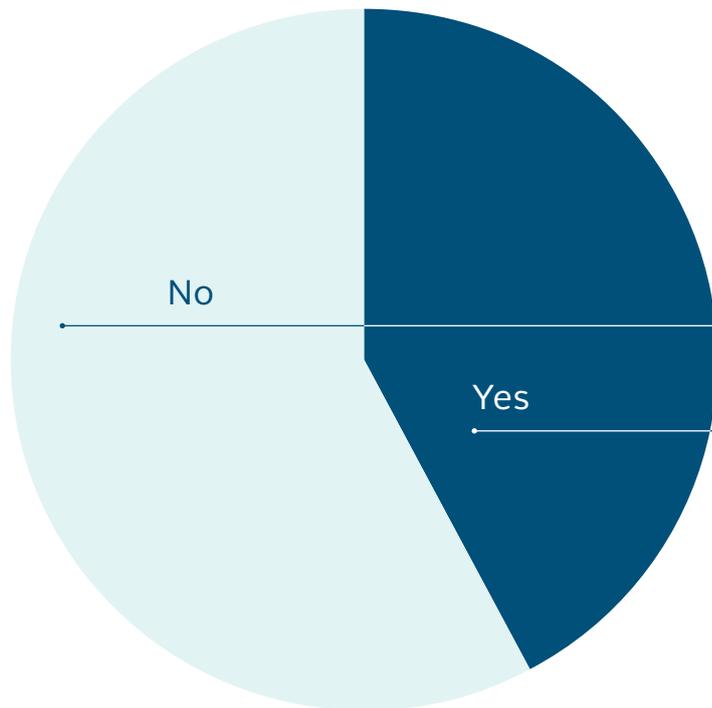
On 5 May, RTÉ reported that 1,700 people in Direct Provision and Emergency Accommodation were sharing bedrooms with non-family members. This figure accounts for approximately 22% of the total population living in the Direct Provision and emergency accommodation system. The Irish Refugee Council highlighted via a press release the direct contradiction between the fact that many people were sharing bedrooms with non-family members and the advice given by Ireland’s Chief Medical Officer, on 29 April at the daily press conference, that non-family members should not share intimate space.<sup>2</sup>

At the beginning of the pandemic, the Irish Refugee Council sought legal advice on the State’s obligations to people living in Direct Provision. Written by Michael Lynn SC and Cillian Bracken BL, the advice<sup>3</sup> stated that these obligations include ensuring an adequate standard of living for people seeking protection and living in Direct Provision. The advice also states that the obligations include measures which guarantee their subsistence and protect their physical and mental health which includes the provision of single or household occupancy accommodation as an

1 See Irish Refugee Council, Nasc, [The Sanctuary Runners Press Release, Move the Vulnerable Out Now, 22 March: Movement of Asylum Seekers Ireland Press Release, Statement on the Irish government’s response to COVID-19 in Direct Provision, 27 March](#); social media hashtag: #movethevulnerableout

2 RTÉ, Concern over numbers sharing bedrooms in Direct Provision, Tuesday 5 May

3 See Annex 2

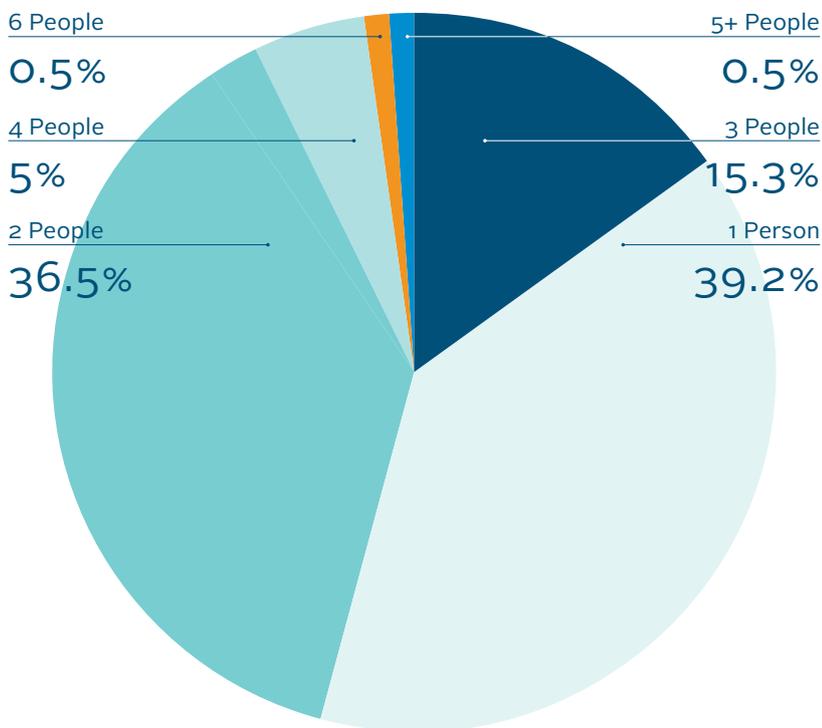


**Question:**

Do you share a room with a non-family member?

57.9%

42.1%



**Question:**

If you do share a room, how many people do you share with?

essential measure to ensure social distancing and to limit the spread of the virus.

The Irish Refugee Council sent this legal advice to the Department of Justice and Equality and the Department of Health on the 24 April.<sup>4</sup> Minister Simon Harris' office responded that the matter does not fall under the remit of the Department of Health and directed the matter to the Department of Justice and Equality (as it was then named). The Department of Justice have not responded to the letter or the legal opinion.

During the week of 27 April, the Health Service Executive (HSE) National Social Inclusion Office stated that non-family members sharing a room in Direct Provision are deemed a household. The Irish Refugee Council criticised this guidance for two reasons.

Firstly, intentionally or not, it seemed a workaround to the statement made by the Chief Medical Officer, Dr Tony Holohan, at a press conference on the 28 April, who said if someone is sharing sleeping quarters with people who are not part of the same family, it is not possible to social distance. The consequence being that there is less or no need to obtain accommodation for people where they cannot socially distance themselves.

Secondly, it suggests that people of completely different backgrounds, languages and cultures are deemed to be a household. As the qualitative findings of this survey show, this assumption is flawed and does not reflect the reality of the situation for those sharing rooms with non-family members. Regular family households are able to exercise open communication and establish rules and ways of living in relation to Covid-19 restrictions and requirements for the protection of all. People sharing a room may experience difficulty in broaching the topic of necessary precautions with those they share a living space with.

The following testimonies also highlight the tentative situation those living in Direct Provision can find themselves in, predating the current crisis; sharing living quarters with relative strangers, some of whom have preexisting mental health issues and/or demonstrate abusive behaviour.

*“Here we struggle because we share with different religions in our rooms, which comprises our staying and prayer sections.”*

*“I asked the management to give me privacy since I take sensitive medication and I’m sharing a room with a very abusive guy who gives me a headache time and time again... I’m not comfortable in staying with someone who has no respect and does whatever he feels like doing anytime. I try to self quarantine but he’s in and out as he wishes ... I’m in a state of giving up now and depressed.”*

*“I’m in the room with a colleague. Unfortunately he is a kind of person [who] seems to have problems with emotional control. He can’t stand still. During the day he goes out more than 15 times [and] can open the door more than twenty times a day and goes down in five laps. I try to stay at home and in my room to try to protect myself and protect him too. Unfortunately the other side does not cooperate so it’s difficult to find security.”*

*“We [are] crowded in a very small room. We are three but the room is very small for three people and my bed is next to the bathroom by the corner so there’s no ventilation. I’m always sick because of the lack of clean air to breathe.”*

*“The rooms are too small, the beds are very close to each other which makes it difficult for people to keep the social distance.”*

*“Living in [a] small room that is meant for 1 person sharing with some only a metre apart.”*

*“There are 3 of us in the room. You cannot keep social distance.”*

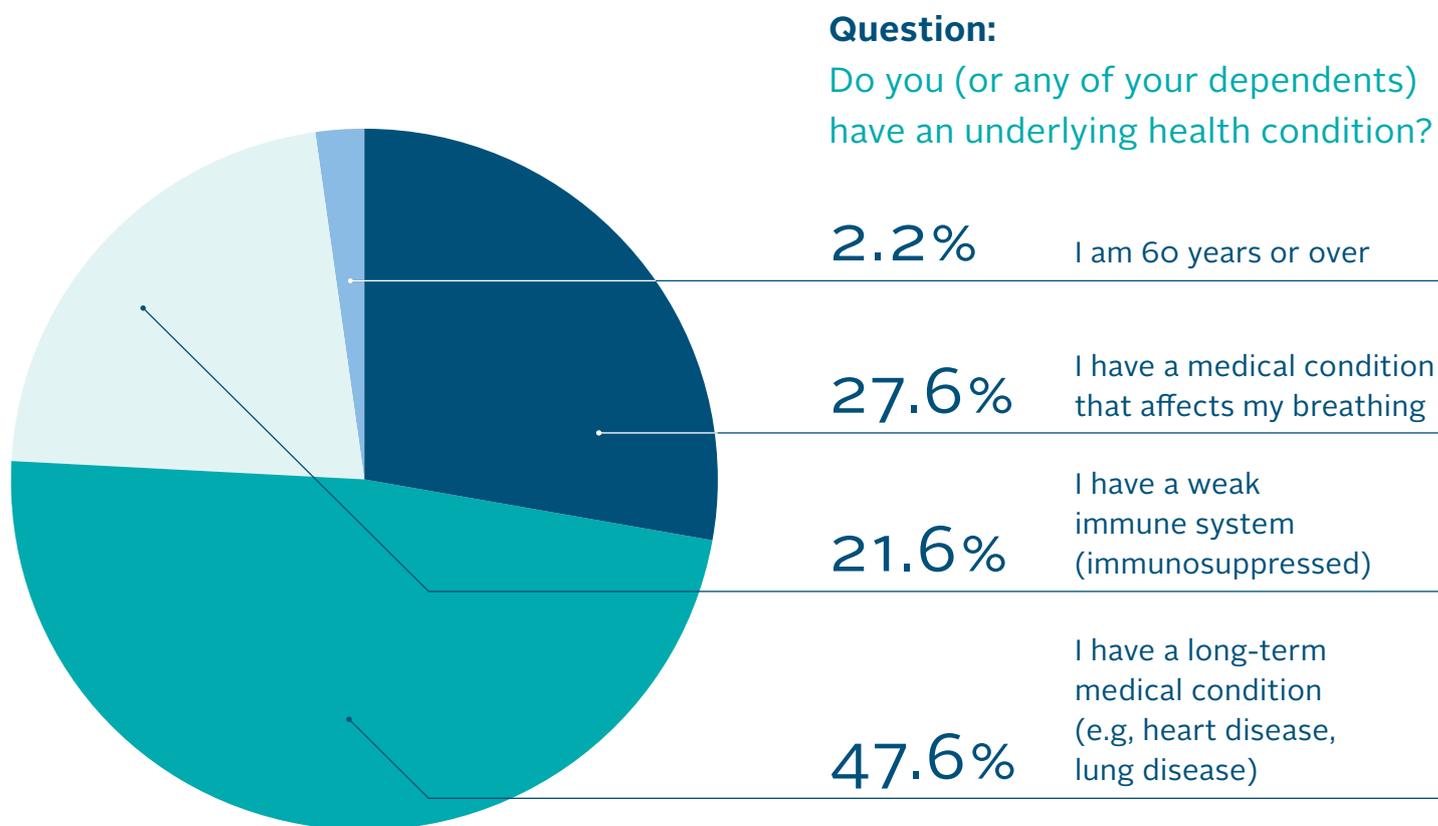
*“Overcrowded room. 12 people in a room and no ventilation. Roommates were coughing badly and possible infections. In fact, I caught [an] infection from those coughing.”*

*“I am living in the Direct Provision centre for about 2 years and there are different problems in different hostels. But the main problems in the hostels are sharing rooms with other people and there are many problems in sharing like snoring, talking on the phone or watching television when another person is sleeping or opening the window when another person doesn't want it or not cleaning the toilet and room. Another problem is the Bunk Beds as it's impossible to sleep in a Bunk bed for many people because when one person moves during the sleep in the bed, the whole bed moves and another person wakes up.”*

*“If I could be moved to a place where both me and my kids can be in one house as my son is sharing a room with a stranger, it's so difficult for him. We need a place where we can cook for ourselves, my kids struggle with the food cooked in the hotel.”*

Overcrowding and shared rooms was also a major cause for concern for those with preexisting health conditions. 135 respondents indicated they have an underlying health condition or are over 60 years of age, putting them at particular risk of severe complications or death should they contract Covid-19.

*“The room is very small and I'm sharing it with 2 people. I am asthmatic and the doctors told me that my left lung has collapsed and I'm still waiting for the Respiratory specialist at the Hospital. It's very hard to breathe fresh air because my bed is closer to the bathroom so the other people are next to the window which is always closed. There's no ventilation at all.”*



A number of respondents who were pregnant or supporting a pregnant person expressed their concern over conditions.

*“I am pregnant and live in constant fear of being infected, as I have to go and use the shared kitchen, utensils and microwaves with 105 if not more other residents. I still have to go and crowd in the shop queue to buy food, social distancing is impossible in this place, the fridge is shared, safety is not guaranteed. My son has to constantly stay indoors as common living rooms aren’t safe. There is no information provided for me or any other resident on what will happen if we get infected.”*

*“It has been difficult for my pregnant wife.”*

## SHARED FACILITIES

As well as shared bedrooms, people living in Direct Provision share cooking, dining, bathroom, washing and laundry facilities with non-family members. Respondents highlighted not being able to adequately distance themselves when using these facilities.

*“It’s easy for this coronavirus to spread as we are sharing toilets, kitchen and using the same bus.”*

*“We are so many in the centre, we go to the canteen for food, we use the same machines for laundry. With this we can’t keep social distances.”*

*“[We are] sharing the kitchen and laundry room with other residents making it difficult to maintain the 2m social distancing.”*

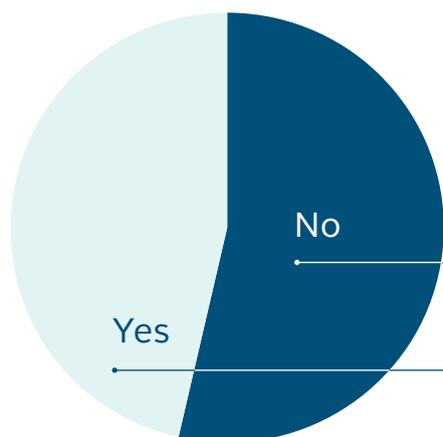
*“[It’s] hard to practice social distancing in a DP [Direct Provision] setting, using communal kitchen and sharing rooms.”*

*“We use the same dining, laundry, lift etc. Nothing is personal and suitable for self isolation.”*

*“Social distancing is impossible in the kitchen and dining place.”*

## SHARED BATHROOM AND WASHING SPACE

53.5% of 392 respondents stated that they were sharing a bathroom and washing space with non-family members.



### Question:

Do you share a bathroom and washing space with non-family members?

46.5%

53.5%

*“We are mixing bathing with more than 20 people.”*

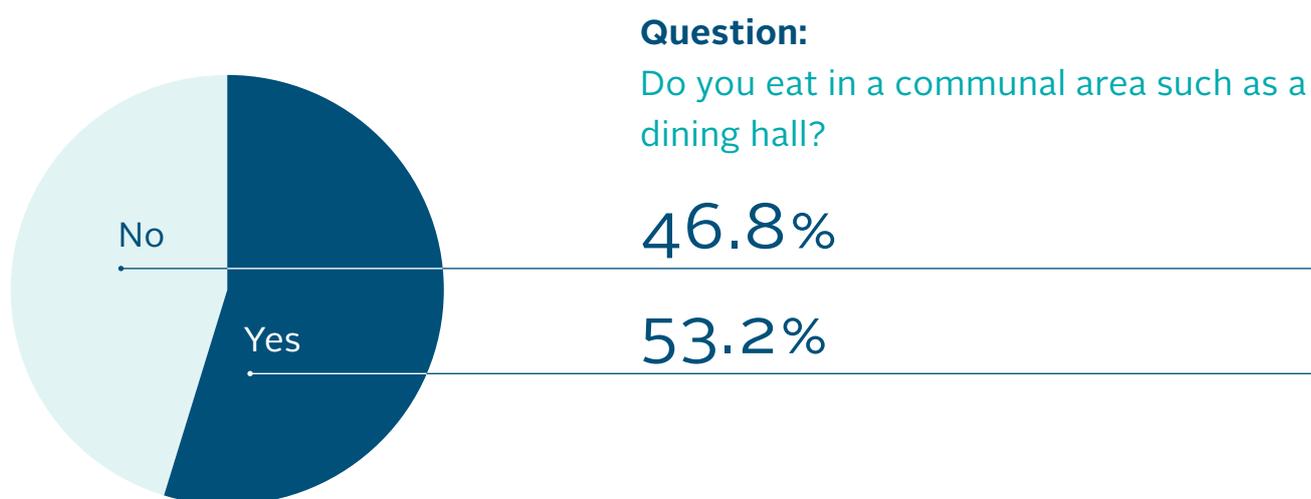
*“Social distance and we share bathrooms and toilets.”*

*“I share bathroom with my roommate and kitchen with everyone.”*

*“I share a room, bathroom and a toilet with two other females and there is no social distancing between us. Also I am an essential worker.”*

## COMMUNAL DINING

Just over half (53.2%) of 396 respondents stated that they ate in a communal dining area with non-family members. 85.6% of 389 respondents, reported they were permitted to eat in their room.

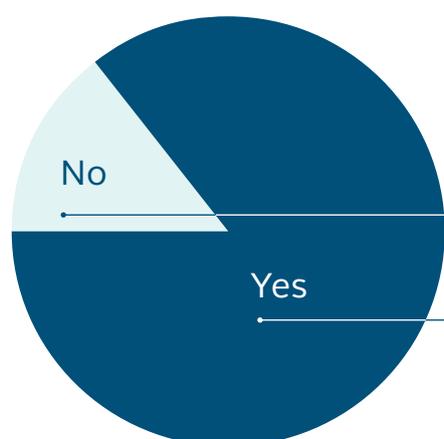


*“We eat at the same dinner hall and there is no social distancing between us [because] it is a small hall.”*

*“We share the dining hall with 100 more people. The door to the dining is always closed, forcing everyone to touch it. The hand sanitizer is not always available. For tea we use only 1 urn, they removed all the kettles from the rooms so for tea everyone has to go to the dining and use 1 urn, even for milk and coffee so more than 100 people touch that urn everyday. We share cutlery and cups/glasses (which are hardly clean). They should put hand sanitizers in the laundry as well since it’s being used by everyone.”*

*“We eat in a dining hall with only 1 hand sanitizer, no basin for washing hands. The cutlery is provided in a large basin and everyone picks a spoon from there. Most of the hand sanitizers are empty, currently only 3 [are] working for over 100 residents. Our beds are not even a metre apart from each other. The hand sanitizers are only downstairs not on the corridors. No tape that shows the social distance 2 metres apart.”*

*“As long as people live in a building with a lot of people no one is safe. We share the kitchen. We try our best to keep to ourselves, cook when no one is in the kitchen but that is hard when it is shared between 6 families with 2 stoves.”*



**Question:**

Are you allowed to eat in your room to avoid contact with people?

14.4%

85.6%

*“The centre consists of 112 people who share the two microwaves provided by the centre and the cooking hours are short, which forces everyone to be in the shared kitchen at the same time hence hindering the social distance protocol.”*

*“8–10 people are using the same one cooker and cannot maintain two metres social distance. So it is a very worrying situation.”*

*“We are sharing the same kitchen with the same kitchenware, sometimes it’s hard to have social distance.”*

*“It is a very difficult time as I share accommodation with other people and it’s not easy to social distance, we share cooking and dining space. I live in fear that I might get the virus at any time.”*

### **CONCERN ABOUT THE BEHAVIOUR OF OTHER RESIDENTS**

Respondents expressed concern about the behaviour of their fellow residents. In particular, they felt they had no control over fellow residents’ irresponsible or risky behaviour.

*“The staff do everything they can to keep us safe. [We] thank them for that. But people here don’t have a high sense of responsibility. So I don’t feel safe.”*

*“Despite protection measures taken by management, we still notice many unsafe behaviours from some people i.e. spitting in the ground, smoking in public, sharing lighters.”*

*“A lot of people don’t seem to be bothered about the virus.”*

*“Not all residents comply with quarantine and basic safety rules.”*

*“I do not feel safe because I am not sure that all residents comply with quarantine requirements. I have to use common areas: laundry room and dining room.”*

*“Too many people going in and out which might spread the virus.”*

*“Some of the residents don’t abide by the centre and health rules during this crisis, they leave the centre for days and weeks and come back to*

*the centre more especially on the weekends when there is no one from the management available. We were all given a chance to leave and not come back until this is over but people won't listen and I don't see any steps taken by management because those people are still here. They go and come back as they want to."*

*"It's a hotel fully packed with people. Even though we maintain social distance, we cannot be sure because all people use the same common areas on transit, lift, tea making area, food collection area. It's not a private property or house [of] which we have control. Not only for covid 19, even after I don't think I can have a healthy life here. I'm with my 3 year old kid and wife, I find it's very difficult living here."*

*"For us living here it's very stressful because we are all the time in contact with other residents because we need to collect food, we need to go to laundry which is outside and not all the residents are careful and keep the hygiene and the distance."*

Respondents also expressed concern over the lack of control over the centre management's hygiene standards and the risk of staff or delivery personnel bringing the virus in to a centre.

*"Our management sends people from outside to come check for things that are not important. This bring germs etc and increased chances of being infected as they roam outside, go room to room. [They] can be carriers and we don't have the right to say no. Please we are scared and don't want to die."*

*"The shop and office staff live outside the centre and I don't know if they are tested."*

*“The staff cooks our food, I haven’t stepped in the kitchen for 3 weeks because I don’t know if whoever is making the food is infected but not showing symptoms.”*

*“The staff going home and coming back scares me because I [can] stay at home and I know my movement [but] what if they contacted someone that has it in their various homes, how do I know? It’s really worrisome.”*

### **WORKING RESIDENTS**

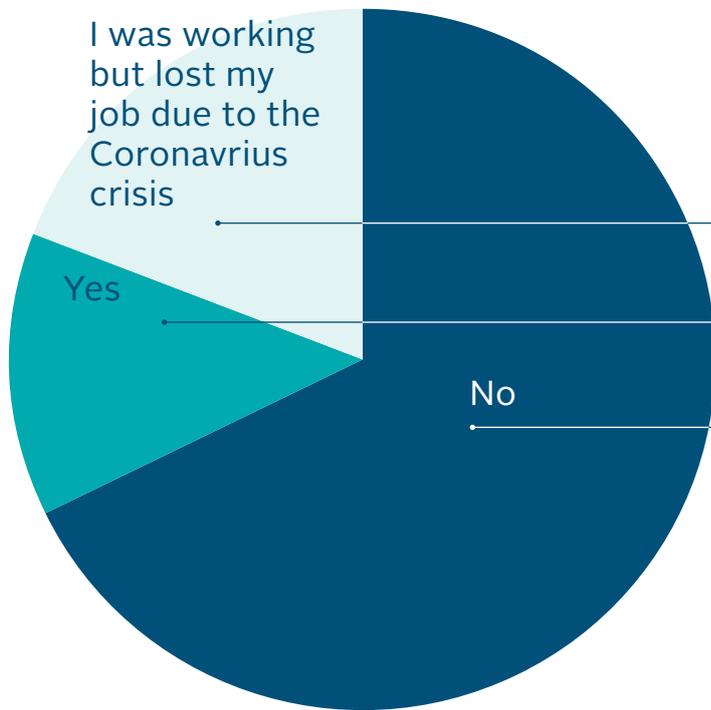
Another issue of concern to respondents was that of essential and frontline workers living in the centres who have continued working throughout the crisis. Of the 204 respondents that stated they were working, 21.2% were working in hospitals, healthcare or the care sector. Sharing living space with frontline workers was of particular concern to fellow residents.

*“People are still working going every day and come back every evening, nobody checks them.”*

*“Some people are going to work in different places, they could spread the virus easily.”*

*“I share a room with two other people. One is a healthcare worker and at times goes to work. When she comes back we are not sure whether she is safe or not. We share the bathroom and the same living space. It’s hard to keep social distance in the same room.”*

*“I’m in a room with 2 other people so in total we are 3 in the room. The other lady I share with is a healthcare assistant, we all go out at times and we can’t restrict each other and anyone one of us could come with the virus at any time.”*

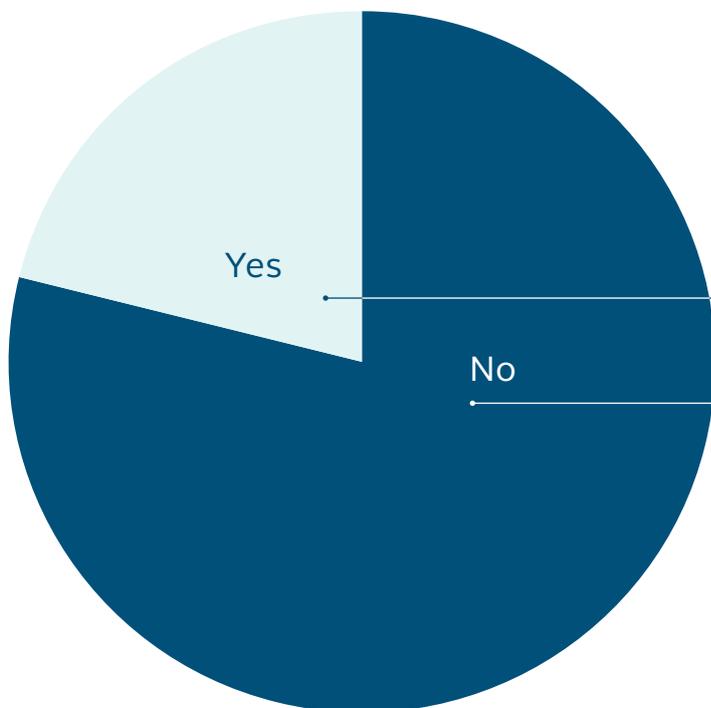


**Question:**  
Are you working?

19.3%

13.0%

67.7%



**Question:**  
If you are working, are you working in hospital, the healthcare or care sector?

21.2%

78.8%

*“It’s overcrowded and my roommate is into healthcare and might contract it while at work and spread it to me or one of [the other] centre members.”*

Frontline workers themselves were equally concerned that fellow residents might infect them and thereby put their patients at risk.

*“We are 4 in the room, I work in Dublin and cannot rest because my roommates always make noise. They go out all the time and do not tidy up the room. I am a healthcare worker and I am scared that if one of us gets infected, the people I look after will be exposed.”*

*“I have asked to be relocated to Dublin but nothing is being done about my request. At this time when the country and community need me on the frontline, they are sending me further away. What about the vulnerable people who depend on my services? I am very worried. Mentally, physically, emotionally and psychologically I am exhausted because no one is seeing the big sacrifice I am making to serve my community. At this time so many healthcare workers have stopped working fearing the Covid-19 but I decided to stay on the frontline to give my services, why are they sending me away again? They keep on transferring me from centre to centre. I always reach the centre around 11pm due to the transport crisis, sometimes we get stuck on the road if the engine is faulty and we can wait for hours before another bus arrives to pick us up and at 4am in the morning I have to get up for my next shift. I have so many issues. We share the same bathroom, toilet and kitchen. We meet different people in the kitchen, what if someone is infected? My roommates don’t clean the bathrooms and sometimes we fight over cleaning issues.”*

On 9 April, the Health Service Executive announced a temporary accomodation scheme for healthcare workers, and specified that those

living in Direct Provision Centres could apply.<sup>5</sup> The Irish Refugee Council invited healthcare workers wanting to move out of Direct Provision to provide their details to them via an online form. They then directed them to the relevant accommodation contact in the Community Healthcare Organisation.

According to Irish Refugee Council records, 41 people had accessed HSE accommodation, two were offered accommodation that was deemed inappropriate, two had submitted their application to the HSE but were still waiting for a response, six had accessed accommodation independent of the scheme, 12 had stopped working and three had stopped working due to childcare issues. Experience of the scheme has been mixed, some users have had problems accessing cooking and laundry facilities, others have benefited from the space and privacy that the scheme has offered and that allows them to continue working safely.<sup>6</sup>

## MOVEMENT OF PEOPLE DURING THE PANDEMIC

19 respondents had been moved to a temporary hotel or other location during the Coronavirus crisis. Some respondents raised concern over the experience in the new location, including issues around sharing bedrooms and food. One respondent, who was not sharing a room, said that having their own room made them feel safer and contrasted it with their experience in Direct Provision accommodation. 12 out of the 19 respondents said they felt safe.

*“I am feeling safe as I am for the first time I’m on my own in the room alone. And nobody stays with me. Because I am living in Direct Provision centre and always was sharing with others. But here for the first time I got a small room with a single bed. But I am afraid that they will change my room in the future and I will be in trouble again. As sharing a room is*

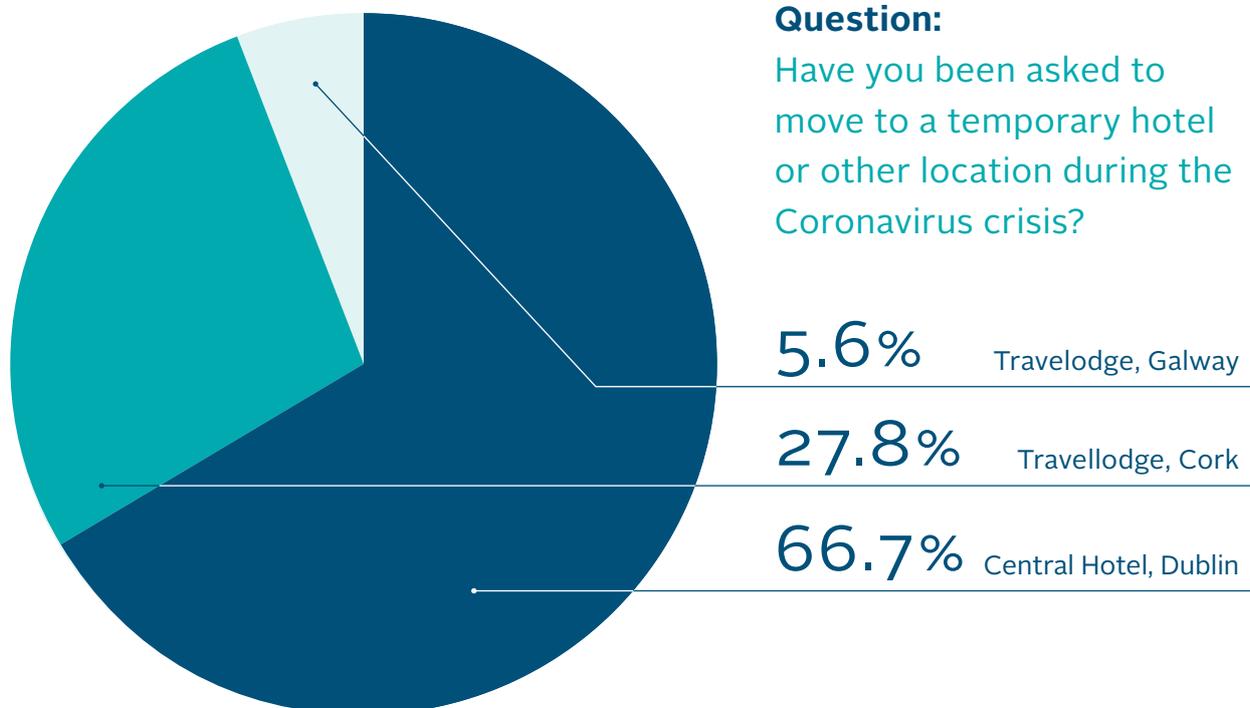
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[Health Service Executive, Temporary accommodation for healthcare workers during COVID-19](#)  
See RTÉ News, Healthcare workers raise temporary accommodation concerns, 11 June 2020

*the biggest trouble in the Direct provision centres. As there are problems of Bunk beds, talking on the phone or watching television when another person wants to sleep, busy toilet and so on.”*

*“This place is packed, people are coming in everyday and they bring them here putting us at risk of corona. I feel like our well being is not important to them, we share the same canteen, a lot of people share bathrooms and toilets. The truth of the matter is we are at risk of dying more than anyone else.”*

*“They moved people from the hotel and promised not to bring new people in the centre as they were creating space for isolation in case we had any cases but they are [still] bringing in new people to the centre. We are scared as we do not understand what is really happening.”*



*“People were moved out of the hostel for social distance purposes. You would expect that we would have a room to ourselves [but] that is not the case, I am still sharing my room with someone. The owners have only brought in the builders to refurbish the empty rooms while they pack people in 2 or 3 to a room. They might as well not have moved people out. It seems the management are using this to their benefit instead of the health and wellbeing of the hotel residents. The renovations are still on and no idea when it would end.”*

*“People have been moved to other centres but we still see new people coming into our centre. I thought the whole point of moving people was to minimise the number of people in hotels.”*

*“They keep bringing new people while in the centre, while we have been isolating already.”*

*“It’s absolutely terrifying not knowing where I stand, we were forced to move regardless of being in college and no information provided except threats that we will be homeless if we refuse to move. One can only live in peace by accepting that seeking asylum strips off basic human rights, we don’t have the power nor choice to direct our lives, the government does that for us. It wasn’t until now I realised as long as I am in the system the government controls my present and my future, regardless of how hard I fight. College is the only meaningful thing [that has] ever happened to me but right now in this town life seems hopeless with a blurry future.”*

## HYGIENE AND SAFETY IN CENTRES

Respondents were asked to state what protective social distancing and cleaning measures had been implemented in the place they were living. See Annex 4 for full data set of responses.



Of 398 respondents, 77.1% had regular access to soap and hand sanitizer, while 22.9% did not. When asked about their safety concerns, respondents expressed concern over the lack of personal protection equipment and hygiene provisions.

*“They don’t keep the doors opened, don’t wash the dishes properly in the kitchen, the food is not good and not enough. Sometimes [there is] no water in the toilet, and [we are] sharing rooms which increases the danger of being infected.”*

*“We have not been provided PPE.”*

*“No hand sanitizer given to us.”*

*“No disinfectant in bathrooms and toilets [no] hand soap.”*

*“No soap in rooms, and sanitizer available only in common place.”*

*“Bathrooms and dining facilities still shared and very limited sanitising stations or provision of sanitisers.”*

*“As a mother I feel I cannot give exact caring for my child. [The] buffet food we give the child, I don’t know how clean it is. In this hotel there are more than 120 people and only around 10 staff. So they cannot maintain a good hygienic standard. We can easily identify [this] by seeing the table, floor, equipment etc.”*

*“There is not enough sterilization in the centre.”*

*“Even the laundry room has no sterilization.”*

## **CENTRE MANAGEMENT RESPONSE**

Some respondents expressed concern over their centre’s management response to the crisis and handling of positive Covid-19 cases. Concerns included a lack of information and transparency.

*“I feel concerned that there is an isolation room with one person just opposite our room on the second floor. It would be best if the isolation room would be placed somewhere else, not next to the rooms of other residents.”*

*“There is no isolation room.”*

*“Now some of the residents are having Covid symptoms and nobody has helped them. No access to tests for covid because it’s not available and*

*GP prescribed just panadol for a resident that has been coughing for over 10 days and suffering from breathing problems. We feel we are just goods for IPAS and business people in Ireland. We are treated like Irish cattle, no human feeling by IPAS, HSE nor management of centres.”*

*“Negligence of the hostel operators which can lead to someone being sick here.”*

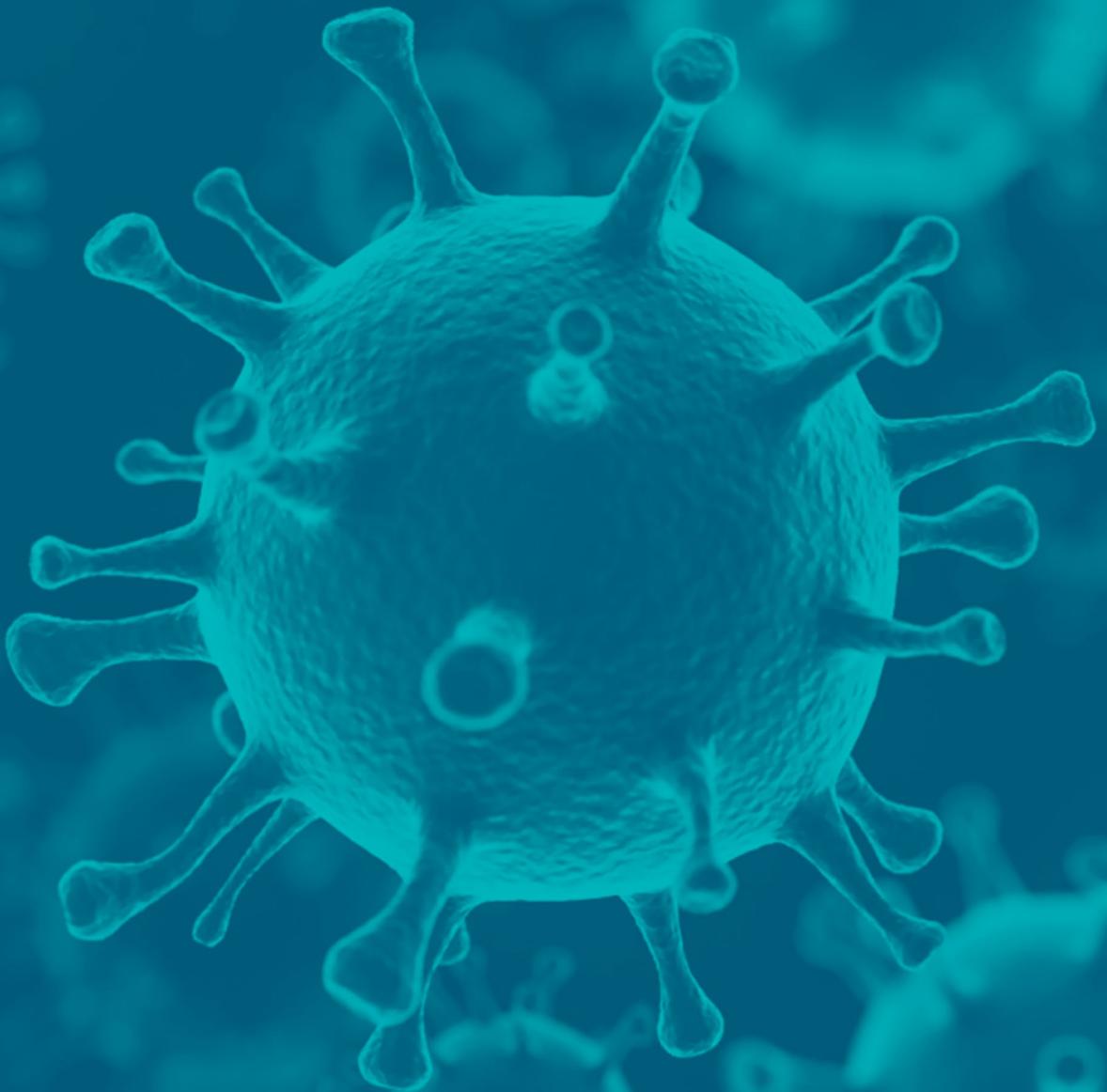
*“There is no visibility from management about the number of cases in the centre, we see ambulances coming, a lot of rumors rounding between people.”*

*“No communication with managers about covid 19.”*

*“People having the wrong information about the pandemic which puts everyone in danger because of their ignorance.”*

Section 5

# Mental Health, Stigma and Racism



## INTRODUCTION

The Covid-19 pandemic and the subsequent disruption and changes to our daily lives and society at large is impacting significantly on the mental health of the population. Initial research in April found that 51% feel the pandemic has had a negative or very negative impact on their mental health with mental health problems commonly cited including meaningful levels of depression, anxiety, post-traumatic stress and feelings of isolation and loneliness.<sup>7</sup> In May, the United Nations report on 'Covid-19 and the Need for Action on Mental Health' highlighted that those most at risk were front-line healthcare workers, older people, adolescents, and young people, those with preexisting mental health conditions and those caught up in conflict and crisis.<sup>8</sup>

The preexisting burden of mental illness experienced by people seeking international protection in Ireland is disproportionately high; studies have found that those seeking asylum were five times more likely to be diagnosed with psychiatric illness than Irish citizens and six times more likely than refugees to report symptoms of PTSD and depression or anxiety due to the disproportionate exposure to post-migration stressors such as insecure residency and the denial of the right to work.<sup>9</sup>

The adverse impact the Direct Provision system has on the mental health of those seeking asylum has been exacerbated by the Covid-19 pandemic. Respondents to this survey reported experiencing increasing or returning mental health issues due to the impact of living within the Direct Provision system during the pandemic, compounded by incidences of stigma and racism. Respondents also mentioned that people in the local community

7 Researchers from Ireland (Maynooth University and the Centre for Global Health, Trinity College Dublin), Northern Ireland (Ulster University), Scotland (Edinburgh Napier University), and England (University of Sheffield) have released the first wave of the Irish COVID-19 Psychological Survey; a multi-wave study running throughout the COVID-19 outbreak to better understand how people are responding, understanding, and coping with the pandemic.)

8 <https://unsdg.un.org/sites/default/files/2020-05/UN-Policy-Brief-COVID-19-and-mental-health.pdf>

9 Bredin, Molly & Duffy, Richard & Crumlish, Niall. (2016). Refugees, the asylum system and mental healthcare in Ireland. BJPsych International. 13. 35-37. 10.1192/S2056474000001082.

perceived them to have Covid-19 due to the fact they lived in a Direct Provision centre.

*“I have never experienced so much depression in my life!”*

*“Its depressing I feel traumatized, I feel not safe in [this] place.”*

*“My already appalling experience has worsened. I currently have mental issues.”*

*“The way people treat us like we are the ones spreading coronavirus, I am stressed and depressed.”*

*“The community did not treat us well.”*

*“When we [go] outside they think we have coronavirus.”*

*“People around outside don’t treat us nice, they say we bring the Covid-19. I am depressed, if they see you coming they will run.”*

*“I do not want to send my child to school here, we had a bad experience while the community rejected us saying ‘covid people’. [Threw us] out of the supermarket and told us not to come out of the building. It’s a stigma on us to continue here.”*

*“I have 4 kids...I am suffering because of the small house. I feel depressed because they eat and play in the same place. I am sick and tired, we are 6 in a caravan.”*

*“[It’s] traumatising and scary.”*

*“It’s an usual experience, very scary.”*

*“This situation is very difficult because we are living in one space. It’s depressing and claustrophobic.”*

*“It is overwhelming to be stuck in one room.”*

*“It’s the most difficult environment to be living in at present with this death threat looming over all of humanity. There is less peace of mind having to live in an institution where everyday is a challenge to survive.”*

*“My experience is so saddening. [There are] 22 Covid cases here. We cry out to be moved for safety in vain. I am still living in an infected room for my roommate tested positive of Covid. The local residents are scared of us we are in total lock down and not safe. I am always in a state of fear.”*

*“I just feel squashed, suffocated, at risk and neglected.”*

*“Stressful, depressing and so difficult.”*

*“It’s a difficult situation, living in fear.”*

*“The Coronavirus crisis is really heartbreaking, giving us depression. Hope God will intervene soon.”*

*“Traumatising. I am afraid I will die and never see my other children again. The thought of the possibility of dying and never to see them kills me each day.”*

*“Stressful and unsafe.”*

*“Very bad vibe here.”*

*“Inactivity and boredom are sickening.”*

*“We [are] living in constant fear.”*

*“I have been keeping myself in [my] room all time, I’m so worried.”*

*“Going through fear and stress when I tested positive for coronavirus.”*

*“It is sad. Totally sad. NGOs must cry out on behalf of Asylum seekers before we are treated with humane and dignity. It is so shameful.”*

*“Direct provision should be closed and people should get [a] house facility which is safe and good for healthy living & also for mental health.”*

*“We are very stressed with all this, for us it’s impossible to be in quarantine.”*

*“There is zero stimulation, we are going out of our minds with boredom. People are losing their patience.”*

*“Whatever that is happening in the world right now having to do with isolation this is how I have been living for the past 8months...the isolation of living in an environment where you cannot socialise, the way people are depressed now is how often I fall into depression and fear. I am in pain that I fear I might die soon and nobody would really know the truth about what happened.”*

*“It’s depressing I feel traumatized, I feel not safe in this place.”*

*“It is so hard for me because, I used to go to work as part of my stress management. I was trying to keep myself busy to avoid thinking too much about the delay or the slow Asylum system. But now I can’t go out, I can’t do anything, it’s like I’m back to that stress again and I’ve added another stress of this virus, I’m so depressed. Can’t even associate with friends,*

*no reliable Internet to socialise. There are no proper restrictions here in our centre about travel like other centres have done. It is good to say if you visit friends or work, in other words if you travel for unnecessary reasons, you must remain there until the end but people are still travelling to work and come back with the infection and pass it over to the roommates. There's no control over it, and it's really affecting some of us who have chosen to remain indoors."*

*"Lonely, depressed, no activities to begin with."*

*"I think living in a Direct Provision Center for a long time is cruel and very frustrating having a family ... It is worse in Corona Virus Time sharing the same kitchen breathing the same air in the tiny space with more than 30 people is insane. A father I thank the Irish government for all support but [it] is time in this situation to act more responsible with people sharing, the virus can spread quickly."*

*"Since I have come into Direct Provision, it has been not easy at all, very stressful. I came here for protection and am traumatised here as well. For now, I don't have pieces of [my] mind, I feel like am no longer needed in this world. I don't want to go anywhere, sometimes I feel like maybe am I dreaming? I am losing my mind here, keeping us for a long time without any answer (from the minister of justice), every day I am living in fear."*

## **IMPACT OF THE PANDEMIC ON THE PROTECTION PROCESS**

As well as concerns over their health and safety during the Covid-19 crisis, respondents were also concerned about the effect the crisis will have on the outcome of the protection process, in particular that an already slow process will be made slower. Some also stated that the pandemic had demonstrated the need to make the protection process quicker.

*“The uncertainty of the future, whether you [will] be taken back home after all this horror or you’ll get permission to remain in the country or you won’t make it to see the verdict.”*

*“Our wish is for the government to take the opportunity and grant us all leave to stay including those on appeal so that we find our own accommodation, work and pay our taxes to help the state. We plead with the state.”*

*“It’s a bit difficult keeping yourself safe in the centres because life is so integrated in the accommodations. There isn’t a space for social distancing at all. I suggest that the asylum seeking process must be sped up so people will get permits faster so they could live by themselves to make it possible to prevent chances of infection in the near future. It is not safe in times like this in the accommodations provided.”*

*“We hope the government will grant us the leave to stay or proper documentation so that we can look for our own accommodate out of this centre.”*

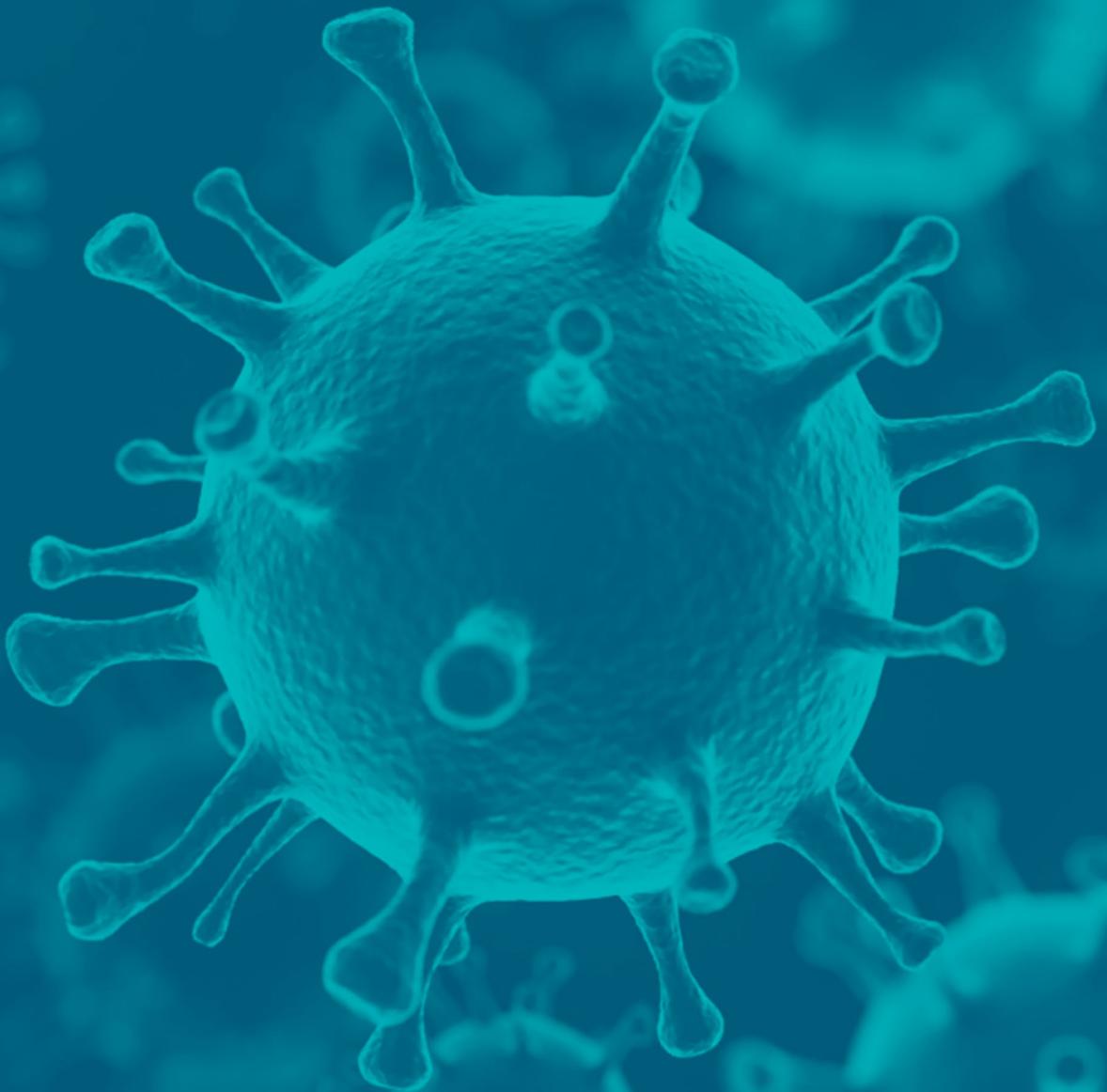
*“This place is hell and I don’t wish it to the devil himself, it’s very hard to be in DP [Direct Provision]. We are facing corona and the Justice Department keep sending negative answers, can’t they wait and let us deal with corona first then they can send whatever they want. It’s so stressful to be an asylum seeker.”*

*“I suffer from many mental and health ailments because I have been suffering from being in the Direct provision centre for more than eight months now. My response to medication has become very difficult, which is reflecting negatively on my health and myself. Despite my urgent and innovative calls to several quarters, I did not receive any response and I am still suffering until now. What I urgently need is to get my papers from*

*the ministerial decision unit in the Ministry of Justice and Equality, with the recommendations received from the International Protection Office two months ago to date. My health is declining and deteriorating day by day due to that delay.”*

Section 6

# Children, Schooling and Parenting



## CHILDREN AND EDUCATION

On the 12 March, the Irish Government announced that schools, colleges and other public facilities would close indefinitely in the wake of the Covid-19 outbreak. Since then, parents of school-going children have had to care for and support their children at home all day, in most cases without childcare, and asked to initiate some form of homeschooling by their children's schools. The situation for parents of children in the Direct Provision system is exacerbated by issues of space and overcrowding, internet connectivity and additional pressures that the system exerts on children.

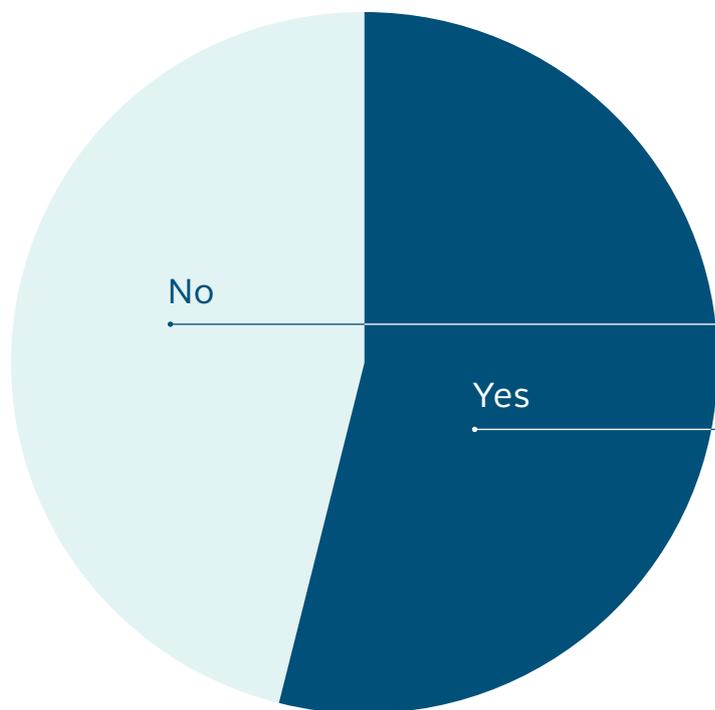
54% of 381 respondents to the survey have children. 42% of 269 respondents stated their children normally attend school.

## SPACE AND OVERCROWDING

The physical, mental and psychosocial hazards of overcrowded living in Direct Provision centres is well documented, most recently in the report by the Ombudsman for Children, 'Direct Division'.<sup>10, 11, 12, 13</sup> Families often share extremely confined spaces, occupying one single room in the case of two-parent families and share with numerous other families in the case of single-parent families. Children rarely have their own room and often experience overcrowding.

*"It is very difficult for the children because they have to stay in one room the whole time, the three of us share one room. It is difficult for me to keep them happy at all times, one has to do phonics, one has to read so in one room, it's very difficult. I worry at times about how they really feel*

10 [Direct Division, Children's views and experiences of living in Direct Provision A report by the Ombudsman for Children's Office 2020](#)  
11 [Ombudsman for Children Press Release, 20 years later Direct Provision, a temporary solution, continues – Ombudsman for Children, 13 March 2019](#)  
12 [Faculty of Paediatrics at the Royal College of Physicians of Ireland, Children in direct provision, 11 December 2019](#)  
13 [Irish Refugee Council, State Sanctioned Child Poverty and Exclusion: The case of children in state accommodation for asylum seekers, 2012](#)

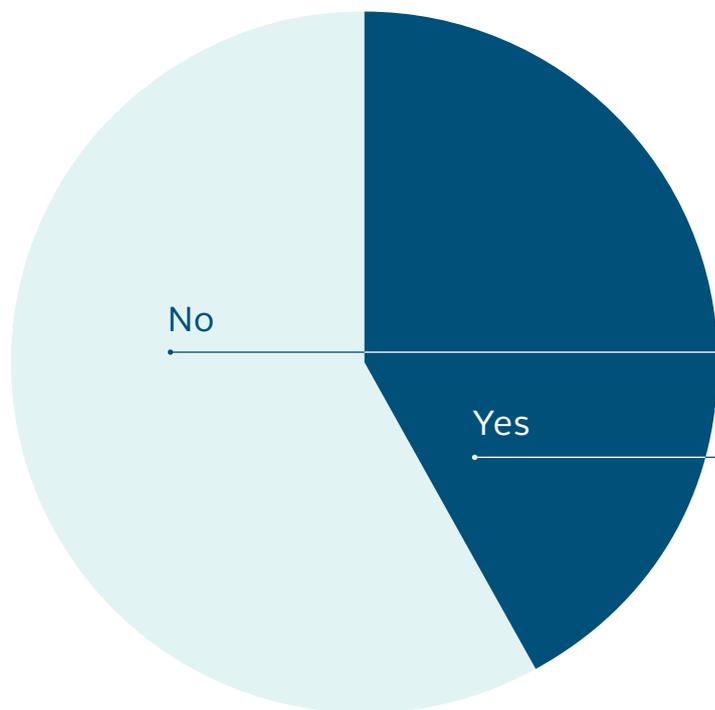


**Question:**

Do you have children?

46%

54%



**Question:**

Do your children normally go to school?

58%

42%

*inside and at the same time there is nothing I can do. All I can do is to be strong for them even when all I want is to break down.”*

*“Now our children do not go to school and this is a problem for us, they do not receive education and can not study remotely because we do not have the opportunity to do so. It is impossible to organize training in one room where there are 4 people in a locked room.”*

*“It is overwhelming to be stuck in one room. Doing school work on beds.”*

*“Our 14 year old shares a room with us and has online classes. It is very frustrating for all of us as we need to give her space in the room and vice versa. We are cramped in our room and none of us have any privacy.”*

*“It’s hard entertaining them in a little room.”*

## **MISSING SCHOOL**

School, as well as being an educational resource, is often a welcome reprieve from the confines of living in the Direct Provision system; it is a safe space where children feel free to learn, play and interact with their peers and receive support and guidance from their teachers and other school staff members. With the indefinite closure of schools during the Covid-19 crisis, children living in the Direct Provision system have lost this space and the sense of normalcy and interaction that comes with it. This is having an adverse impact on their wellbeing and mental health.

*“Not easy at all. My boy is always looking out from the window hoping that his teacher would come and get him.”*

*“We’re trying to make the best out of this challenging time. It’s hard for the kids to be away from school. There they get to be ‘normal’ and free and partake in activities that other kids do unlike being confined at a centre.”*

*“My children are finding it hard being at home all the time instead of school because they love it at school. They miss their school activities a lot.”*

*“They are finding this situation very difficult because we are living in one space. It’s depressing and claustrophobic.”*

*“She misses school and playing.”*

Some families were moved out of accommodation in Dublin at the beginning of the pandemic and raised the impact on children of changing schools at short notice. Some respondents also raised the issue of having no access to printers.

*“Our daughter has online classes and much of her work needs to be printed. We only have a laptop and used to use the library for printing. Access to a printer and perhaps a separate study room for her would be first prize.”*

## **INTERNET CONNECTIVITY**

Another impediment to education is the issue of internet connectivity. As most schools transitioned to online classrooms or learning resources, children and parents living in Direct Provision accommodation found it difficult to keep up with online classes due to poor internet connectivity and WiFi signal strength in their centres.

*“We are having problem accessing internet as it is very slow and disconnects every 5 minutes.”*

*“Network it’s a very big problem in my house.”*

*“The network reception is bad which also affects the wifi.”*

## PARENTING ISSUES

Respondents were asked whether they are encountering any other parenting issues during the crisis. Parents of children living in Direct Provision, like parents across the country, are faced with the challenge of explaining the Covid-19 crisis, self-isolation and social distancing to their children. This situation is compounded by the nature of living in Direct Provision accommodation during such a crisis. Parents are concerned over a lack of space, overcrowding and mental health and well-being of their children, as well as their own..

*“Trying to convince a 6 year old to stay indoors is challenging.”*

*“My children don’t understand why they have to be kept indoors, they can’t even play outside.”*

*“The child does not have enough communication with peers.”*

*“Yes it difficult to keep them motivated.”*

*“Yes it’s scary and kids are bored . Nobody comes to give some kind of encouragement or education apart from what we read or see on news.”*

*“This place is like a hostel where families are living with their kids, it’s not safe for the kids at all. The food is bad, just isn’t fit for my child who is a toddler. I don’t have any support here, I feel intimidated and insecure, no friends and no one to help me through this difficult time.”*

*“It’s difficult to explain to children about the pandemic, that’s a problem on its own but then not being able to sit out in the provided living rooms because they are overcrowded is even [more] stressful.”*

*“Being confined to a room since the beginning is affecting him and it’s hard to explain to him how dangerous it is going outside.”*

*“It’s not easy having to lock my children up in one room and they are just 2 years. They can’t go out to play or even in the corridor, it’s really stressful trying to entertain them.”*

## **MENTAL HEALTH AND WELLBEING**

Parents reported the adverse impact of the crisis on their children’s mental health and ability to cope due to the restrictions and limitations of living in the Direct Provision system. One respondent commented on the letter received from the Department of Justice and Equality about who would care for their child if they became ill. Others raised the issue of having to share a bedroom with their children, including teenage children.

*“I have [been] over 4 years in direct provision. [The] first time I got scared in this country [is] when I got a letter from the justice department about the virus. They asked me who will care for my children if me and my wife got the virus. We don’t have people to whom we can trust to care for our children, every day is stressful for us. God bless all the world.”*

*“Staying in one room for weeks, it’s a terrible situation. A large family should live in a proper house where the kids can have a proper childhood, not in a single room. The situation is now worse as they have to be indoors because of the pandemic. As a mum, it’s hard to control the kids and still take care of myself physically and mentally.”*

*“Just the fact that it is most difficult to raise a child in a room and have to eat and sleep in the same area.”*

*“All I can say is being stuck in a single room like this in times like this is killing me mentally and emotionally.”*

*“I’m stressed and frustrated because there’s no breathing space, as a single mother I share one room with two kids.”*

*“Living with my family and I am pregnant with my second baby in only one room is difficult under normal circumstances so let’s imagine how it can be at this tough time. My daughter wants to play and she can’t, everything has changed. Coping also with my mental health issues I have had before is not easy at all. Anyway we are trying our best and hope everyone is safe for now. We know the best thing is living and isolating ourselves in a proper house but at the time this is what [cannot] be done at all.”*

*“We’re on top of each other and familiarity breeds contempt.”*

*“My child is very depressed as we can not protect ourselves from the virus. We are now forced to drink bathroom water as we are prohibited to use the kitchen after meals and not allowed to have sneaks in our rooms.”*

*“Yes, most of them [children] are in depression about this location and conjunction.”*

*“My child is depressed about it. He doesn’t sleep at night.”*

*“My children have gone back to being anxious and tearful.”*

*“They are locked in a single room for over 3 weeks now. They are going bananas. Mental health is compromised. Showing signs of distress living in one room.”*

*“Yes my son is concerned about the way we are leaving here. He is very depressed as they were taught about coronavirus at school.”*

*“There are many problems, we don’t have resources for children to keep them busy, [it’s] really hard to keep children in a home. They are getting aggressive day by day. This makes us [very] depressed.”*

*“My child needs a doctor because she has a problem in her ear, so she needs to go to the doctor every year. She is 13 years old, we are sleeping in the same room.”*

Parents were also concerned about issues regarding the lack of provisions, hygiene and food.

*“Shortage of diapers as we are not able to go to town and [not enough] hand sanitizers in the house.”*

*“Not getting enough points to buy food and snacks for the whole week.”*

*“We don’t have enough snacks and food is not allowed in our room.”*

*“I have to give the baby cold food, no access to the kitchen (microwave) or they only leave hot water and milk outside the kitchen.”*

*“Food [is a] problem, eating the same thing everyday.”*

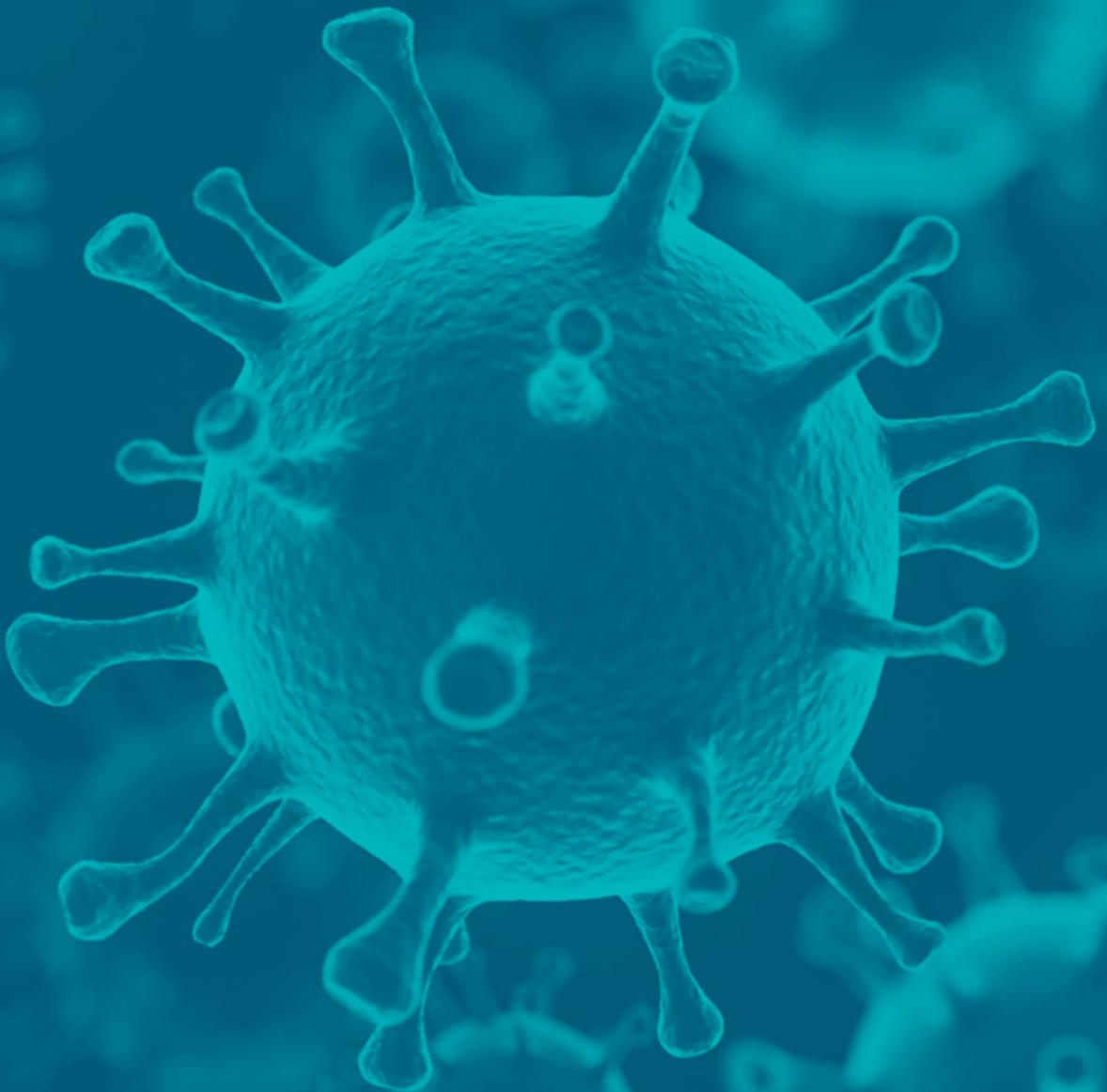
Some parents expressed concern over their children’s welfare should they, as a parent, become ill.

*“Just the worry of I am a single parent I can’t afford to get sick.”*

*“We as parents are afraid if one of us gets infected our baby will get infected as well. [It] is very scary what can happen in the situation that we are in.”*

Section 7

# Supports



## INTRODUCTION

This section details support and assistance and a lack thereof, affecting those living within the Direct Provision system during the pandemic, including the Direct Provision centre's management and centre shops, the daily expenses allowance and external support.

## DIRECT PROVISION CENTRE SHOPS

The majority of Direct Provision centres have an independent shop within the centre which supplies basic groceries and essential items for residents. When asked if there were any issues with their centre's shops, some respondents reported positive experiences with their centre shop's management including enforcement of social distancing measures and creation of a delivery and collection service to minimise risk to customers.

*“They try to put signs and marks on the floor to keep the distance at the shop.”*

*“They are doing their best by delivering food rather than we go collect for ourselves.”*

*“Staff bring the items to the rooms.”*

*“They created a delivery system so we don't have contact with personnel.”*

*“We make a list and they deliver to your house apartment.”*

The remaining respondents highlighted concerns around the lack of provisions and suitable items, lack of adequate social distancing measures and hygiene, the extra expense of centre shop items as well as unhelpful attitudes and rules of the centre shop's management and staff.

### Lack of Provisions

Respondents detailed the lack of access to food and hygiene and sanitation items essential for personal protection during the Covid-19 crisis.

*“The shop has been out of stock with the basic necessities like food, potatoes, hand washing gels, sanitizers, drinking water and many more essentials.”*

*“Lack of items such as daily food or occasionally rotten chicken meat.”*

*“Often food is out of date, forcing people to go into local shops to buy food.”*

*“Sometimes they don’t have certain items which is very stressful.”*

*“Shortage of basic food commodities.”*

*“Sometimes products like chicken are separated into small amounts of chicken legs and put in a plastic bag. We don’t know the way they do it and we don’t feel safe from the hygiene techniques.”*

### **Social Distancing**

Respondents reported an inability to social distance due to the size of the shop and a lack of enforcement of social distancing measures by shop management as well as adherence by fellow resident customers.

*“They just allow two people inside at once. But all I am saying is every individual in the centre enters that shop and not everyone takes this Covid-19 seriously, putting people at risk.”*

*“[The] shop is very small. It’s nearly impossible to keep a 1-2 metre distance”.*

*“[The] shop only opens for 15 hours in the whole week. People form long queues which makes it difficult to social distance. People have to pass when we are in queues and they do not maintain 2 metre distance.”*

*“They are not supplying hand wash in order for us to buy [which causes a] problem of queuing at the same time.”*

*“My big concern is about space. This room does not allow more than two metres [from] another person.”*

### **Shop Centre Prices**

Respondents reported the extra cost of basic items in their centre’s shops as compared to regular market prices and having to spend their weekly allowance on cleaning and hygiene products.

*“The prices are very high and it’s difficult to buy the essential things each week.”*

*“Things are [more] expensive than in any other shop out there.”*

*“I recognised that we have some raised prices for the products. Even they are double priced compared with other shops.”*

*“Everything is overpriced, more expensive than normal grocery shops.”*

*“I do not have enough points to buy products and hygiene products.”*

*“We have a shop but we have points, very few for 4 people. [My] small child is 10 months but she already started a normal meal and she only has 15 points in a week and her supplement milk costs 12 points which she needs every week as well.”*

*“If you buy food today, tomorrow it will [cost] 2 points if you come another day it will be 3 points or more.”*

*“We feel isolated, there’s no access to buy other essential needs. We*

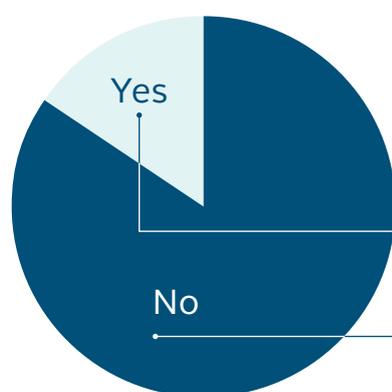
*spend so much on cleaning agents and paracetamol. There's no access to hospital."*

*"We have a shop in our Hotel where we buy the products. My family and I do not have enough points to buy products in our shop, what we have is enough for just 3 days and I am forced to go to another shop in the city to buy products, soap and everything that we need, that is not safe."*

*"The management protected themselves only. We are supposed to call them, not through their reception window, email them for groceries but we have asked for doors to be left open, that didn't happen. I have to open 4 doors when going to collect my groceries and I don't want to touch anything."*

## **SUFFICIENCY OF THE DIRECT PROVISION DAILY EXPENSES ALLOWANCE**

Adults living in Direct Provision receive €38.80 per week to cover their daily expenses, children receive €29.80. 84.6% of respondents stated this weekly allowance has not been enough to live on during this time of crisis. Some respondents also raised the fact that the weekly allowance was low and therefore meant that they had to shop more frequently, putting them at increased risk.



### **Question:**

Has your weekly allowance of €38.80 been enough to live on?

**15.4%**

**84.6%**

*“I am depressed and stressed and social welfare allowances is not enough. €38.80 is not enough is better €50 it can help during this pandemic.”*

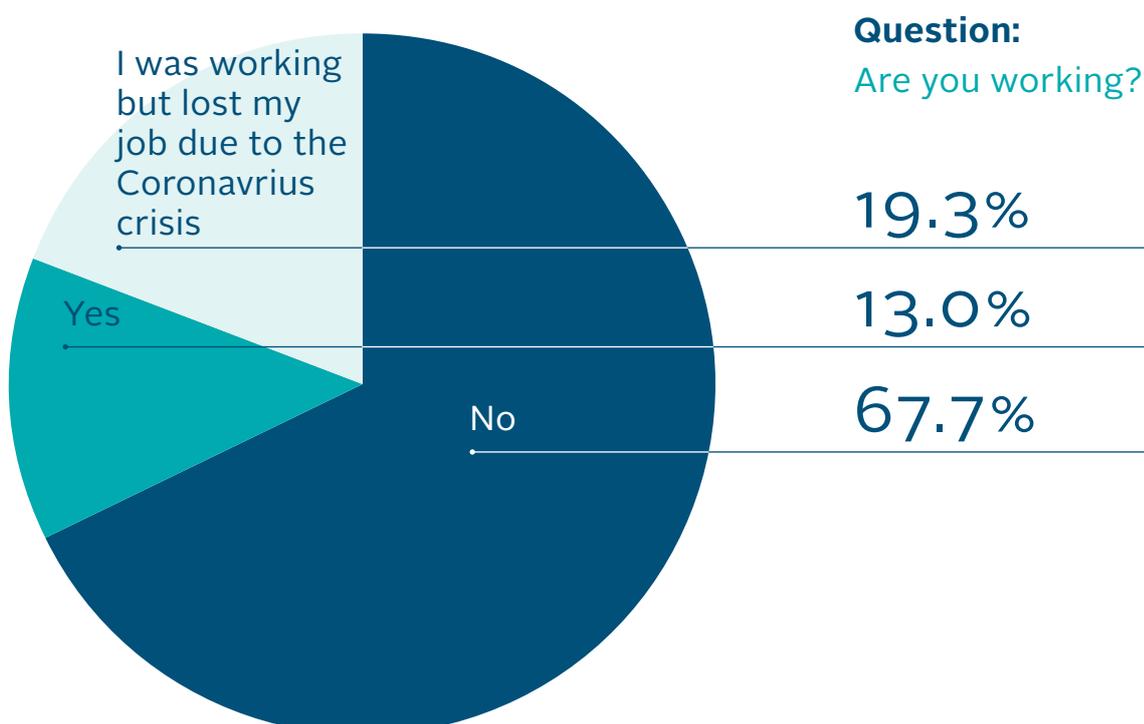
*“The only thing that bothers me is that I do not have enough points to buy products and hygiene products.”*

On 6 May a letter, signed by 40 organisations, was sent to the Department of Employment Affairs and Social Protection requesting a €20 increase to the weekly allowance for the duration of the pandemic.<sup>1</sup> The letter highlighted that over 1,600 children live in Direct Provision, that many would normally be at school and that parents are facing increased expenditure as they try to provide for and support children living in lockdown. An increased spending on cleaning items, medicine and food, mobile data was also raised. This request was refused by Minister Regina Doherty.<sup>2</sup>

## LOSS OF WORK DUE TO COVID-19

19.3% of 400 respondents lost employment due to the Covid-19 crisis. The Covid-19 Pandemic Unemployment Payment was not made available

<sup>1</sup> See Annex 2  
<sup>2</sup> See Annex 2



to people living in Direct Provision. The Irish Refugee Council wrote to Minister Regina Doherty three times requesting that the payment be made available to people living in Direct Provision but no response was received.

## **SUPPORT, ASSISTANCE AND INFORMATION DURING THE PANDEMIC**

Respondents were asked what, if anything, had supported them during the Covid-19 pandemic. Responses ranged from centre management staff, to external support organisations, physical activity, faith and their studies. Some respondents were critical of centre staff.

### **Support from Direct Provision Centre Management**

Direct Provision centre and emergency accommodation management and staff was cited in some instances as a source of support during the crisis.

*“The great tremendous team of staff we have in our centre has kept me going.”*

*“The hotel manager has been very good to me.”*

*“The Administrator in my centre helped me with my monthly medication refill.”*

*“Management are excellent.”*

*“I think our managers are really good and are trying their best to inform us about the Coronavirus, I personally appreciate their effort.”*

*“Since I moved [centre] I have had no bad experience during the Coronavirus crisis. I really appreciate being here and all measures taken, I feel safe to be here.”*

*“[They] have been professional & gone the extra mile to protect us residents.”*

*“The centre staff here have been very good with informing us on the virus and with trying to keep us safe. My mom is over 65 and they check on her regularly and offer to cook for her. I feel very safe here.”*

*“To be honest it could have been worse but I have been taken care of by Ireland and I am happy. The care I’m receiving would not have been the same if I was in my home country. Thank you Ireland as a whole.”*

*“Was awesome. I feel safe and I am pleased with our management team and whoever has helped us with anything. Thank you so much for the concern.”*

*“I must acknowledge that the management of my centre is doing the best to protect us from Covid-19.”*

*“I am happy with the set up in our centre, the staff is extra nice and helpful.”*

*“They do assist, even call the ambulance.”*

### **Lack of Support from Centre Management and Staff**

A significant number of responses provided reports of no support, misinformation, mistreatment and interpersonal conflict with centre management and other support staff.

*“Not much. Just hotel management shouting orders at us.”*

*“There is no stimulation and we just sit around all day waiting for this to be over. There is nothing offered in the centre or community.”*

*“If you [make] any mistake [the manager] always calls the Garda as a weapon, when she talks to people she uses the F word and she’s a racist and people are scared of her. Her behaviour is not acceptable, she needs to be removed.”*

*“No, nothing at all. It’s everyone for himself/herself, God for us all. We live in fear. No welfare officer. The welfare officer is only an office based officer. She does nothing for us but instead intimidates us. She uses her narrow views to deny us so many privileges designed to help us.”*

*“Yes on the 21st of March we were told if we have family or friends we can move in with them for 14 days then we can come back but we [have] just been informed we [are] not allowed to come back any more. I lost my bed not even allowed to take my stuff as I have medication in my bags as well.”*

*“Departments are releasing measures, doing transfers carelessly without seeing the family, individuals and healthcare workers. They want to do their job and go home.”*

*“No mental support given.”*

*“When you raise a complaint to management you become an enemy.”*

*“The management seems to be ignoring my pleas.”*

*“There is zero stimulation, we are going out of our minds with boredom. People are losing their patience. The food has been disgraceful. Management is far from sympathetic, we are made to feel guilty for asking for basic human rights. We are cut off from the rest of society with zero transport options.”*

### **Support and Assistance from External Organisations**

Respondents cited external organisations, agencies and support groups as a source of the supporting during the Covid-19 pandemic. These included the Irish Refugee Council, Sanctuary Runners, Movement of Asylum Seekers Ireland (MASI), Doras, Refugee and Migrant Solidarity Ireland (RAMSI), Tusla, Ruhama, Longford Youth Centre, New Horizons Athlone, Killarney Immigrant Support Centre (KASI), LGBT Ireland, Guide Clinic, Mayo Development Company in Ballyhaunis as well as individual and community support.

Support provided by these organisations, individuals and communities included distribution of hygiene and sanitation products (hand sanitizers and gels, soaps and disinfectants), Personal Protective Equipment (masks and gloves) as well as peer and mental health support, medical guidance, technology and, in some cases, assistance in securing accommodation.

*“Sanctuary Runners gave us some sanitizers, soaps, etc.”*

*“MASI group brought some hand gels, soaps and gloves for residents and the centre also provided the hand sanitizers and gloves by the corridors.”*

*“Help with some supplies (soap) from the Longford Youth Centre.”*

*“Many individuals and NGOs really supported us. Likes of Masi, RAMSI, Doras etc.”*

*“Yes we have a NGO, Natalya always supports us does her very best she with Tusla.”*

*“Support groups like New Horizon and Irish Refugee Council etc.”*

*“I do art, and I talk to my psychologist online every Thursday. I am in contact with my LGBT peer support group (LGBT Ireland) online also.”*

*“I had support from someone from the community that brought baby nappies and food for my daughter. And also a support from the Irish Refugee Council that topped up my phone to be able to get data and connect to do an online study programme as we have very poor wifi connectivity here.”*

In some instances, the Irish Refugee Council has assisted people who had been made homeless after being denied re-entry to Direct Provision accommodation during the strictest phases of the pandemic response roadmap.

*“I had lost my accommodation due to the mistakes of management in the hostel because I was away for one night and the management had given me permission in the first place but the next day they called me [and said] that I lost my accommodation due to the new rules of IPAS. But Irish Refugee Council helped me and they gave me accommodation again.”*

*“Irish Refugee Council supported me because I was sleeping rough outside and had no accommodation.”*

Personal protection equipment (PPE) was reported as a support in itself, giving respondents a sense of security and agency over their own personal protection efforts.

*“What has been supporting me [is] regularly using my mask and washing hands.”*

*“I was working as a Healthcare assistant and we were given the PPE to protect ourselves, so when I stopped, I had remained with some of*

*the gloves and Aprons that have helped me since the beginning of the lockdown due to this virus in Ireland until they're finished. I'm just worried about where to get them again because we don't even have access to the Masks and Gloves, we're using tissues now to open the doors and our scarves to cover the mouth and nose when we go outside the rooms. We're just trying hard on social distancing and the use of hand sanitisers."*

## **INTERNET AND INFORMATION**

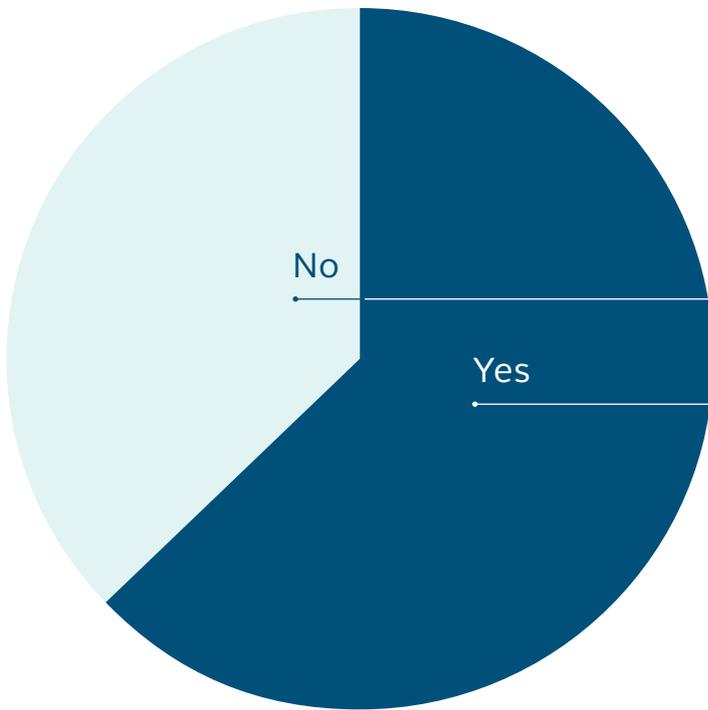
63% of 401 respondents stated they had access to a reliable WiFi connection, while 37% experienced issues with internet connectivity.

*"Really trying to cope with the current situation and Internet problems are not helping."*

*"The major problem is the inability to have access to wifi in the room which is very poor, the connection to wifi in the room is not strong enough, sometimes we find ourselves on the stairs to get hold of strong network connection."*

85.1% of 397 respondents feel they have received enough information about Covid-19 and how to stay safe, while 14.9% felt they have not. Online news was cited as a significant support regarding instant and easy access to information and media reporting on Covid-19 and safety measures. The social engagement and entertainment element of ICT was also reported as a form of support.

*"Reliable WIFI in my centre has really helped me during this period because it enables me to be up to date on issues concerning the Coronavirus pandemic."*

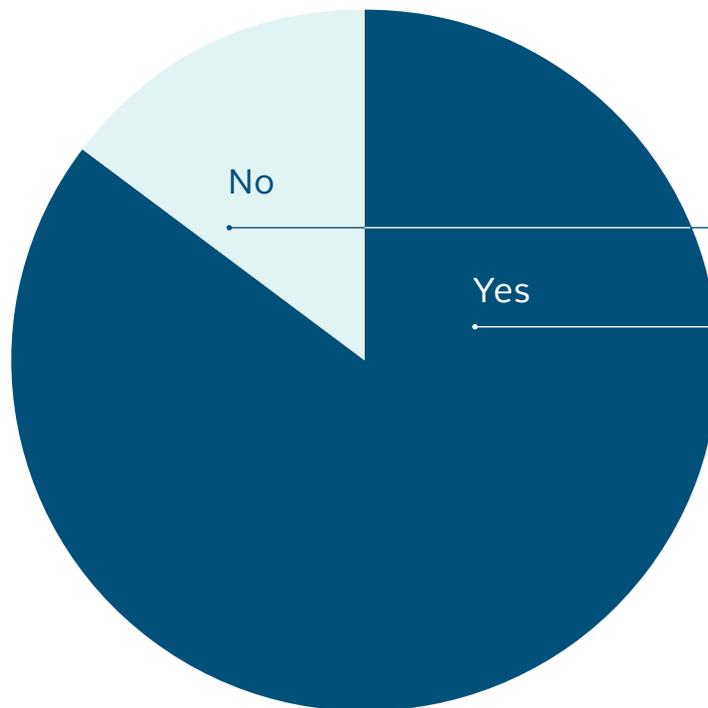


**Question:**

Do you have access to a reliable WIFI connection?

37%

63%



**Question:**

Do you feel you have received enough information about Covid-19 and how to stay safe?

14.9%

85.1%

*“Reading the internet on what I should do to protect myself from the virus.”*

*“RTÉ news, Irish Refugee Council Facebook page, Sky News and DRP and computer.”*

*“Following reliable information via local stations and live broadcasts from government.”*

*“I got support from Ruhama. I didn’t have a smartphone to be able to reach out to my teachers and classmates. But I received a smart phone from Ruhama a few days ago which has helped me stay connected and gotten more information about the virus.”*

*“My phone, being able to entertain myself in my room. Available information on the crisis at hand.”*

*“In my accommodation, we have constant information on staying safe to protect ourselves and others who may be at high risk.”*

### **Social Supports**

Family, friends, fellow residents, faith-based and educational support were cited widely by respondents as being highly supportive, especially the ability to connect with people online.

*“My family and friends are looking for information about my health. This has given me a lot of strength.”*

*“Our pastor has been sending motivational messages and scriptures.”*

*“I’ve also been getting spiritual and emotional help from church.”*

*“The children’s teachers have been sending materials and links of activities to educate and entertain the kids.”*

*“My friends and a few people in the community.”*

Other supports mentioned included personal positivity, daily exercise, nutrition, medical support as well as workplace support for those that continued to work. Some respondents reported they were not able to take exercise.

*“Keeping positive... Hope”*

*“Going out for runs & exercises.... Physical exercise”*

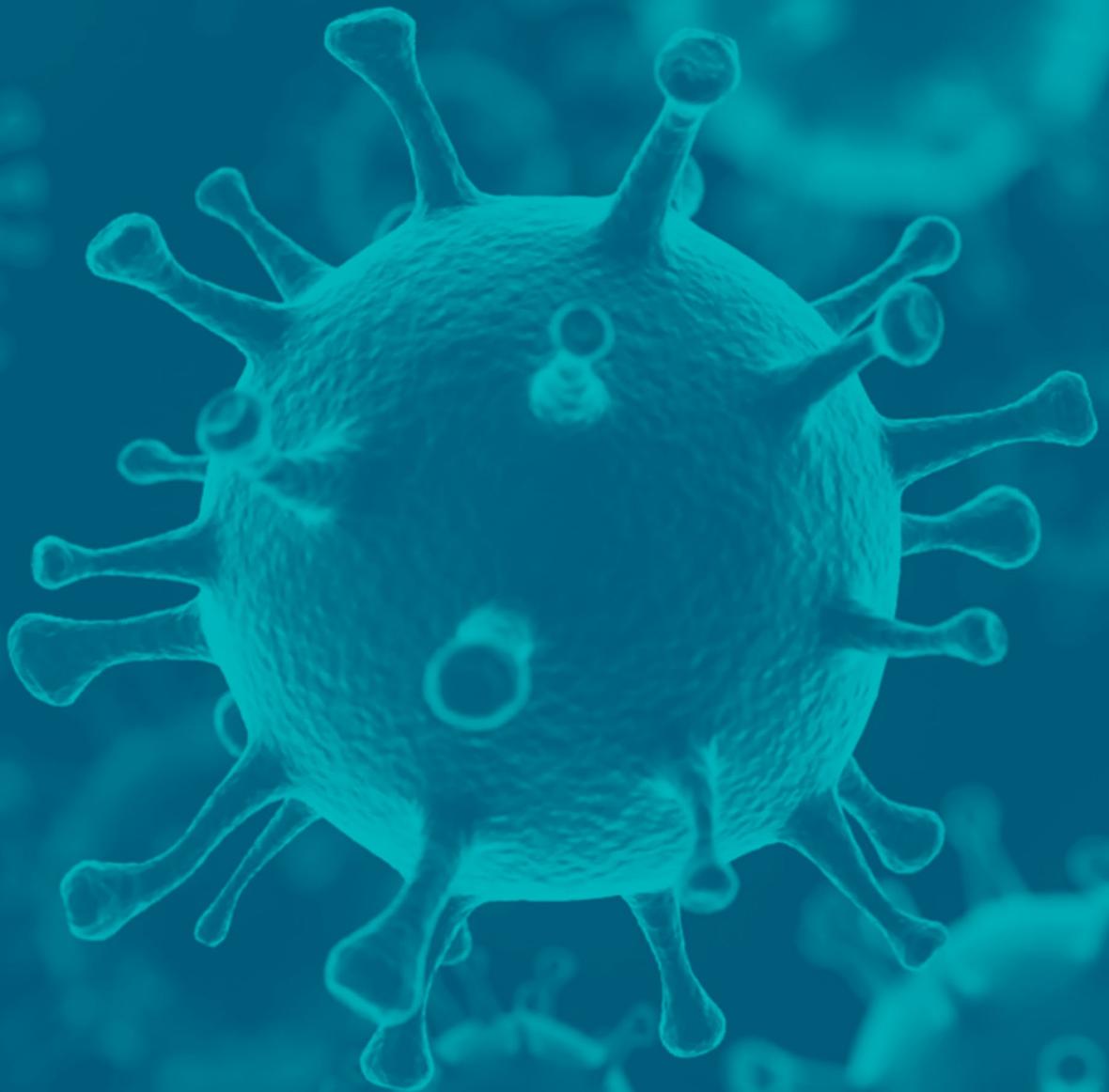
*“Frequently using ginger, lemon, garlic, vicks, hot water, etc”*

*“My workplace... My GP”*

*“It’s very tense as kids cant go outside to play as usual and I can’t jog outside because am Asthmatic”*

Section 8

# Recommendations



## PROVISION OF SINGLE OR HOUSEHOLD OCCUPANCY ACCOMMODATION

- The pandemic continues and will do so for the foreseeable future. Direct Provision and emergency centre accommodation, after nursing homes and meat processing factories, are particularly vulnerable as demonstrated by recent outbreaks. At least 1,600 people remain sharing bedrooms. The legal advice received by the Irish Refugee Council is that obligation on the Irish government is to provide single or household occupancy accommodation as an essential measure to ensure social distancing and to limit the spread of the virus.
- **Recommendation:** Ongoing review of Direct Provision accommodation with a view to ending shared living space with immediate effect in order to decrease the risk of the virus spreading.

## ENDING DIRECT PROVISION

- The commitment to end Direct Provision in the programme for government is very welcome and is a highly significant step in the campaign to end Direct Provision.
- **Recommendation:** While Direct Provision cannot end overnight, the Government should meet its target of delivering a white paper by the end of 2020, at the very latest.

## CLOSURE OF THE SKELLIG STAR HOTEL, CAHERSIVEEN AND REVIEW AND CLOSURE OF OTHER EMERGENCY LOCATIONS

- As the recent hunger strike demonstrates, the situation in the Skellig Star Hotel remains intolerable. The recent statement of Minister Helen McEntee TD is very welcome.
- **Recommendation:** The Skellig Star Hotel is closed as soon as possible and residents are moved out. Other emergency accommodation locations, such as the Central Hotel in Milton Malbay should be urgently reviewed.

## REVIEW OF THE GOVERNMENT'S HANDLING OF COVID-19 AND DIRECT PROVISION

- The Department of Justice has received much criticism of its handling of Direct Provision during the pandemic, including from the Irish Refugee Council. Simultaneously, we know that Department staff worked extremely hard in difficult circumstances. As the introduction states, blame for the Government's handling of the crisis lies in the past as much as the present. The Direct Provision and emergency accommodations system, tolerated by various different political parties, is completely inappropriate for a pandemic: congregated settings of different forms in 80 plus locations many without adequate supports. Nevertheless, as the Cahersiveen situation demonstrates significant errors have been made.
- **Recommendation:** A constructive internal inquiry in the Department of Justice's and wider government's handling of the pandemic with a view to forward looking recommendations .

## UPDATED TESTING STRATEGY

- A copy of the HSE's testing strategy is contained in the annex.
- **Recommendation:** Update and review if necessary the testing strategy for Direct Provision. Changes to this strategy should also be communicated to people living in Direct Provision.

## EXTEND AND CLARIFY THE TEMPORARY ACCOMMODATION SCHEME FOR HEALTHCARE WORKERS

- While the introduction of the temporary scheme was very welcome, beneficiaries of the scheme have had different experiences. In addition, on current guidance, people in the scheme who want to return to Direct Provision accommodation must quarantine for 14 days which will affect their ability to keep working.

- **Recommendation:** Extend the scheme and issue updated guidelines for people using the scheme and allow for changes of location or provision of support if necessary.

### **PERMISSION TO REMAIN FOR HEALTHCARE WORKERS**

- People in the protection process who have worked in healthcare settings have been part of a wider, national effort of all our essential services.
- **Recommendation:** Grant permission to remain to all people in the protection process, who are unsuccessful in their refugee or subsidiary protection application, and who have worked in the healthcare sector during the pandemic as a recognition of their work and contribution to Irish society.

### **PANDEMIC UNEMPLOYMENT PAYMENT**

- Several months have passed since the Pandemic Unemployment Payment was introduced. It is likely to continue until April 2021. The reasons given by the Department of Employment Affairs for not allowing people living in Direct Provision have been criticised as being possibly unlawful. The Taoiseach's announcement on 4 August that Direct Provision residents will be treated the same as any other citizen in terms of social protection supports when it comes to COVID-19 is very welcome, however clarification and more detail is necessary.
- **Recommendation:** Retrospectively allow people who live in Direct Provision and who lost work due to the pandemic to apply to the Pandemic Unemployment Payment.

### **INCREASE THE DIRECT PROVISION DAILY EXPENSES ALLOWANCE**

- People living in Direct Provision currently receive €38.80 per week through the Daily Expenses Allowance. As the results of the

survey demonstrate, this allowance is insufficient in covering the additional costs people are encountering due to the nature of living with this pandemic, putting them under severe pressure. Some of these additional costs and issues include: parents facing increased expenditure as they try to provide and support children living in lockdown; increased spending on essential hygiene and cleaning items; increased spend on medicine; increased spend on food.

- **Recommendation:** An increase of at least €20.00 to the daily expenses allowance for both children and adults for at least the duration of the public health emergency.

#### **VULNERABILITY ASSESSMENT:**

- Despite being a legal obligation since transposing the Reception Conditions Directive in to Irish law in 2018, no vulnerability assessment is in place. One of the consequences of this was that, during the pandemic when people were being moved, there was little data that the Department of Justice and Equality could use to identify vulnerability.
- **Recommendation:** Implement a vulnerability assessment as soon as practicable, as required by law.

#### **DIRECT PROVISION, QUARANTINE AND THE PANDEMIC:**

- People living in Direct Provision, because they live in an at risk congregated setting through no fault of their own, remain subject to significantly tighter controls around movement and quarantine than other members of society. For example, a resident who is absent from the centre one night or more without notifying the manager will not be permitted to return to the centre and will have to formally apply to IPAS to be re-accommodated. This will include a required 14 day quarantine period in an appropriate isolation location.

- **Recommendation:** Relax the rules for people living in Direct Provision, where possible, to allow people to move with the same ease of someone living in wider society.

### **CONTINUE TO ENSURE ACCESS TO THE PROTECTION PROCESS:**

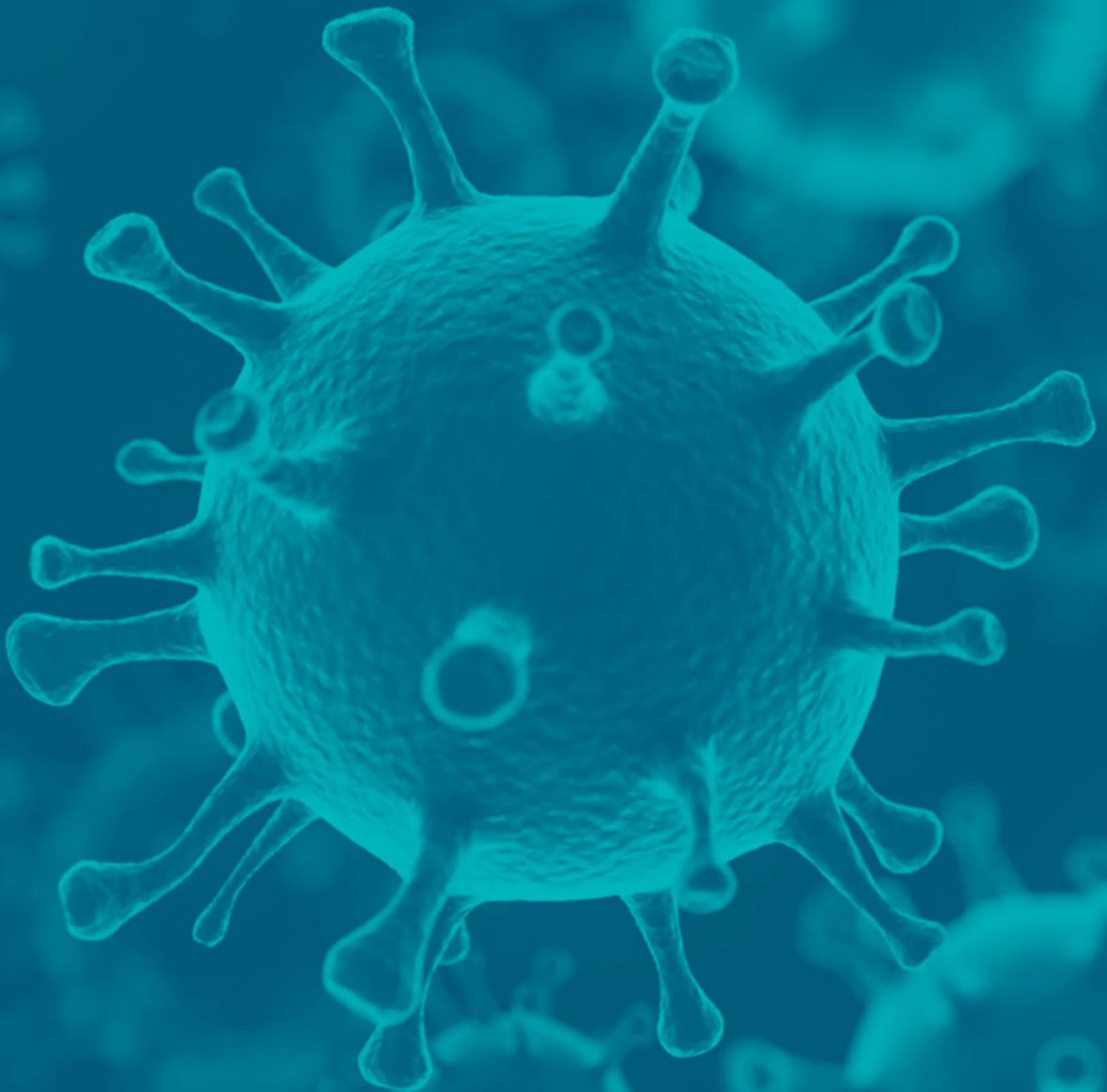
- Applications for protection in Ireland have plummeted during the pandemic. 221 people applied for protection in March, April and May in 2020 compared to 1086 in the same months in 2021. A terrible human rights consequence of the pandemic is that people fleeing persecution have not been able to leave their country due to curtailment on travel. Experience of the Irish Refugee Council is that people who have tried to apply for protection during the pandemic have been given access to the procedure.
- **Recommendation:** Continue to provide access to the protection procedure to people applying for protection and follow UNHCR's guidance on access to the protection process during the pandemic.

### **RESTARTING THE PROTECTION PROCESS**

- As respondents articulate in this report, another consequence of the pandemic is that decision making processes slowed or stopped completely. Delays have long afflicted the Irish protection process. As noted above, fewer people have been applying for protection. While this is of concern, it does give decision making bodies like the International Protection Office and the International Protection Appeals Tribunal the opportunity to work through a back log of cases.
- **Recommendation:** Where possible and safe, continue to re-start decision making processes.

Section 9

# Annex 1 - Chronology of Key Events

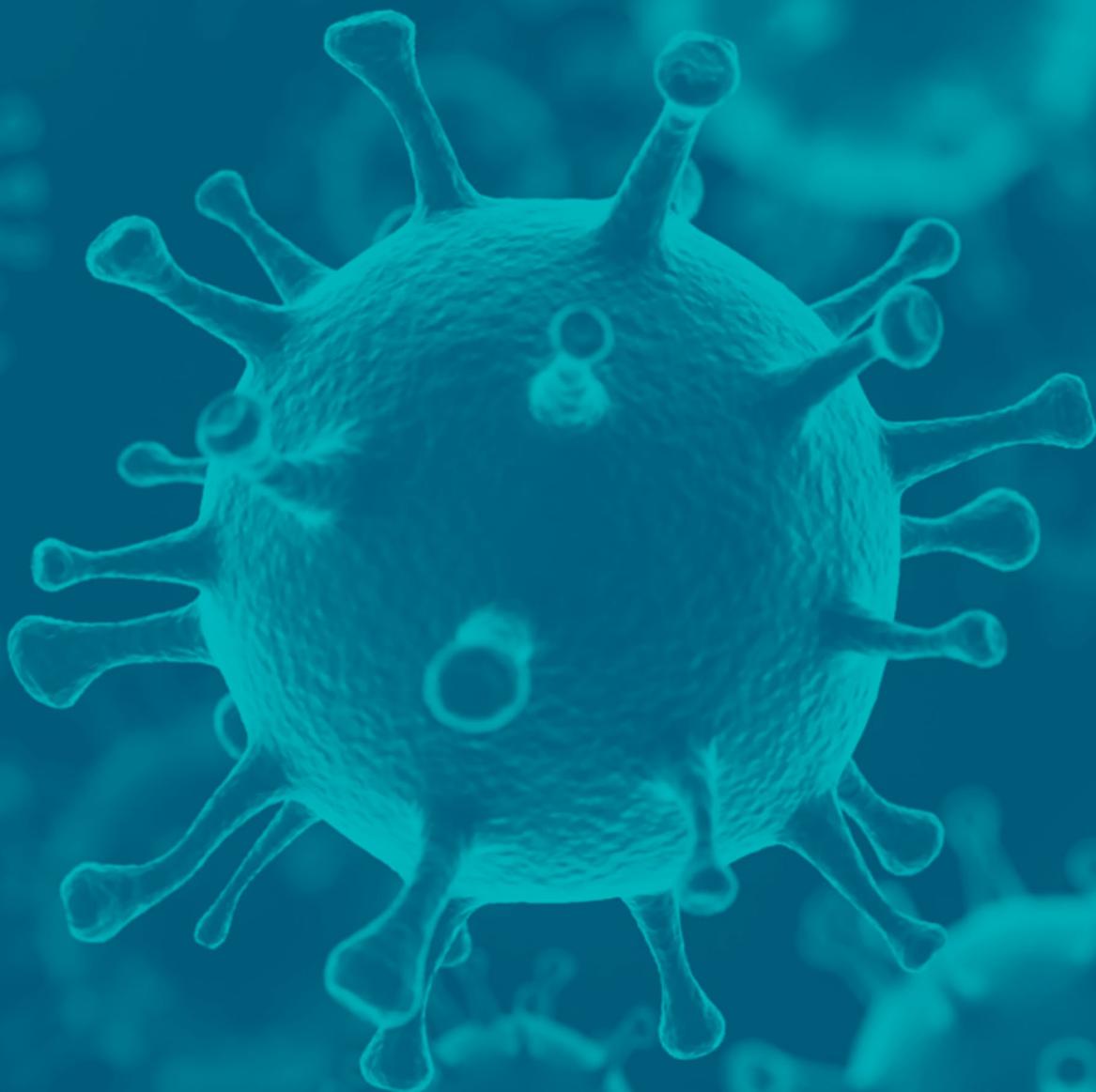


- 12 March** Taoiseach Leo Varadkar announced the closure of all schools, colleges and childcare facilities until 29 March
- 22 March** Irish Refugee Council email to Minister Flanagan requesting vulnerable people be moved out of Direct Provision
- 31 March** Open letter from 200+ academics to the Irish Government about open social distancing and Direct Provision
- Department of Justice announce more than 650 new beds secured to 'facilitate greater social distancing & isolation where necessary'
- 9 April** Announcement of Health Service Executive Temporary Accommodation Scheme for healthcare workers
- 15 April** Health Protection Surveillance Centre guidance on homeless and other vulnerable group settings published
- 23 April** Ombudsman annual report on Direct Provision published
- 24 April** Irish Refugee Council letter sent to Minister Charlie Flanagan enclosing opinion of counsel
- 28 April** Statement made by Chief Medical Officer that sharing a bedroom with non-family members does not allow for required social distancing
- 28 April** Irish Refugee Council letter to Bernard Gloster, CEO of Tusla, raising concerns about child protection in Direct Provision during Covid-19
- 30 April** 62 cases of Covid-19 in Direct Provision
- 6 May** Joint letter to Minister Regina Doherty, Department of Employment Affairs and Social Protection, requesting increase in daily expenses allowance of €20

- 8 May** Irish Refugee Council letter to Dr Colm Henry, Health Service Executive on testing strategy for Direct Provision
- 8 May** Joint letter from 30+ organisations and individuals calling for Skellig Star Hotel in Cahersiveen to be closed
- 11 May** Irish Human Rights and Equality Commission make statement on Direct Provision and Covid-19
- 15 May** Response from Dr Colm Henry regarding testing strategy for Direct Provision
- 15 May** Response from Minister Regina Doherty
- 19 May** 13 clusters, 171 cases of Covid-19 reported in Direct Provision centres
- 26 May** Oireachtas Special Committee on Covid-19 on Congregated Settings
- 28 July** Residents of the Skellig Star Hotel go on hunger strike
- 30 July** Department of Justice Minister McEntee states that residents of the Skellig Star Hotel are to be moved
- 4 August** Approximately 31 people reported as testing positive for Covid-19 in the Eyre Powell Hotel, Kildare

Section 9

# Annex 2 - Key Documents



<b>Document 1</b>	Cover letter enclosing legal opinion of Michael Lynn SC and Cillian Bracken BL
<b>Document 2</b>	Conclusion of legal opinion of Michael Lynn SC and Cillian Bracken BL
<b>Document 3</b>	Joint letter from 40 organisations requesting increase to Direct Provision daily expenses
<b>Document 4</b>	Response from Department of Social Protection and Employment Affairs to joint letter
<b>Document 5</b>	Letter to Dr Colm Henry, HSE Chief Clinical Officer regarding testing strategy for Direct Provision
<b>Document 6</b>	Response from Dr Colm Henry regarding testing strategy
<b>Document 7</b>	Joint letter from organisations and individuals requesting the closure of the Skellig Star Hotel, Cahersiveen
<b>Document 8</b>	Letter from Minister Charlie Flanagan and Minister David Stanton
<b>Document 9</b>	Letter to Bernard Gloster, CEO of Tusla
<b>Document 10</b>	Response from Bernard Gloster to Irish Refugee Council

Document 1:

24 April 2020

Minister Charlie Flanagan  
Department of Justice and Equality  
51 St. Stephen's Green  
Dublin 2  
D02 HK52



37 Killarney Street  
Dublin 1

Tel: 00 353 1 764 5854  
Fax: 00 353 1 672 5927  
Email: [info@irishrefugeecouncil.ie](mailto:info@irishrefugeecouncil.ie)  
Web: [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie)

CC: Minister Simon Harris

By email to: [charles.flanagan@oir.ie](mailto:charles.flanagan@oir.ie)

Dear Minister Flanagan and Minister Harris,

My name is Nick Henderson, I am CEO of the Irish Refugee Council.

As you will be aware the Irish Refugee Council and other organisations have raised the issue of the impact of COVID-19 on people living in Direct Provision since the crisis began. I wish to acknowledge the considerable work both your departments have undertaken to address the impacts of the disease. I also want to acknowledge that measures have been taken to transfer persons out of Direct Provision and to cocoon vulnerable people. In addition, both your departments have been forthcoming with regular briefings and information which have been helpful.

However, since the beginning of this crisis, our Information and Support Service and Law Centre have received calls from residents of Direct Provision about their inability to socially distance in the accommodation provided to them. In

**Document 1:**

response, our Law Centre sought an independent legal opinion from counsel, though the Public Interest Law Alliance, on the State's legal obligations to protect the health and safety of persons living in State-provided congregated settings in a situation of a public health crisis. In addition, one of our values as an organisation is the international human rights law framework and we try to embed our work in the law as much as possible.

We wish to share that legal opinion with you, which was written by Michael Lynn SC and Cillian Bracken BL. The opinion states that a number of positive obligations arise by virtue of Irish, European Union and International Human Rights law. These require that adequate safeguards are put in place by the State to protect those in State-provided accommodation during the currency of the COVID-19 pandemic, with particular emphasis on adherence with the State's own guidelines.

Furthermore, the opinion states that those obligations extend to ensuring, in line with Article 17(2) of Directive 2013/33, the Reception Conditions Directive, an adequate standard of living for those in receipt of reception conditions, which guarantees their subsistence and protects their physical and mental health.

The opinion states that this, in line with the State's guidelines, and indeed the restrictions it has put in place, requires the provision of single or household occupancy accommodation as an essential measure to ensure social distancing and to limit the spread of the virus. The opinion states that the need to restrict human interaction and contact is clear from the prevailing expert advice, nationally and internationally.

It is acknowledged that the opinion pre-dates various measures being taken to protect this vulnerable group. However, it remains our concern that further measures are needed, on an urgent basis, to protect the health and well-being

**Document 1:**

of those who remain in Direct Provision and cannot socially distance to ensure the State's actions are compatible with the State's national, European, and international legal obligations.

Yours faithfully,

Nick Henderson  
Chief Executive Officer

## Document 2:

**OPINION OF COUNSEL**

**To: Irish Refugee Council**

**Re: COVID-19 FAQs for those in State-provided Accommodation**

**Date: 8 April 2020**

**A. BRIEF**

1. The Irish Refugee Council ('IRC') seeks the opinion of counsel as to the obligations placed on the State with regard to those in Direct Provision and emergency accommodation centres in light of the risks posed by Coronavirus/COVID-19 in circumstances where those living in such accommodation are unable to adequately socially distance and so may be at risk of serious illness from COVID-19.
2. IRC has posed the following questions:
  - i. What obligations, if any, exist in domestic, international or EU law to protect the health and safety of persons living in State-provided congregated settings in a situation of a public health crisis?
  - ii. Do the State's obligations extend to providing single room accommodation to persons vulnerable to suffer from the public health emergency?
  - iii. What level of protection in times of a public health emergency does the law relating to the accommodation of people seeking international protection provide?
  - iv. Are the measures which are being taken by the State to protect people seeking international protection adequate to meet its obligations in respect of non-discrimination?
3. For obvious reasons, this Opinion has had to be produced within an extremely short time period. Accordingly, whilst both counsel are satisfied as to its general accuracy, it may be that nuances and qualifications may emerge. However, both counsel are satisfied that their conclusions are well grounded.

**B. BACKGROUND**

4. There are currently approximately 7,600 people living in Direct Provision and emergency accommodation centres throughout the State. The majority of these people live in shared rooms with others who may not be members of their household and are provided with board in communal eating settings, rendering effective social distancing impossible. Further, given the nature and capacity of these accommodation centres, many do not have the space to provide for self-isolation units. A number of residents work in healthcare settings and other front-line work, with a heightened risk of exposure to COVID-19. Additionally, residents may be placed under a psychological burden in circumstances where they may reside with others that they do not know and are now unable to absent themselves during the day. Accommodations centres are both State-provided and privately run, a number of which are former hotels.

## Document 2:

78. The Siracusa Principles, adopted by the UN Economic and Social Council in 1984, and UN Human Rights Committee general comments on states of emergency and freedom of movement, provide authoritative guidance on government responses that restrict human rights for reasons of public health or national emergency. Any measures taken to protect the population that limit people's rights and freedoms must be lawful, necessary, and proportionate. States of emergency need to be limited in duration and any curtailment of rights needs to take into consideration the disproportionate impact on specific populations or marginalized groups.
79. No state party shall, even in time of emergency threatening the life of the nation, derogate from the ICCPR's guarantees of the right to life; freedom from torture, cruel, inhuman or degrading treatment or punishment, amongst others. These rights are not derogable under any conditions even for the asserted purpose of preserving the life of the nation.
80. On 6 April 2020, the CESCR adopted a statement, UN Doc. E/C.12/2020/1, on the COVID-19 pandemic. It stated that States are under an obligation to take measures to prevent, or at least to mitigate, the impacts of the pandemic. No one should be left behind in taking the measures necessary to combat this pandemic. In particular, the Committee noted that indigenous peoples, refugees and asylum seekers, and those living in conflict-affected countries or regions are particularly vulnerable during this pandemic. These populations frequently suffer higher rates of chronic illnesses and underlying health conditions that place them at greater risk of developing severe health complications from COVID-19.
81. The Committee recommended that where the measures adopted limit ICCPR rights, such measures must be necessary to combat the public health crisis posed by COVID-19 and be reasonable and proportionate. State parties are under an obligation to devote their maximum available resources for the full realization of all economic, social and cultural rights, including the right to health. As this pandemic and the measures taken to combat it have had a disproportionate negative impact on the most marginalized groups, States must make all efforts to mobilize the necessary resources to combat COVID-19 in the most equitable manner, in order to avoid imposing a further economic burden on these marginalized groups. Allocation of resources should prioritize the special needs of these groups.
82. All States parties should, as a matter of urgency, adopt special, targeted measures, including through international cooperation, to protect and mitigate the impact of the pandemic on vulnerable groups such as the elderly, persons with disabilities, refugees and conflict-affected populations, as well as communities and groups subject to structural discrimination and disadvantage.

**H. CONCLUSION**

83. On the basis of the above, the following conclusions can be drawn in response to the specific questions posed.

## Document 2:

- a. In relation to the first question, a number of positive obligations arise by virtue of Irish, European Union and international human rights law requiring that adequate safeguards are put in place by the State to protect those in State-provided accommodation during the currency of the COVID-19 pandemic, especially in compliance with the State's own guidelines.
  - b. In relation to the second and third questions, the State's obligations do extend to ensuring, per Article 17(2), an adequate standard of living for those in receipt of reception conditions, which guarantees their subsistence and protects their physical and mental health. This, in line with the State's guidelines, and indeed the restrictions it has put in place, requires the provision of single or household occupancy accommodation as an essential measure to ensure social distancing and to limit the spread of the virus. The need to restrict human interaction and contact is abundantly clear from the prevailing expert advice, nationally and internationally.
  - c. In relation to the fourth question, in circumstances where the measures being taken by the State to protect those seeking international protection in accommodation centres appear on their face to directly contradict the State's own guidelines and seem to be markedly different to that approach being taken to those in homeless emergency accommodation would seem to be contrary to its obligations in respect of non-discrimination.
  - d. Finally, judicial review proceedings would be the most appropriate method of vindicating the rights set out above.
84. Accordingly, we are of the opinion that domestic, European and international human rights law places a number of obligations on the State to ensure it protects those in shared State-provided accommodation centres during the COVID-19 pandemic.
85. For the time being, nothing further occurs.

**Cillian Bracken B.L.**  
**Michael Lynn S.C.**  
**8 April 2020**

## Document 3:

6 May 2020

Minister Regina Doherty  
Department of Employment  
Affairs and Social Protection,  
Áras Mhic Dhiarmada,  
Store Street,  
D01 WY03

Nick Henderson  
Irish Refugee Council  
37 Killarney Street  
Dublin 1  
[nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie)

By email to: [regina.doherty@oir.ie](mailto:regina.doherty@oir.ie)

CC: John McKeon, [secretary.general@welfare.ie](mailto:secretary.general@welfare.ie)

Dear Minister Doherty,

**Re: increase of the daily expenses allowance for people seeking protection**

As more than 40 organisations and individuals working with people seeking protection in Ireland we write with a joint request to increase the daily expenses allowance (DEA) by €20.00.

The Government, led by your Department, has rightly committed to short-term measures that will offer security to individuals and families in this time of instability. However, we are very concerned that people seeking protection in Ireland are generally not entitled to these measures and they remain exceptionally vulnerable during this crisis.

In our experience people are encountering additional costs that are putting them under severe pressure. Some of these additional costs and issues include:

**Document 3:**

- There are over 1,600 children in Direct Provision, many would normally be at school. Parents are facing increased expenditure as they try to provide and support children living in lockdown.
- Increased spend on cleaning items. Sanitizer has been provided to some Direct Provision centres but feedback is that this is insufficient.
- Increased spend on medicine.
- Increased spend on food. An increase would also allow people who can cook to purchase items in larger quantities to avoid frequent trips to shops.
- Increased use of mobile data. Many people would use libraries or other space with free Wi-Fi that is now closed. While some Direct Provision centres provide WiFi, feedback is that this is patchy. Organisations and legal representatives are giving support and advice online. Public health guidance is provided online and via TV. Schools are using online platforms to provide lessons. People are using media platforms to try to pass time. All of which increase data use.
- It should also be mentioned that, despite advocacy to you and your Department, the Covid-19 Pandemic Payment is not available to people living in Direct Provision. We urge you to re-consider this decision. In the meantime an increase in the DEA would be of some assistance to people.

We are recommending an increase of at least €20.00 to the DEA for both children and adults for at least the duration of the public health emergency.

We look forward to hearing from you.

Yours sincerely,

Signatories:

Document 3:

Nick Henderson, Irish Refugee Council

Tinu Achioya, Cultur Migrants Centre

Ann Hayes, Waterford Integration Network

Fiona Finn, Nasc, the Migrant and Refugee Rights Centre

John Lannon, Doras

Gerry Callaghan, New Horizon Refugee & Asylum Seeker Support

Roos Demol, International Community Dynamics

Janet Kehelly, Croí na Gaillimhe Resource Centre

Piaras Mac Éinrí, Cork City of Sanctuary Covid-19 Task Force

Brian Killoran, Immigrant Council of Ireland

Edel McGinley, Migrant Rights Centre Ireland

Philip Berman, Places of Sanctuary of Ireland

Natalya Pestova, Mayo Intercultural Action

Eugene Quinn, Jesuit Refugee Service Ireland

Sarajane Mc Naboe, Longford Community Resources Co Longford Youth Service

Most Rev Bishop Alphonsus Cullinan DD, Waterford and Lismore

Rory Halpin, Spirasi

Máire Leane, UCC University of Sanctuary Working Group

Rachel Doyle, Community Work Ireland

Rosemary Kunene, Voice of Migrants Ireland

Professor Brian Hughes, Galway Anti Racism Network

Sarah Clancy, Clare Public Participation Network

UCC Failte Refugees

David Lynch, South Dublin County Partnership

Tanya Ward, Children's Rights Alliance

Document 3:

Colm O’Gorman, Amnesty International Ireland

Marie Collins, Brij Asylum Support, Cork

Breege Keenan, Crosscare

Nadette Foley, Welcome Cafe

Naoimh Mc Namee, CEO Glencree Centre for Peace and Reconciliation

ATMOS Collective, Galway

Bríd O’Brien, Irish National Organisation of the Unemployed

Paul Ginnell, European Anti-Poverty Network Ireland

Dr Chris Noone, School of Psychology, NUI Galway

Dr. Lorraine McIlrath, Community Knowledge Initiative, NUI Galway

Dr Muriel Grenon, School of Natural Sciences, NUI Galway

Dr. Cassie Smith-Christmas, Marie Skłodowska-Curie Fellow, NUI Galway

Karen Kiernan, One Family

Joanie Barron, Wallaroo Child and Family Project Cork

Tracey Holt

Shauna Gillan, Safe Haven Voyages

Joe Murray, Afri, Action from Ireland

Niamh Conaghan, Newbridge Asylum Seekers Support Group

Marie Flynn BL

## Document 4:



**Oifig an Aire Gnóthaí Fostaíochta agus Coimirce Sóisialaí**  
**Office of the Minister for Employment Affairs and Social Protection**

Nick Henderson  
Irish Refugee Council  
37 Killarney Street  
Dublin 1

15<sup>th</sup> May 2020

Dear Nick

I refer to your recent correspondence regarding an increase in the rate of the Daily Expenses Allowance.

Daily Expenses Allowance is payable under the European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230 of 2018), which transposes the conditions for the reception of applicants for international protection set out in the EU (recast) Reception Conditions Directive (RCD) (2013/33/EU).

As you know, the current rate payable for Daily Expenses Allowance is €38.80 per adult and €29.80 per child. There are approximately 4,700 adults and 2,000 children residing in the system of direct provision in respect of whom daily expenses allowance is being paid. Any increases to the rate of Daily Expenses Allowance would have to be approved by Government and considered in a budgetary context.

As part of measures introduced in response to Covid 19, IPAS allows protection applicants stay with family or friends on a temporary basis and retain their place within the IPAS accommodation system. In order to support this arrangement my Department has stated these protection applicants can continue to receive the Daily Expense Allowance during this period. In addition, it is possible to request to move the weekly payment to a different Post Office during this period, or to have it paid to a bank account.

I regret to inform you that there are no plans to grant entitlement to the Covid-19 Pandemic Unemployment Payment for those in receipt of Daily Expenses Allowance. Protection applicants residing in accommodation provided by the International Protection Accommodation Service (IPAS) of the Department of Justice & Equality receive accommodation, food and other services while as well as the Daily Expenses Allowance. The Covid-19 PUP is an enhanced payment for jobseekers and eligibility is aligned to jobseeker payments. It is paid to people who, in most cases, have no other source of income.

## Document 4:



**Oifig an Aire Gnóthaí Fostaíochta agus Coimirce Sóisialaí**  
**Office of the Minister for Employment Affairs and Social Protection**

Protection applicants residing in the community who have the right to access the labour market and have lost employment or self-employment due to the Covid-19 Pandemic are entitled to apply for the Covid-19 PUP. They are not entitled to the Daily Expenses Allowance as it is only payable in respect of protection applicants who reside in accommodation provided by IPAS.

Protection applicants can also access Exceptional Needs Payments, as the habitual residence condition does not apply to these payments. My Department may make an Exceptional Needs Payments to help meet essential, once-off expenditure which a person could not reasonably be expected to meet out of their weekly income. Payments are made at the discretion of the officers administering the scheme taking into account the requirements of the legislation and all the relevant circumstances of the case.

Exceptional Needs Payments are administered by the Community Welfare Service (CWS) within my Department, which also administers the Daily Expenses Allowance. Protection applicants who require additional financial assistance with necessary and essential expenditure should contact the office in the CWS that deals with their accommodation location.

I have forwarded your correspondence to Simon Harris TD, Minister for Health, in relation to the matters raised concerning increased spend on medicine. I have also forwarded your correspondence to Charles Flanagan TD, Minister for Justice and Equality, in relation to the matters raised concerning Direct Provision accommodation facilities and operations as these issues come within his responsibility.

Yours sincerely,

Regina Doherty T.D  
Minister for Employment Affairs and Social Protection

*The Minister is a Designated Public Official under the Regulation of Lobbying Act, 2015  
(details available on [www.lobbying.ie](http://www.lobbying.ie))*

Áras Mhic Dhiarmada, Sráid Sráis, Baile Átha Cliath 1, D01 WY03  
Áras Mhic Dhiarmada, Store Street, Dublin 1, D01 WY03  
minister@welfare.ie | + 353 1 704 3000 | www.welfare.ie

## Document 5:

7 May 2020

Dr Colm Henry  
Chief Clinical Officer  
Health Service Executive  
By email to: [cco@hse.ie](mailto:cco@hse.ie)

Nick Henderson  
Irish Refugee Council  
From email: [nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie)

Dear Dr Henry

My name is Nick Henderson, I am CEO of the Irish Refugee Council.

We have written to the both the Department of Health and the Department of Justice and Equality several times in recent weeks raising concerns about Direct Provision. In our representations we have called for people to be moved out of Direct Provision to accommodation where they can socially distance themselves. Until and unless this happens it is our respectful opinion that the risk of the disease spreading will always be considerably higher than elsewhere in society. RTÉ reported this week that 1,700 people were sharing bedrooms with non-family members.

We are concerned about the possibility of 'vicious circles' occurring where people become infected and are moved out but, due to living in proximity to others, they infect others and the chain of infection continues. What has happened at the Skellig Hotel in Cahersiveen is a possible example of this.

In the absence of people being moved out, I am writing with some respectful suggestions about how the testing strategy for people in Direct Provision could be developed. These include:

## Document 5:

1. A testing strategy should be published.
2. Testing of all residents of all centres is recommended, at the very least testing should occur at the hint of an symptoms being shown in a resident. The ratio between the number of tests conducted to number positive results should also be published.
3. Any testing should coincide with a public health campaign. This could be a leaflet, translated in to languages, stating why testing is taking place, that it is safe and necessary. The International Protection Accommodation Service of the Department of Justice and Equality have a newsletter to residents. Anecdotally we have heard that some people are sceptical of testing. In extreme cases we have heard that people think testing may infect them.
4. As far as I know several different organisations are undertaking testing (the ambulance service, Safety Net and the HSE themselves). Obviously this is a good thing but it may mean there is a lag in results being fed back to the HSE. If possible this should be improved and rectified.
5. The strategy should be mindful of the fact that, we understand, a significant number of people in Direct Provision do not have access to a GP. This is particularly the case for people in emergency accommodation and for people who have been recently moved.
6. Thought should be given to how positive tests results are communicated to people. The information material mentioned above could include a description of the pathways for people in the event of a negative or positive test.
7. There are approximately 1,600 children in Direct Provision. The approach to testing children should also be carefully considered.
8. Testing should also be done on a periodic basis. While other parts of Irish society are starting reopen, the risk is likely to persist for people in Direct

**Document 5:**

Provision because they are sharing intimate space. There is also the 'vicious circle' potential mentioned above.

I appreciate your time which must be under severe pressure.

Thank you,

Yours faithfully,

Nick Henderson,

CEO

Irish Refugee Council

CC: Ann O'Connor, Dr Ronan Glynn, Oonagh Buckley, Mark Wilson, Philip Crowley

## Document 6:



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

Office of the Chief Clinical Officer  
Dr Steevens' Hospital|Steevens' Lane|Dublin 8|D08 W2A8  
email: [cco@hse.ie](mailto:cco@hse.ie)

Oifig an Príohoifigeach Clínicíúil Eatromhach  
Ospidéal Dr Steevens|Lána Steevens|Baile Átha Cliath 8|D08 W2A8

**By Email Only**

15<sup>th</sup> May 2020

**Nick Henderson**

Chief Executive Officer  
Irish Refugee Council  
37 Killarney Street  
Dublin 1

**Email:** [Nick@irishrefugeecouncil.ie](mailto:Nick@irishrefugeecouncil.ie)

Dear Mr Henderson,

Many thanks for your letter dated 7<sup>th</sup> May. We have outlined your queries below with our responses.

1. A testing strategy should be published.

*Testing strategy appended*

2. Testing of all residents of all centres is recommended, at the very least if someone presents with symptoms. Testing should occur at the hint of symptoms being shown in a resident. The ratio between the number of tests conducted to number positive results should also be published.

*We agree that we should test early anyone with symptoms. Testing people who are asymptomatic has not tended to help us control spread.*

*For COVID-19, persons may present for test on the basis of GP or individual risk assessment in the local Emergency Dept. If a resident or staff member in an IPAS accommodation setting is a suspect or COVID-19 detected case, it is important to adhere to public health advice regarding self-isolation and contact tracing. Local or national Public Health/ Social Inclusion team will inform DOJE if there is a newly notified case in a centre where possible. However, it is more likely Centres/ IPAS will know of a case first as the patient is contacted directly first and told of the diagnosis.*

*Note that some people get a COVID test in a variety of means such as a community assessment hub which may not be apparent to the clinician as a direct provision centre. Residents should feel safe to inform centre management if they are concerned about possible COVID-19 or have been diagnosed.*

3. Any testing should coincide with a public health campaign. This could be a leaflet, translated in to languages, stating why testing is taking place, that it is safe and necessary. The International Protection Accommodation Service of the Department of Justice and Equality have a newsletter to residents. Anecdotally we have heard that some people are sceptical of testing. In extreme cases we have heard that people think testing may infect them.

*When it is decided to carry out Covid testing in an IPAS centre, leaflets in appropriate languages are distributed to each resident. These leaflets show what time and date the test will take place and also provide basic information about Covid. All IPAS centres have been provided with significant quantities of Covid posters, information sheets and materials to assist social distancing. These resources are*

## Document 6:



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Oifig an Príohoifigeach Cliniciúil Eatromhach  
Ospidéal Dr Steevens|Lána Steevens|Baile Átha Cliath 8|D08 W2A8

*displayed within and outside IPAS buildings to support the ongoing public health campaign. Some HSE staff have encountered a minority of residents who initially do not want to get tested. This opposition to testing is usually resolved by addressing the resident's questions and concerns.*

4. As far as I know several different organisations are undertaking testing (the ambulance service, Safety Net and the HSE themselves). Obviously this is a good thing but it may mean there is a lag in results being fed back to the HSE. If possible this should be improved and rectified.

*Very strenuous efforts are being made to accelerate the testing and tracing process.*

5. The strategy should be mindful of the fact that, we understand, a significant number of people in Direct Provision do not have access to a GP. This is particularly the case for people in emergency accommodation and for people who have been recently moved.

*We are very aware that some people in DP and out of DP do not have a GP. That is why we made a deal with the IMO stating that anyone could sign up with any general practice for a COVID Test.*

6. Thought should be given to how positive tests results are communicated to people. The information material mentioned above could include a description of the pathways for people in the event of a negative or positive test.

*When a resident has a confirmed positive test, the result will be relayed by the GP who requested the test or the HSE PH who arranged mass testing. The resident may inform the staff member and also PH staff member will liaise with manager in order to support the resident. Additionally the process of referral for self-isolation is explained in detail to the resident. If the resident appears medically unwell at this time, a GP is called immediately to assess the situation.*

*With respect to contact tracing, Public Health Contact tracing will work in an individual case. In a cluster however Centre staff will be involved and will try to establish/trace contacts of the case as far as possible. IPAS accommodation is a congregated setting and Local Public Health consider all residents and staff as close contacts (see HSE Close Contact). Management of close contacts is detailed in the Vulnerable Groups Guidance and involves restricting movement for 14 days and actively monitoring for symptoms. Self-isolation can be provided on site but sometimes there is insufficient or unsuitable accommodation and referral to City West SI may be needed.*

7. There are approximately 1,600 children in Direct Provision. The approach to testing children should also be carefully considered.

*The HSE approach to testing children in all circumstances including IPAS centres is always to ensure the rights of children are protected. HSE staff who undertake the testing of children have received appropriate training.*

8. Testing should also be done on a periodic basis. While other parts of Irish society are starting reopen, the risk is likely to persist for people in Direct Provision because they are sharing intimate space. There is also the 'vicious circle' potential mentioned above.

Document 6:



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Ospidéal Dr Steevens|Lána Steevens|Baile Átha Cliath 8|D08 W2A8

*Approach to testing referred to above will persist throughout the pandemic.*

I hope that this clarifies your queries. It was good to meet with you previously. We are seeking through Joe Barry to meet again with you to keep you informed and to hear your perspective on the current situation.

Dr Philip Crowley  
**Acting National Co Lead, Public Health Response to COVID-19**  
**National Director of the National Quality Improvement Team**

**On behalf of the Chief Clinical Office**

## Document 6:



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

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#### Appendix 1:

##### Managing pandemic Covid 19 in direct provision centres and the role of viral testing

From early January the HSE has been active in using its experience and previous learning with DOJE to be prepared and to mitigate against more serious consequences of the disease in direct provision. Testing has an important role to play in the COVID response for Vulnerable Groups. However, it is but one tool in the response.

During preparation the emphasis was on getting information out to centre managers and residents, supporting prevention and hygiene measure especially handwashing and social distance. Centres had resident numbers reduced, vulnerable residents were cocooned and medical supports were provided to those at risk.

Control depends on what people do both to protect themselves and others. This includes restricting movements, maintaining social distance in recreation etc and complying with government measures. For this reason, the HSE developed Guidance early on in letter form, social media and HPSC website. Early action and response to a single case remains a very important tool in the fight

##### The use of testing to control viral spread in direct provision:

Where there is more than one case in a congregated setting in which there is considerable intermingling and likelihood of rapid viral spread, there may be a case for enhanced testing of residents and staff. The judgment to test all residents and all staff ultimately is a decision to be made in conjunction with the Local Public Health Directorate. This will identify anyone living or working in the centre who has not identified that they have symptoms or who are asymptomatic but who are positive for the virus. The workers will be excluded from work and the residents isolated for 14 days.

On the other hand, if a centre has separate living and catering facilities for families you would only test the close contacts of a positive case. This is where local judgement comes in.

Testing in a DP centre must only be undertaken with the agreement of the local public health department.

##### Principles of testing

There should be effective communication within HSE and DOJE plus residents, centre management and staff

- 1.1 Preparatory work by HSE Public Health and Social inclusion with DOJE, residents and staff explaining context of testing, precaution measures and what the testing involves (see resource page for English and translated version of '[what happens during a test](#)' for residents and staff).
- 1.2 Communication on what will happen if people are tested positive; that if people need to move facility arising from the test result, that they will be able to return to that centre post isolation (unless advised otherwise by Public Health). Translation facility may be required.
- 1.3 Confirmation of where the testing will take place (i.e. through GP, National Ambulance Service, [SafetyNet Primary Care](#), Regional CHO/primary care or a static community assessment or test centre). If in a test centre, off site transport arrangements will be required.
- 1.4 Notification from Public Health and HSE /IPAS to send to residents and staff re testing.
- 1.5 If a person refuses a test a Public Health or Social Inclusion staff member will provide additional counselling / support.
- 1.6 Database for testing - inputting information onto Health link (through Public Health/GP)
- 1.7 Notification of test results. Delivery of results will be by phone.

*Dr Margaret Fitzgerald and Dr Philip Crowley*  
10-05-20

## Document 7:

8 May 2020

Minister Charlie Flanagan  
Department of Justice and Equality  
51 St. Stephen's Green  
Dublin 2  
D02 HK52

By email to: [charles.flanagan@oir.ie](mailto:charles.flanagan@oir.ie)

Contact: Nick Henderson  
CEO, Irish Refugee Council  
[nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie)

CC: Minister Simon Harris

Dear Minister,

We, the undersigned, write to express our deep concern in relation to the situation in the Skellig Star Hotel, Cahersiveen.

We are particularly shocked by a letter given by the HSE to residents in the last 24 hours which extends the quarantine until 20 May. The letter infers that responsibility for the quarantine having to be extended lies with residents because they are not adhering to social distancing. This plainly ignores that social distancing in this environment is not possible.

We want to draw attention to the following:

- Reports that people are not able to leave the hotel, or are given the strong impression that they can not leave;
- People, including children, spending all day in hotel rooms;
- No deep clean of the hotel following 22 residents testing positive for Covid-19 two weeks ago or following positive tests this week;
- Non family members sharing rooms;
- Reports that food provided is not suitable to the needs of residents;

## Document 7:

- Risk of a contagion ‘vicious circle’: people become infected and are moved out but, due to living in proximity to others, they have already infected others and the chain of infection continues. This chain could continue for weeks if residents are not moved out urgently to more appropriate accommodation.

Both people in the hotel, and the local welcome committee, have repeatedly called for the use of the hotel as a Direct Provision Centre to be ended.

In line with these calls, and in line with the obligations of the Government under the EU Reception Directive (2013/33/EU) to ensure that “reception conditions provide an adequate standard of living for applicants, which ... protects their physical and mental health”, we also strongly recommend that the hotel is closed.

Yours faithfully,

Nick Henderson, Irish Refugee Council

Liam Herrick, Irish Council for Civil Liberties

Graham Clifford, The Sanctuary Runners

Fiona Finn, Nasc, Migrant & Refugee Rights

John Lannon, Doras

Dr Liam Thornton, Associate Professor, School of Law, University College Dublin

Roos Demol, International Community Dynamics

Anne McShane Solicitors

Úna O’Brien, Sinnott Solicitors

Elizabeth Mitrow, Abbey Law

Brian Killoran, Immigrant Council of Ireland

Carol Sinnott, Sinnott Solicitors

Dr Piaras Mac Éinrí, Committee member, Cork City of Sanctuary and UCC

**Document 7:**

Mike FitzGibbon, UCC Sanctuary Working Group and Cork City of Sanctuary member

Dr. Chris McDermott, Law Lecturer, Athlone Institute of Technology

Wendy Lyon, Solicitor, Abbey Law

Dr Dug Cubie, School of Law, University College Cork

Dr Claire Dorrity, School of Applied Social Studies, UCC

Colm O’Gorman, Amnesty International Ireland

Seamus O'Halloran Solicitors

Lisa McKeogh B.L.

Saul Woolfson B.L.

Janet Kehelly, Croi na Gaillimhe

Conor Ó Briain Solicitors

Sarah Clancy, Clare Public Participation Network

Breege Keenan, Crosscare Refugee Service

Dr. Gertrude Cotter, Centre for Global Development, UCC

Rose Gartland, Immigration & Human Rights Caseworker, DLCM Solicitors

Mary Henderson, Solicitor

Dr Ciara Smyth, School of Law and Irish Centre for Human Rights, NUI Galway.

## Document 8:

An Roinn Dlí agus Cirt  
agus Comhionannais  
Department of Justice  
and Equality

*Óifig an Aire* | Office of the Minister



Mr. Nick Henderson  
CEO of the Irish Refugee Council  
& others.

[nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie)

Re: Skellig Accommodation Centre, Caherciveen, Co. Kerry

12 May 2020

Dear Nick,

I refer to your letter of 8 May 2020, regarding the Skellig Accommodation Centre in Caherciveen sent on behalf of your organisation and a number of other interested organisations and individuals.

Firstly, let me say that both Minister Stanton and I appreciate how disappointing it will have been for residents to receive the letter from HSE Public Health last week which extended the period of current restrictions. The current restrictions are difficult for residents – as they are for anyone required to quarantine during this pandemic – but the purpose of this HSE guidance is to protect the health of all residents, staff and the wider community.

In line with our agreed policy with the HSE, anyone with a positive COVID-19 result has been transferred to an offsite self-isolation facility where they are cared for until such time as the HSE considers that they can safely return to their centre. We have four dedicated facilities in Dublin, Cork, Limerick and Dundalk as well as the use of the HSE City West facility, as appropriate. The advice for the remaining residents in the Skellig Accommodation Centre to quarantine is public health advice, provided by public health authorities. The HSE has confirmed that there should be no movement into or out of the centre at this time, unless directed by public health.

It is important to say that no one is being prevented from leaving the centre. Centre management has confirmed that the main entrance door is on a thumb lock and residents have access to leave freely if they wish to do so. However, the guidance from the HSE at this time is that residents should self-isolate and staff do remind residents of this public health advice.

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## Document 8:



Where cases of Covid-19 arise in the community, the HSE's Outbreak Control Team (OCT) manage the response. In addition to health professionals, this OCT also includes representatives from my Department and from centre management. We are all focused on ensuring the health and welfare of residents and restoring a sense of normality for our residents as quickly as possible. To achieve this, we need the cooperation of all residents and staff. We understand that self-isolation is very difficult. Nothing about this terrible pandemic is easy.

There are currently 69 residents (including 9 children) onsite in the centre, which has capacity for 150 residents, and 56 bedrooms. Residents are a mix of single people and small sized families. All single residents have been offered their own bedroom and all bedrooms in the centre are en-suite. Some have declined this offer and have indicated that they wish to self-isolate with their roommate as a family unit. We continue to encourage these residents to accept the offer of their own room at this time.

Guidance has been provided by the HSE to centre management on the enhanced cleaning arrangements required at this time including through an onsite visit by a HSE infection control specialist. This applies to bedrooms, corridors, staircases, the dining room, kitchen, laundry room, lift, public toilets and reception and public areas. This is being strictly adhered to by centre management and staff. Full details of the cleaning regime during this time is appended below.

We are working closely with the HSE and centre management to provide additional supports for residents during this time. There is a HSE Community Development Worker onsite at the Centre seven days a week to monitor the health of residents. This person is supported by a wider healthcare team. Additional outdoor space has been opened up with some seating provided and, this week, exercise equipment is being set up in the outdoor area, which is expected to be ready for residents' use by the end of this week. This outdoor equipment is being installed with the knowledge and support of HSE public health, and will be operated under their direction for safe use.

The residents are provided with three meals per day and snacks are provided to residents daily. In line with overall policy objectives the service provider plans to introduce independent living arrangements with cooking facilities for residents in the coming period. In the meantime, we have asked centre management to work with residents to find out about preferred meals and we have asked staff to source and provide ethnic snacks for residents. Kettles have been provided in rooms so that residents can make refreshments throughout the day rather than using communal facilities and meals are also being delivered to rooms. The centre has a good Wi-Fi service and phone credit has also been provided for residents so that they can keep in touch with family and friends.

We appreciate that the current restrictions are especially difficult for children, many of whom are too young to understand what is happening. In addition to the upgrades to the outdoor space, toys and puzzles are being provided for children and a laptop will be made available to each family. The Tusla official seconded to work with my Department has

## Document 8:



contacted the families to see what additional supports they need and to discuss any concerns they might have.

Department officials intend to begin Zoom clinics with residents this week and a telephone service for residents with the Jesuit Refugee Service (JRS) is also being established. While these services are starting in Caherciveen, it is intended to roll-out this service regionally and nationally to all centres in the coming period.

We will continue to work hard with centre management, health agencies, and NGOs to provide every support possible to residents in Caherciveen and in all centres at this difficult time. I hope that you will work with us in this regard.

Yours sincerely,

Charlie Flanagan, T.D.  
Minister for Justice and Equality

David Stanton, T.D.  
Minister for State for Justice and Equality  
with special responsibility for Equality, Immigration, and Integration

## Document 8:

**Appendix I – Cleaning Regime**

Specific guidance has been provided by the HSE specialists to Centre Management. A check list for cleaning requirements in each area is displayed and checked off by the cleaning staff as they complete each task.

- **Bedroom Corridors & Staircases:** Vacuuming and cleaning of both areas at 12noon and 10pm. Antibacterial spray is used for all door handles, lifts areas and railing areas.
- **Dining Room:** Detergent Sprays and Bleach are used to clean Tables, Chairs, Serving Areas, Counter Tops, & Floor three time per day.
- **Kitchens:** Detergent Sprays and Bleach are used to clean all cooking equipment including hobs, combi-oven and, all cooking utensils, wet and dry stores and floors twice daily.
- **Public Toilets:** Public toilet areas are thoroughly cleaned every 2 hours using appropriate detergents and bleach.
- **Public Area & Reception Areas:** Floors are cleaned twice daily. All counter tops, seating areas and touch points - including door handles - are regularly wiped down with appropriate anti-bacterial products. Sanitizer is in place in the reception area and at the lift entrances on each floor.
- **Laundry room:** Only one person allowed in at one time. Cleaned fully twice per day with appropriate antibacterial agents and vacuumed and mopped with detergent and bleach.
- **Lift:** A member of staff is present at the lift at all times to ensure one only resident or family unit uses it at a time. All touchpoints are disinfected after every use (there are also three sets of stairs in the hotel).

Rooms vacated by Residents have been cleaned in line with HSE recommendations using appropriate detergents and bleach.

Residents have been provided with a supply of anti-bacterial wipes to wipe down touchpoints in their rooms in line with advice given by the HSE.

In addition to specific advice given to Centre Management, general HSE advice on managing COVID-19 in Direct Provision settings is contained in their document "COVID-19 Guidance for Vulnerable Groups Settings", which is available on the HPSC website at the following link: <https://www.hpsc.ie/a-z/respiratory/coronavirus/novelcoronavirus/guidance/vulnerablegroupsguidance/COVID-19-Guidance-for-vulnerable-groups-settings.pdf>

## Document 9:

28 April 2020

Bernard Gloster  
Tusla, Child and Family Agency  
Heuston South Quarter,  
St John's Rd W,  
Kilmainham,  
Dublin



37 Killarney Street  
Dublin 1

Tel: 00 353 1 764 5854

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Email: [info@irishrefugeecouncil.ie](mailto:info@irishrefugeecouncil.ie)

Web: [www.irishrefugeecouncil.ie](http://www.irishrefugeecouncil.ie)

By email to: [ceo@tusla.ie](mailto:ceo@tusla.ie)

Dear Bernard,

**Re: Urgent Child Protection and Welfare Risks in for Families living in Direct Provision**

My name is Nick Henderson. I am CEO of the Irish Refugee Council.

I am writing to you to raise concerns about the immediate and real risk to the protection and welfare of children living in Direct Provision.

From the earliest stages of the crisis, the Irish Refugee Council has given suggestions to the Department of Justice and Equality to identify solutions for vulnerable Direct Provision residents which needs to happen as a matter of urgency.

We welcome the fact that the people living in Direct Provision are now recognised by Minister Simon Harris and the HSE as a priority group, and that additional bed capacity has been made available. However, we remain extremely concerned that it is not feasible to practice adequate social-distancing in many Direct Provision centres and also the direct impact on

**Document 9:**

children There are more than 80 Direct Provision and Emergency Accommodation centres across Ireland accommodating approximately 8,000 people approximately 1,600 of whom are children.

From feedback we have received, parents are understandably anxious about their ability to continue to protect and care for their children due to struggles experienced on a daily basis to socially distance and, if needed, self-isolate in these shared accommodation settings. Additional strain caused by school closures and limited access to social/recreational facilities are compounding existing issues caused by a system long recognised by the Ombudsman for Children as detrimental to family life. The Daily Expenses Allowance that people seeking protection receive is also under extreme pressure with additional costs such as washing and cleaning products and also costs for children who would otherwise be at school

These concerns are shared with many others including the Irish Association of Social Workers (IASW), and the Children's Rights Alliance.

As a pre-emptive measure, the Department of Justice has issued a letter to all parents residing in Direct Provision to nominate someone to care for their children should they contract the virus and need to be admitted to hospital. Many people living in Direct Provision have limited social networks and may be unable to identify a suitable carer should they become ill. It will, in such circumstances, fall to Tusla to provide alternative placements for children should an emergency situation arise.

We are additionally concerned at the impact on children of conducting their lives entirely in one room, without access to outdoor spaces, communal living areas, and the negative impact such containment measures have on the mental health of both children and young people and their parents. We would ask that the Government put in place measures to ensure access to some leisure activities, and that children are permitted to exercise while respecting social distancing.

We are concerned at the disproportionate impact, from an educational perspective, that the school closures are having on children living in Direct Provision. We would ask that steps are taken to ensure that children are supported in their learning process through ensuring English language

**Document 9:**

supports, IT equipment, internet connections, access to reading, arts and crafts materials are made available in each of the direct provision centres. We are conscious that schools, NGOs and other organisations are undertaking this work on an ad hoc basis, and that the Department of Children and Youth Affairs is putting in place measures to access vulnerable children and young people. We would welcome input in to how we could potentially support the Child and Family Agency work in this area.

I am happy to communicate with you to discuss how we can work together to minimise the risk to families and to support Tusla in identifying appropriate solutions informed by Children First, should parents find themselves unable to care for their children.

Finally, I would like to acknowledge the commitment of Tusla, particularly casework staff, who continue to provide essential services to vulnerable children and families under these extraordinary and challenging conditions.

I look forward to your response.

Yours sincerely,

Nick Henderson

## Document 10:



An Ghníomhaireacht um  
Leanaí agus an Teaghlach  
Child and Family Agency

**Mr Nick Henderson**  
**CEO**  
**Irish Refugee Council**  
**37 Killarney Street**  
**Dublin 1**

**11 May 2020**

**Re: Urgent Child Protection and Welfare Risks for families living in Direct Provision**

Dear Mr Henderson,

I am writing in response to your correspondence of April 28<sup>th</sup> 2020. I have consulted with relevant Tusla staff and am advised as follows. In relation to families living in IPAS Accommodation Centres it is important to stress that all children living in those centres are living with their parents or guardians. The role for Tusla is in relation to children who may be at risk and to respond to any case where a child is experiencing child abuse or neglect. In order to fulfil these responsibilities Tusla has a full time secondee at TL grade managing the Child and Family unit in IPAS and a TESS Education and Welfare secondee recently joined the service. Local Tusla child protection services are also engaged with children and families in IPAS centres across the country.

I am aware that the International Protection Accommodation Service (IPAS) has developed a Strategic Framework for Engagement on Child and Family Issues in the context of the school closures and social distancing requirements put in place during the COVID-19 crisis. The two secondees from Tusla, as well as the Manager of the IPAS Education Unit and the Principal Officer of the International Protection Accommodation Service developed this framework to support families living in the centres. In preparing the framework there has been communication with key stakeholders including centre managers, Tusla, the Department of Children and Youth Affairs, the Department of Education and Skills, the Department of Rural and Community Development, the HSE, the Children's Rights Alliance, One Family, Barnardos and UNHCR. The framework encompasses three broad themes under which actions will be rolled out: child and family welfare, identifying education requirements, and the general provision of activities for children.

The Child Welfare and Protection secondee is responsible for actions under child and family welfare. The Manager of the Education Unit and the TESS EWO Secondee are responsible for the education actions and they are collectively responsible for the actions under the general provision of activities for children.

An Ghníomhaireacht um Leanaí agus an Teaghlach / Child and Family Agency  
Urlár: 2-5, Foirgneamh Brunel, An Ceantar Theas, Baile Átha Cliath 8  
Floors 2-5, Brunel Building, Heuston South Quarter, Dublin 8  
T. +353 (0) 1771 8500 F. +353 (0) 1771 8610 / [info@tusla.ie](mailto:info@tusla.ie)  
[www.tusla.ie](http://www.tusla.ie)

## Document 10:



An Ghníomhaireacht um  
Leanaí agus an Teaghlach  
Child and Family Agency

In your correspondence you refer to the Policy on Supporting Parents during the Covid 19 Pandemic to guide local management teams and residents in how to facilitate quarantine, social distancing, self-isolation and alternative care for the children where the parent needed to go to hospital or was too unwell to care for their children and this policy has been developed in consultation with the Tusla Senior Management link to IPAS. All accommodation centres have been provided with copies of the Child Protection and Welfare Policy of IPAS and IPAS was overseeing a training programme for staff in all centres in Children First in the run up to the pandemic.

All staff in all centres have been requested to complete the Introduction to Children First eLearning module on the Tusla website and forward their certification to the Child and Family Services Unit.

Given the restrictions on children's lives as a result of COVID 19 work is ongoing to provide resources to children across all centres and some of this is being coordinated nationally. There have been activities in local communities often led and financed by Tusla which have produced games, technology, books, art materials and sports equipment for children in the centres. The Children's Rights Alliance has agreed to provide play mats to all babies and toddlers in our centres. One Family have offered phone based and email parenting advice and support.

TUSLA Education Support Service (TESS) in liaison with IPAS are working jointly to ensure that the most vulnerable children living in IPAS Centres and EROCs are identified and supported in relation to the provision of education during the Covid-19 crisis. In addition, TESS has identified EWO's in each region to work alongside the TESS EWO secondee to IPAS to respond to educational issues which may have arisen for vulnerable children within the IPAS system. Information to identify the families who need support regarding education has already been provided from IPAS to TESS.

The work involves contacting a number of centres, primary and post primary schools as necessary and on occasion parents within each region (5/6 centres allocated per EWO) and the 3 key areas identified for attention are:

1. **No school places:** There are some children across the IPAS accommodation centres who require school places. These families require support from EWO's to find school places in the local area.
2. **6<sup>th</sup> Year Students:** Where consent is provided EWO's are contacting the parents and schools of 6<sup>th</sup> year students with a view to ensuring that students can access educational materials and have the support they require from the schools where they are enrolled.

## Document 10:



An Ghníomhaireacht um  
Leanaí agus an Teaghlach  
Child and Family Agency

3. **6<sup>th</sup> Class students:** EWO's contacting the centres where 6<sup>th</sup> class students reside to establish if they have an onward school placement for 1<sup>st</sup> year in their local area. Where required support will be provided to ensure these students have a secondary school place for September 2020.

The work to support the completion of the actions are ongoing, liaison with schools, centre managers and parents, liaison with other support agencies, recording of work using recording tools provided by TESS management. TESS work with IPAS will continue to be supported by the IPAS EWO secondee. In addition, there is a management lead for this program.

In conclusion it is clear that there is a lot of good work taking place across the country. Of course it is a time of great difficulty for everyone and children are obviously being impacted significantly by this crisis as well, but I am very hopeful the work undertaken by Tusla and IPAS will significantly alleviate the stress and anxiety that many are feeling.

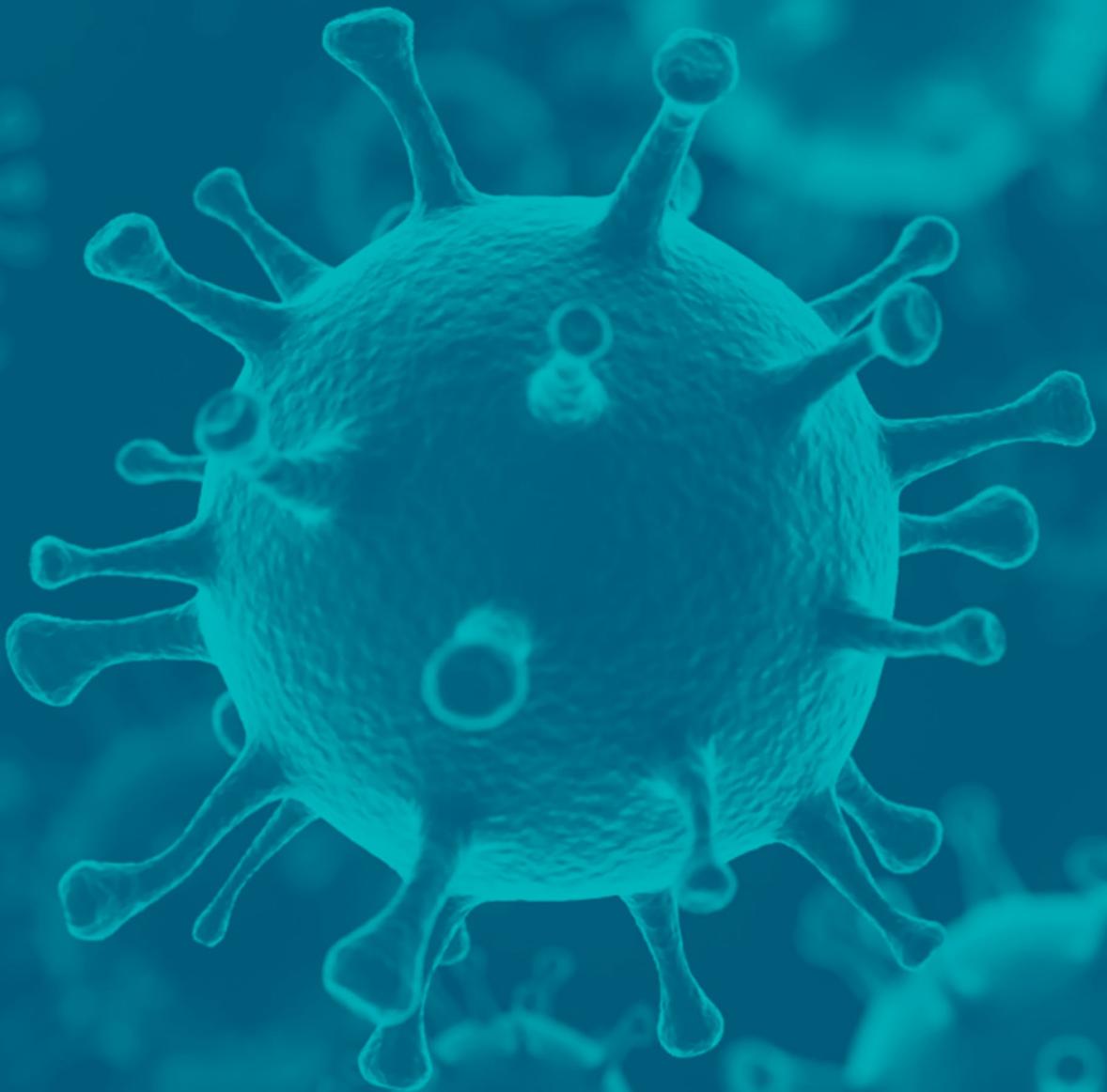
Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Bernard Gloster'.

**Bernard Gloster**  
**Chief Executive**

Section 9

# Annex 3 - Work and impact of the Irish Refugee Council During the Pandemic



**SERVICE AND SUPPORT TO PEOPLE IN DIRECT PROVISION:**

- Answered more than 2,000 telephone calls and more than 1,000 emails
- Convened two online meetings of the Asylum Support Network (more than 20 support organisations across Ireland) and shared information regularly through a facilitated message board
- Advocated, in partnership with other organisations, for vulnerable people and healthcare workers to be given space to isolate and moved out of Direct Provision
- Coordinated more than 40 organisations to request an increase of €20 to the Direct Provision weekly allowance

**LEGAL SUPPORT AND INFORMATION:**

- Support to people who are particularly 'at-risk' and liaising with the relevant authorities to secure safe and appropriate accommodation
- Assistance to homeless people who were unable to re-access their bed in Direct Provision.
- Assisted persons who have been wrongly excluded from Direct Provision in accessing accommodation
- Direct advice to protection applicants regarding access to the Covid-19 emergency social welfare payment
- Direct advice to applicants wishing to make new applications on how to access the international protection procedure in the current circumstances
- Sought legal opinion on the State's responsibilities to people in congregated settings during the pandemic and submitted to Minister Flanagan and Minister Harris
- Published the Asylum Information Database report for Ireland, a detailed report analysing Ireland's protection process

**COMMUNICATIONS:**

- Partnered with 'We Make Good' and the 'Textile Studio' on a 'buy one, gift one' face mask initiative, with more than 1,700 masks being distributed
- Partnered with Centra to deliver more than 3,000 Easter Eggs to children in Direct Provision
- Multiple media interviews including RTÉ and the BBC World Service

**YOUNG PEOPLE AND EDUCATION:**

- Two meetings with the University of Sanctuary movement discussing how student accommodation could be used for people in Direct Provision
- Released our 2020 Education Information Booklet
- Communicated with stakeholders on the broadening of the SUSI regulations which we have been advocated for
- Checked in with and provided support to young people including applying for the Covid-19 payment

**EMPLOYMENT:**

- Ran 3 online Women's programmes between May - July, attended by 42 women.
- Met with 8+ employers around partnering for inclusive employment opportunities for refugee women
- Provided suite of casework/career guidance and holistic supports to isolated clients
- Advocacy to the Departments of Health Justice for easier registration of health care professionals
- Assisted with ad hoc recruitment, including HSE recruitment campaign applications, and supporting persons made redundant

- Information sharing and referrals made for clients across range of issues affected by Covid 19 pandemic
- Conducted 23 phone interviews and questionnaires with refugee women, employers and external stakeholders as part of consultation process for our “Integration from Day 1” project
- Worked with more than 90 healthcare workers to access temporary accommodation so they could continue their important work and not live in Direct Provision

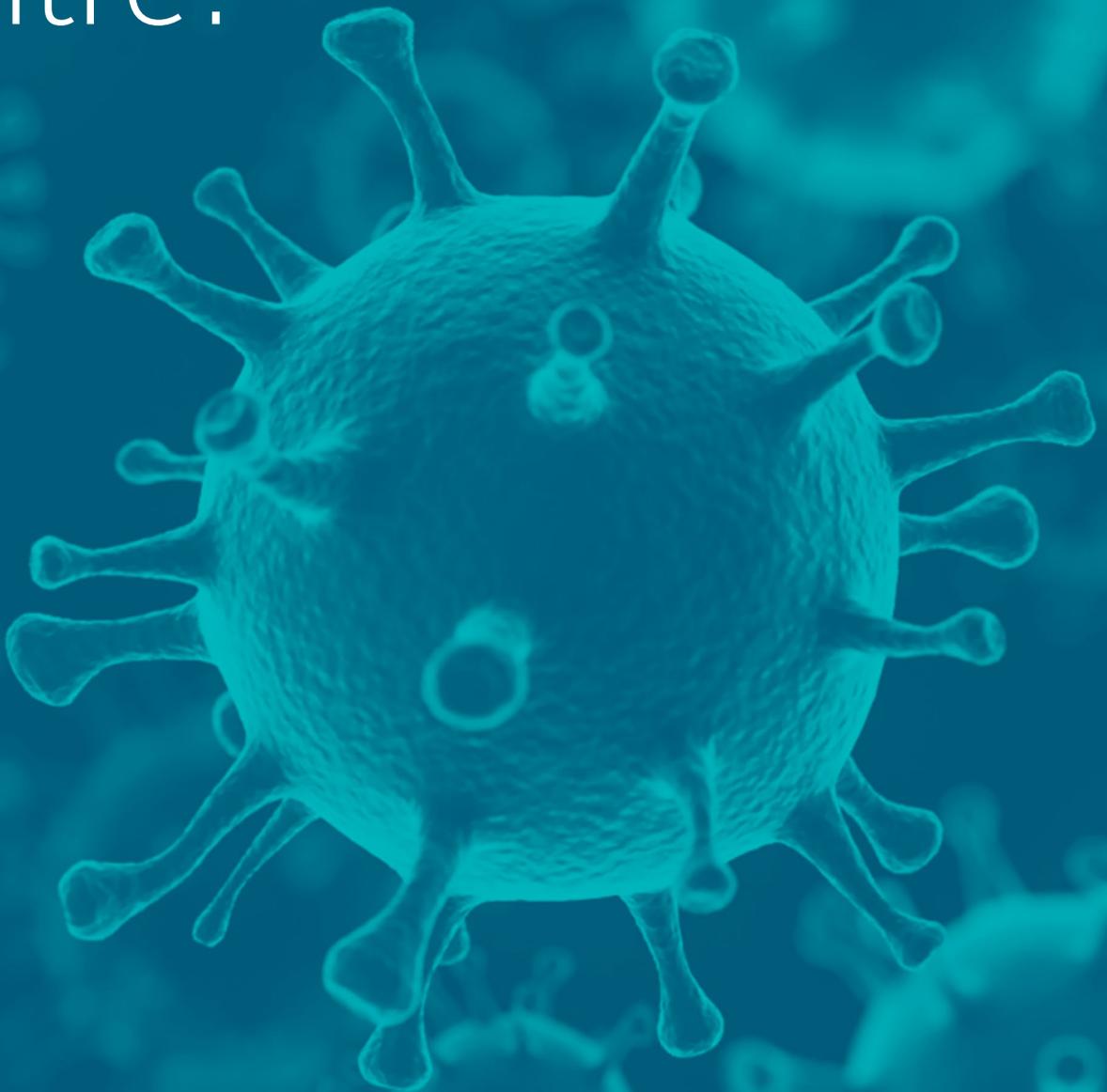
### **RESETTLEMENT AND COMMUNITY SPONSORSHIP:**

- Ongoing support to both community and family that arrived pre-Covid.
- Continued engagement, support and training to nine CSG’s working towards welcoming a family when resettlement resumes.
- Resources and capacity that CSG’s had available were redirected to support individuals and families that required emergency assistance. Support included accommodation and funds.

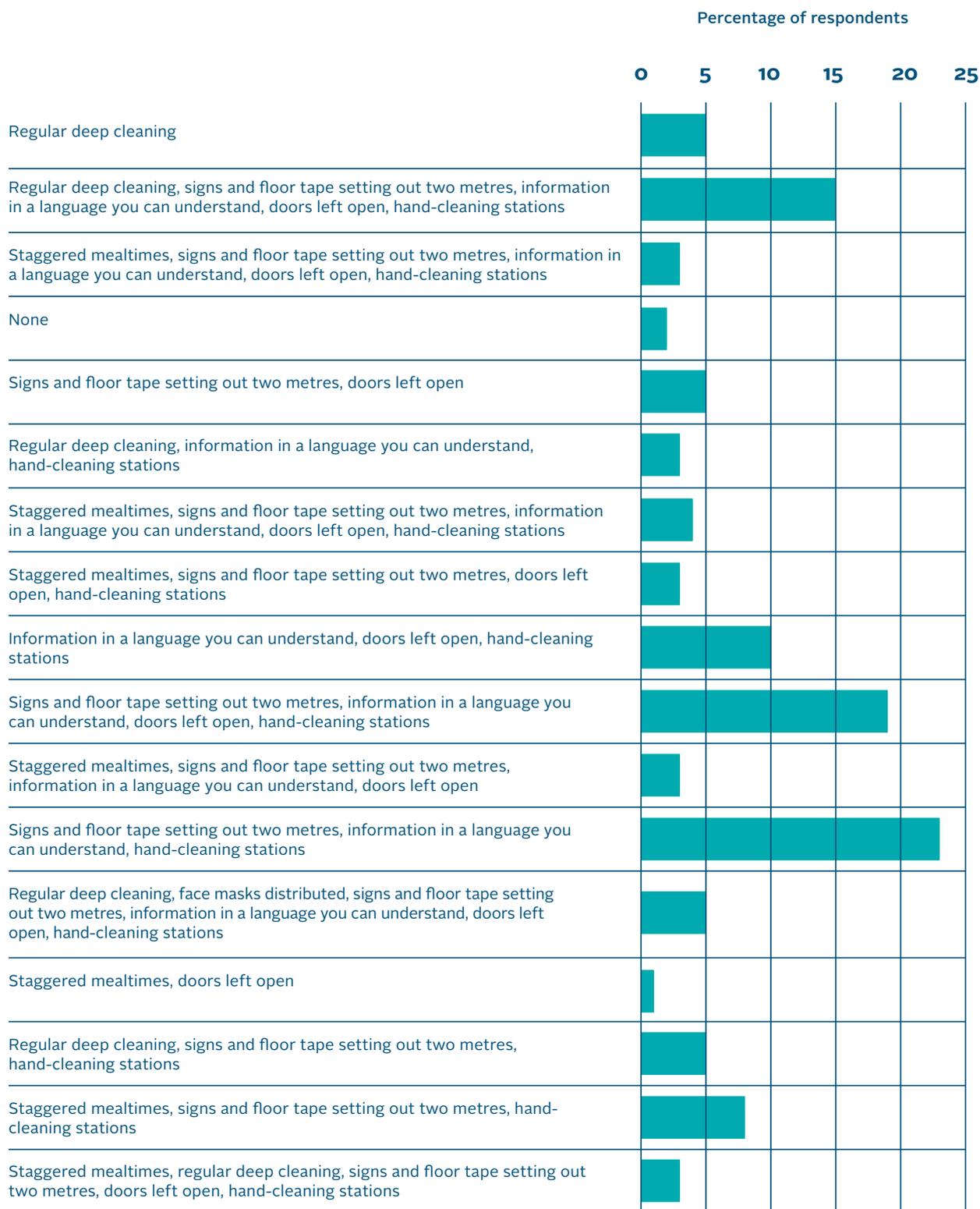
The Irish Refugee Council are grateful for the funders and supporters of our work. These include the Department of Community and Rural Affairs’ Scheme to Support National Organisations, the European Social Fund, the Asylum, Migration and Integration Fund, Rethink Ireland, the Oak Foundation and A&L Goodbody.

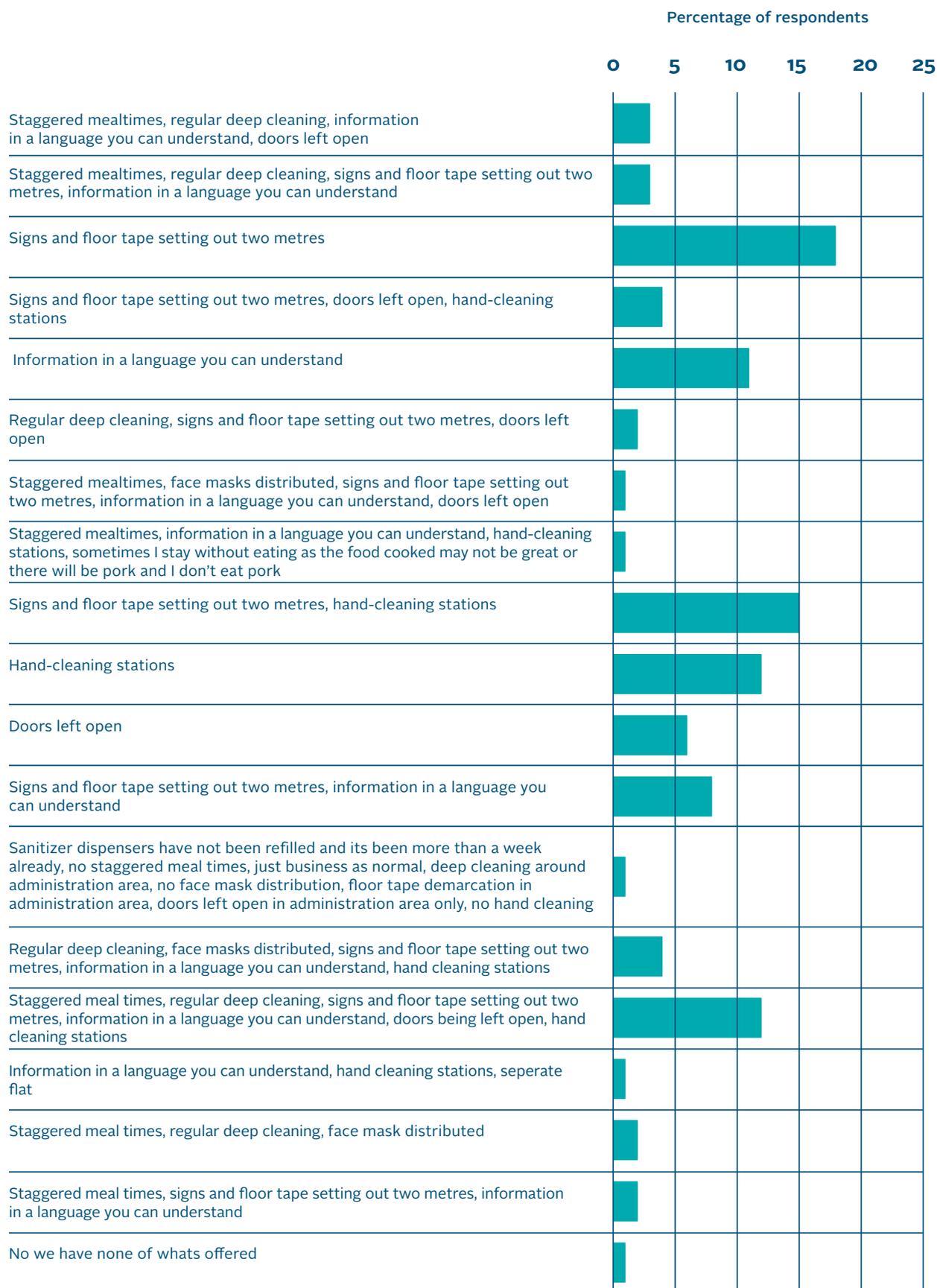
Section 9

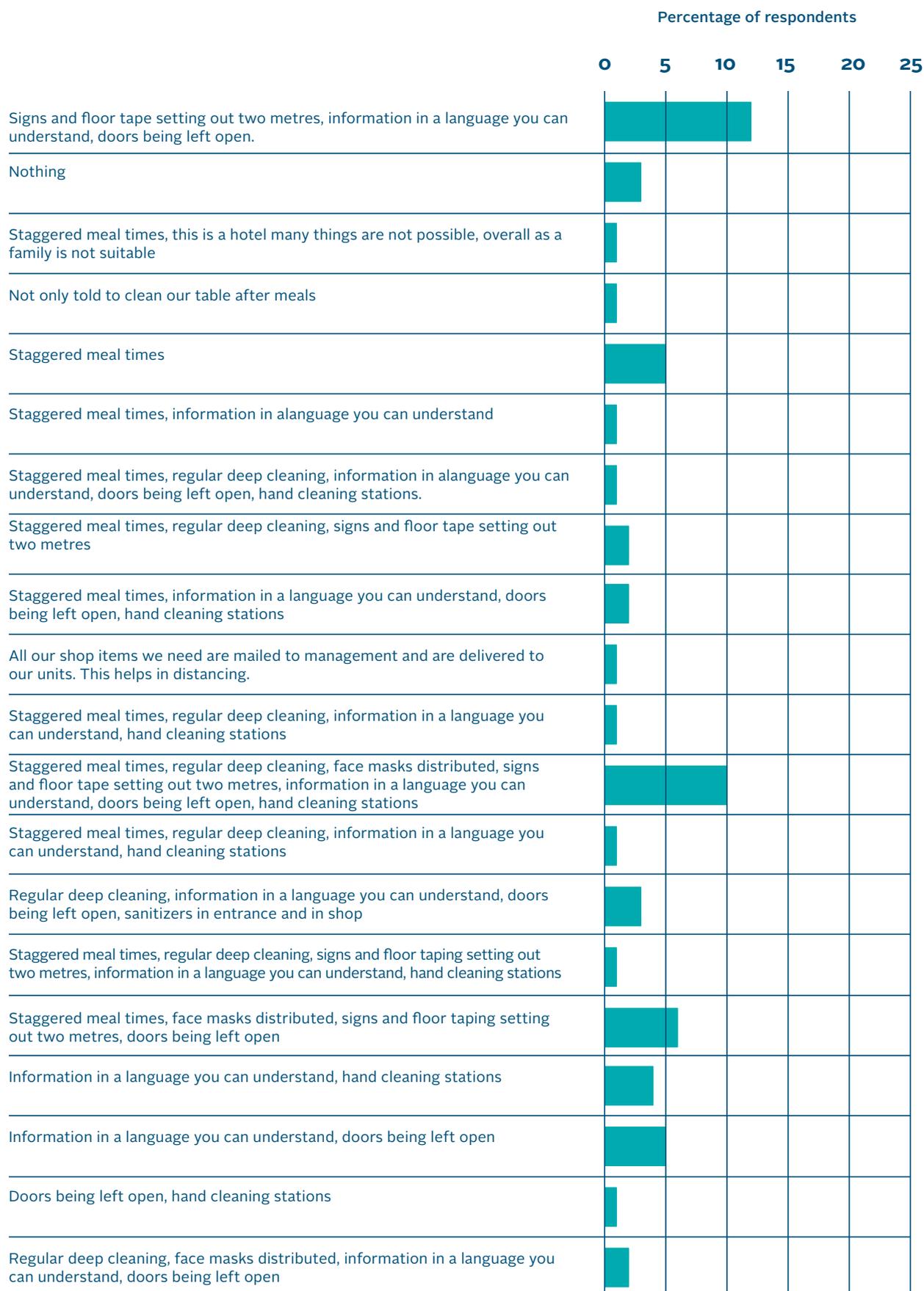
# Annex 4 - Have Social Distancing or Cleaning Measures Been Implemented in your Centre?

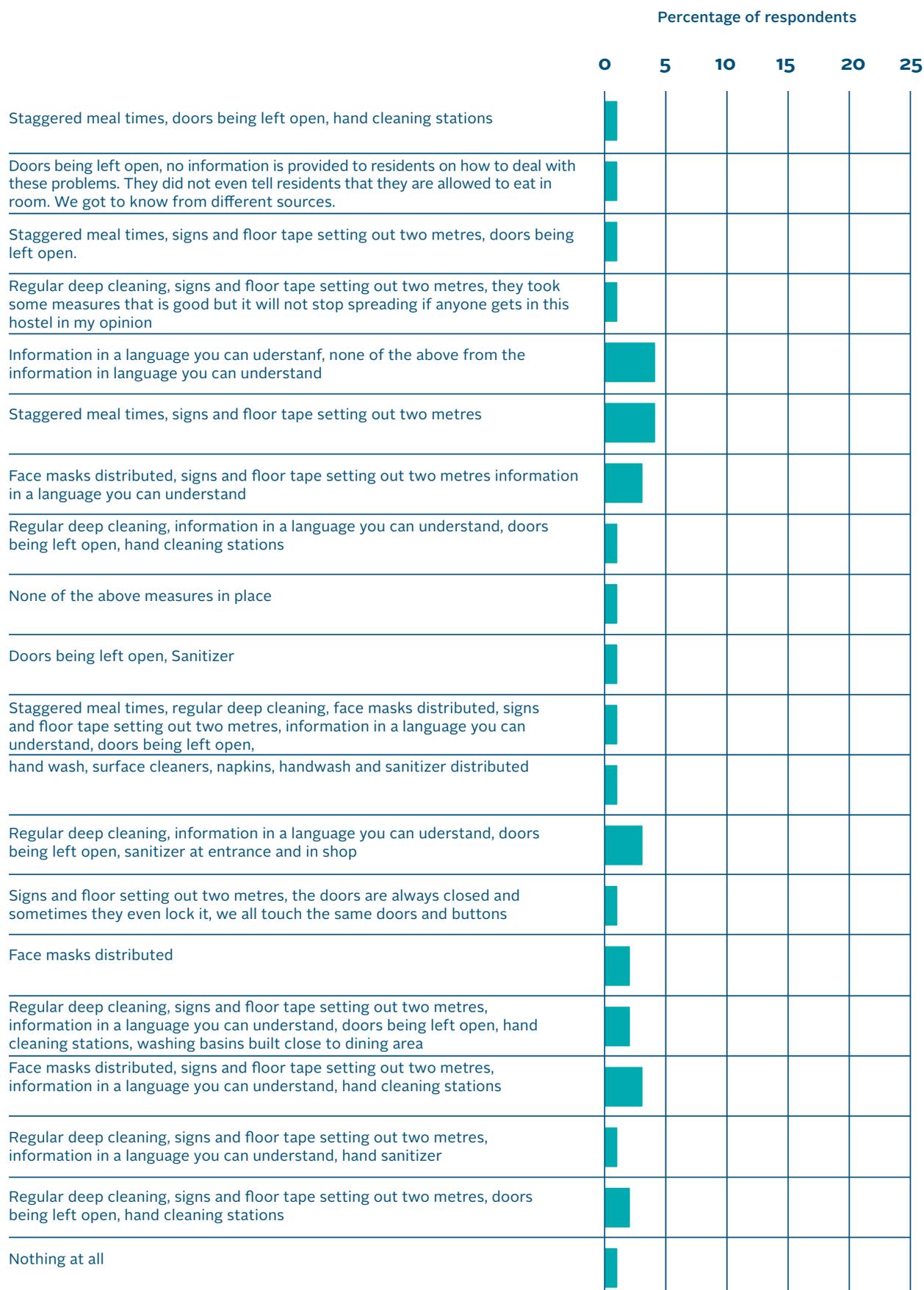


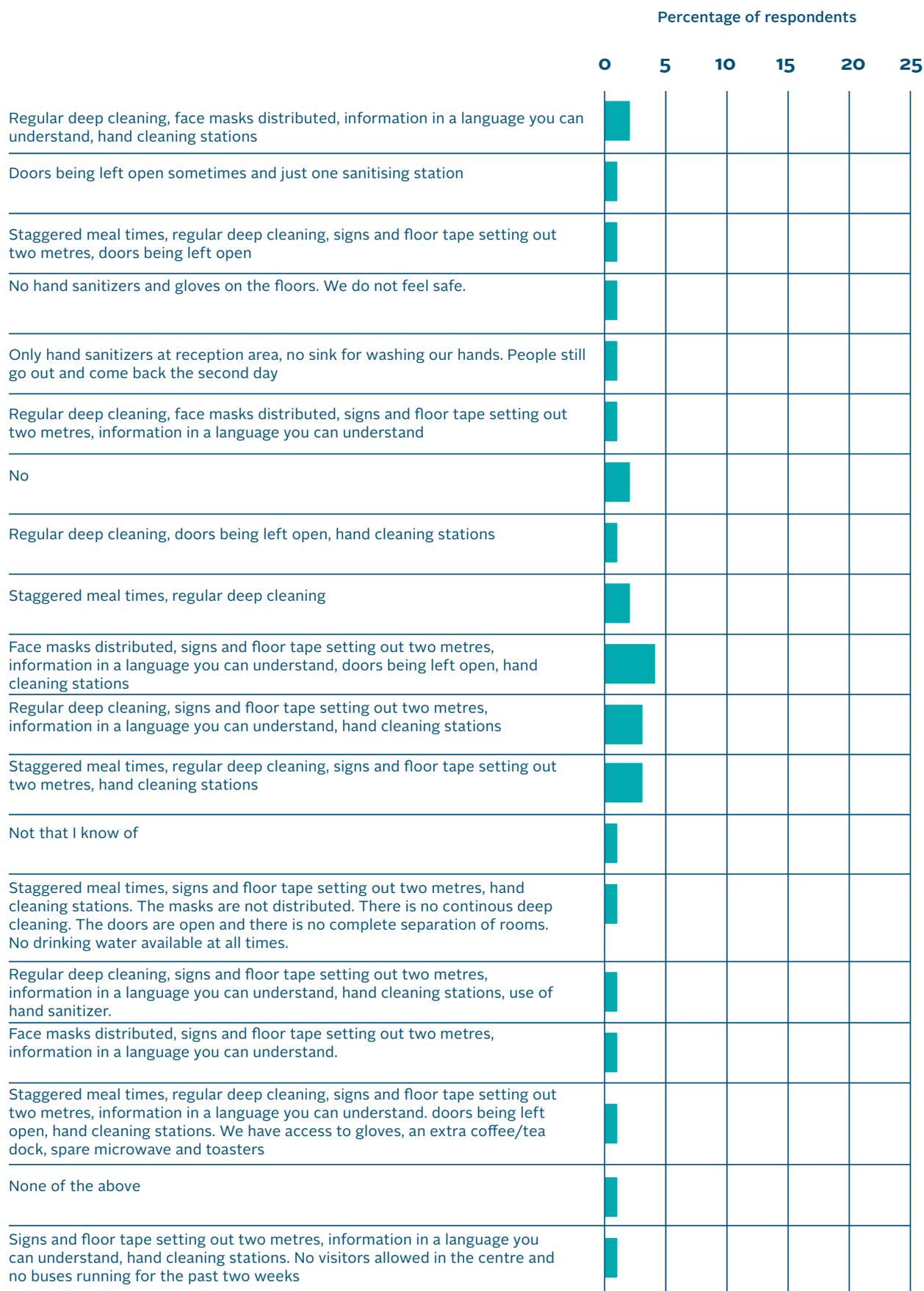
## HAVE SOCIAL DISTANCING OR CLEANING MEASURES BEEN IMPLEMENTED IN YOUR CENTRE?

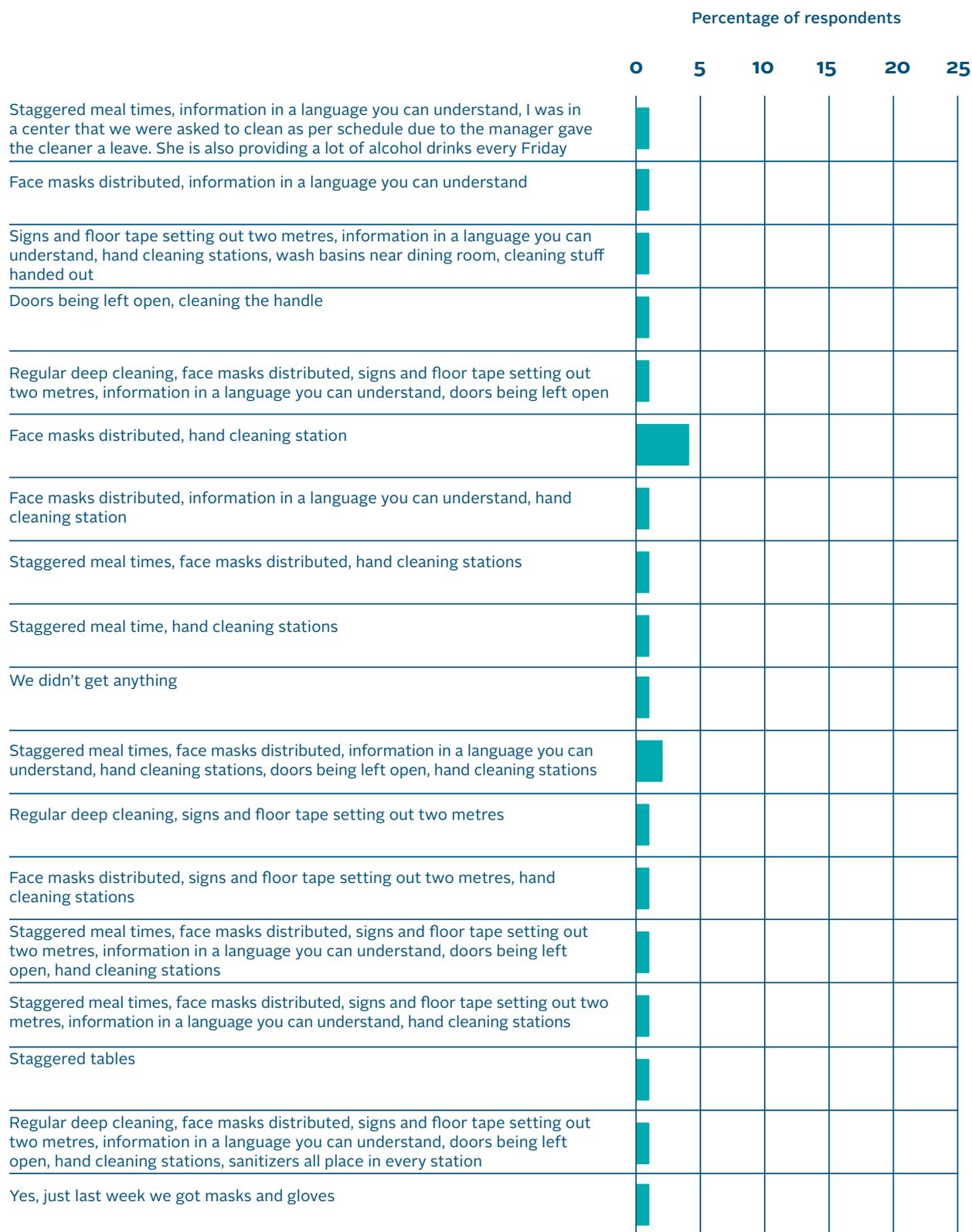






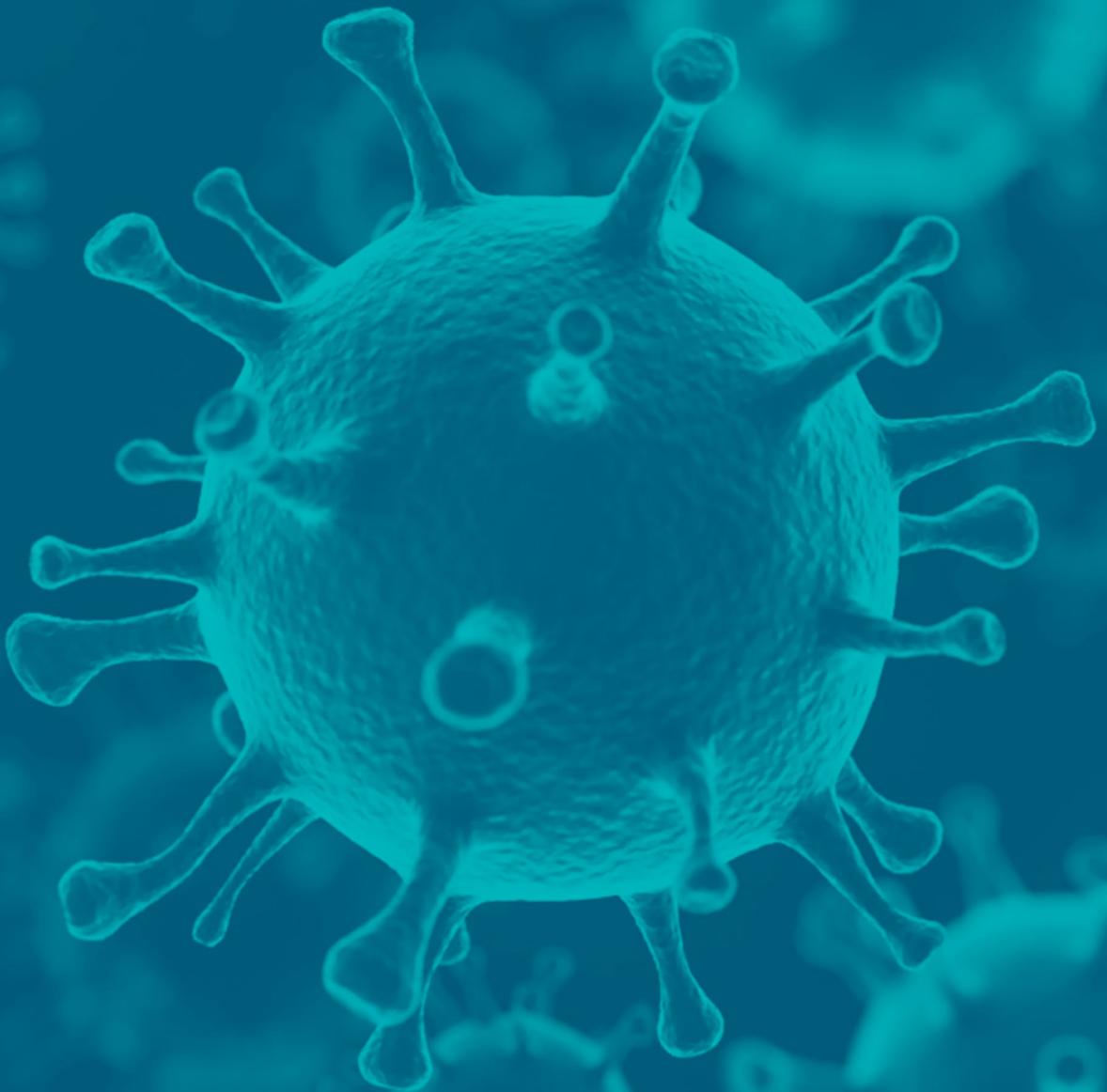






Section 9:

# Annex 5 - Survey



4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

## Experiences of Direct Provision during the Coronavirus crisis

This survey aims to collect information about the experience of people in Direct Provision during the Coronavirus crisis.

Information collected will be used to advocate for people and for conditions and treatment to be changed or improved. This data may be used in a public document.

Please read the statement below carefully before completing the survey.

We are trying to get the survey translated. In the meantime you can download the google translate extension (عربي, shqiptar, اردو, Kiswahili, ქართული) by clicking here: <https://bit.ly/39B0Jj3> This will allow you to read and complete the survey in your language.

Please share with your friends and fellow residents.

Contact [nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie) for information about the survey.

If you would like advice or help or want to raise a particular concern about Coronavirus please email [nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie) and give your name and number and we will call you back.

Thank you.

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

1. The Irish Refugee Council wishes to collect and process the information and personal data that you provide in this survey, for the purpose of working to improve conditions for people living in direct provision or emergency accommodation during the Coronavirus crisis. To achieve this purpose, the information that you provide in this survey may be published and shared with third parties including the Irish Government, for example as a statistic in combination with information submitted by other people. The information you submit will be used in this way only in a manner that does not identify you personally. To fulfill the purpose set out in the first line above, your information may be kept by the Irish Refugee Council for up to three (3) years, after which time it will be deleted. If you consent to the use of your personal information in the manner described above, including the use of any special category personal information, such as information you provide about your health, please indicate your consent by ticking the box provided below. You can withdraw your consent to this use of your information at any time, by emailing [nick@irishrefugeecouncil.ie](mailto:nick@irishrefugeecouncil.ie) If you do not wish for your personal information to be used in the manner described above, please do not complete this survey.

*Check all that apply.*

I agree for any personal data to be processed as stated above

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

2. Which Direct Provision centre do you live in? This information will help us identify trends and issues for advocacy. If you would rather not say, please leave blank.

*Mark only one oval.*

- Ashbourne House
- Athlone
- Atlantic House
- Atlantic Lodge
- Atlas House Killarney
- Atlas House Tralee
- Baleskin Reception Centre
- Birchwood House
- Bridgewater House
- Carroll Village
- Clonakilty Lodge
- Clondalkin Towers
- Davis Lane
- Eglinton Hotel
- Eyre Powell
- Georgian Court
- Glenvera
- Globe House
- Great Western House
- Hanratty's Hotel
- Hatch Hall
- Hibernian Hotel
- Johnson Marina
- King Thomond Hotel
- Kinsale Road
- Knockalisheen
- Linden House
- Millstreet
- Mosney
- Mount Trenchard
- Ocean View

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

- Park Lodge
- Richmond Court
- St. Patrick's
- Skellig Star Hotel, Cahersiveen
- Temple
- The Grand Hotel
- The Hazel Hotel
- The Montague Hotel
- The Old Convent
- The Towers
- Viking House
- Watergate House

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

3. Which emergency centre do you live in? This information will help us identify trends and issues for advocacy. If you would rather not say, please leave blank.

*Mark only one oval.*

- Ballsbridge Hotel
- Ciúin House
- Clayton Airport
- Clayton Liffey valley
- Cluskey's B&B
- Commercial Inn
- Dun A Rí House
- Gallery BnB Courtown
- Hotel Rosslare
- Lake House B&B
- Lake View
- Leitrim Lodge
- Lisanisk House
- Maldron Hotel Limerick
- Maldron Hotel Dublin
- Maldron Hotel
- Rathmore Holiday Village
- Setanta Guesthouse
- Shannon Lodge Hotel
- The Central Hotel
- The Courtown Hotel
- The East End Hostel
- The Esplanade
- The Fiddlers Elbow
- The Lodge
- The White House
- Travel Lodge Swords
- Treacys Hotel
- Westenra Arms
- Other

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

4. Have you been asked to move to a temporary hotel or other location during the Coronavirus crisis? If you would rather not say, please leave blank.

*Mark only one oval.*

- Central Hotel, Dublin
- Travelodge, Galway
- Travelodge, Cork

5. If your centre, hotel or location is not on the list you can enter the name here:

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6. Do you feel safe in the place that you are living during this crisis?

*Mark only one oval.*

- Safe
- Not safe

7. If you do not feel safe, please say what concerns and worries you.

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8. Do you have children?

*Mark only one oval.*

- Yes
- No

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

9. Do your children normally go to school?

*Mark only one oval.*

Yes

No

10. If you children normally got to school, how are they finding this? Are you or your children encountering problems?

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11. Are you encountering any other parenting issues during the crisis?

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12. Do you share a room with a non-family member?

*Mark only one oval.*

Yes

No

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

13. If you do share a room. How many people do you share with?

*Mark only one oval.*

- 1 person
- 2 people
- 3 people
- 4 people
- 5 people
- 6 people
- 7 people
- 8 people

14. Do you have regular access to soap and hand sanitizer?

*Mark only one oval.*

- Yes
- No

15. Do you share a bathroom and washing space with non family members?

*Mark only one oval.*

- Yes
- No

16. Are you able to 'socially distance' yourself from other people in your centre?  
Social distancing means keeping a space of 2 metres between you and other people. We understand that this may not be possible in many Direct Provision centres.

*Mark only one oval.*

- Yes
- No

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

17. Do you eat a communal area such as a dining hall?

*Mark only one oval.*

Yes

No

18. If your centre has a shop, has there been any issues with this?

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19. Are you allowed to eat in your room to avoid contact with people?

*Mark only one oval.*

Yes

No

20. Have social distancing or cleaning measures been implemented in your centre?

*Check all that apply.*

- Staggered meal times
- Regular deep cleaning
- Face masks distributed
- Signs and floor tape setting out two metres
- Information in a language you can understand
- Doors being left open
- Hand cleaning stations

Other:  \_\_\_\_\_

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

21. Are you working?

*Mark only one oval.*

- Yes
- No
- I was working but lost my job due to the Coronavirus crisis

22. If you are working, are you working in hospital, the healthcare or care sector?

*Mark only one oval.*

- Yes
- No

23. Do you (or any of your dependents) have an underlying health condition?

*Mark only one oval.*

- I am 60 years of age or over
- I am 70 years of age or over
- I have a long-term medical condition (for example, heart disease, lung disease, diabetes, cancer, cerebrovascular disease, renal disease, liver disease or high blood pressure)
- I have a weak immune system (immunosuppressed)
- I have a medical condition that affects my breathing

24. Do you feel you have received enough information about Coronavirus and how to stay safe?

*Mark only one oval.*

- Yes
- No

4/6/2020

Experiences of Direct Provision during the Coronavirus crisis

25. Do you have access to a reliable WIFI connection?

*Mark only one oval.*

Yes

No

26. What, if anything, has supported you during this time?

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27. If you want to share any photos of your experience or issues in your accommodation please upload them here.

Files submitted:

28. Thank you for completing the survey. Please add any other information about your experience in Direct Provision during the Coronavirus crisis.

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Google Forms

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The Irish Refugee Council (IRC) was established in 1992 to create a just, fair and inclusive society for people seeking asylum.



## **Practice Direction HC81**

**- Asylum, immigration and citizenship**

2 August 2019

## Introduction

The Irish Refugee Council Independent Law Centre represents applicants for asylum and those who have received refugee status, subsidiary protection, or leave to remain in Ireland. The primary aims of the Law Centre are to meet unmet legal need in a strategic manner and to promote and deliver early legal advice and representation to people in the early stages of the asylum process.

We have extensive experience representing applicants before the courts and our submission will focus on the challenges which Practice Direction HC81 presents from the perspective of the applicant.

Judicial review has been a critically important corrective to defects in the Irish asylum procedure. For example: recognition of right to work, overturning poor first instance and appeal decision making, -prompting the introduction of single procedure, clarification of the standard of proof in asylum cases. We would be concerned about any measure that made access to the courts more difficult. It should also be noted that people seeking asylum are already treated differently in judicial review proceedings: separate list in High Court, higher test and shorter time limits, limited right to appeal (See Illegal Immigrants Act 2000). Despite these challenges, in the last seven years, approximately 46% of applications have been given leave to apply for judicial review; approximately 33% of those have obtained the order sought; and approximately 40% have settled, presumably many in favour of applicant.

## Issues

### **i. Subtitle Volume of information and documentation required**

Many people in the asylum process will struggle to access all of the information and documentation required under PD HC81. Insofar as the documentation is of a sensitive nature or, for example, relates to a family member's asylum application, the applicant will simply not be in a position to provide it. Restrictions around personal data and GDPR obligations on data controllers present a further enormous challenge.

It places an undue burden on the applicant to take the steps necessary to seek documentation which they themselves do not hold, particularly where they may not have any legal entitlement to access such documentation.

It is submitted that a more proportionate approach is to require that only documentation which the solicitor, in their professional opinion and as an officer of the court, considers relevant to the specific case in issue to be exhibited. It could satisfy the same objective, in a more proportionate manner, if the solicitor then swears a supporting affidavit stating that to the best of their knowledge, all relevant documentation has been exhibited to the court.

## **ii. Advising clients regarding prior representations**

The IRC is aware that, out of an abundance of caution, many solicitors are now operating on the basis that they will not represent a client if that client did not make the application the subject of the proposed litigation with the office of that solicitor. The IRC is one of the rare examples of practice which adopts the early legal advice. This means that we often represent people from the very beginning of the asylum process and have both visibility and awareness of the details relating to a person's circumstances and their application history.

This is, however, far from the norm. Many applicants in immigration matters often either make their own applications (without the benefit of legal advice) or rely on the services of unregulated immigration consultants, or are appointed a solicitor through the legal aid board for their asylum application only. PD HC81 thus creates a chilling effect, with many solicitors unwilling to take on a client who they did not represent at an earlier point and refusing to represent clients due to concerns that they do not have access to a client's application history.

This places applicants at risk of being unable to access justice due to an inability to access legal advice from solicitors.

## **iii. Not seeking JR due to risk of being personally attached for costs if discrepancies arise**

The IRC independent law centre does not operate for profit and is dependent on funding from a number of sources including the European Commission under the Asylum, Migration and Integration Fund 2014-2020 supported by the Department of Justice and Equality.

If charitable organisations such as ours are held liable for the costs of an action in circumstances where an individual client was not wholly truthful in the context of JR proceedings, it would create a serious threat to our ongoing existence and our ability to represent other clients in future.

## **iv. Requirement to be present at hearing**

Applicants in Direct Provision are dispersed to isolated locations throughout the country. They are prohibited from accessing a driving licence and must pay for transport through an application to a Community Welfare Officer for an Exceptional Needs Payment – an entirely discretionary payment to which there is no specific entitlement. The IRC have had experiences with clients being refused the cost of transport to meet with their solicitor in the

context of preparations for JR proceedings. This could easily arise for a person living in Direct Provision who would not be able to attend Court, through no fault of their own.

Some locations are exceptionally remote, particularly for the approximately 1,000 people who are currently living in emergency accommodation. Due to the difficulties accessing transport services, they would need to be accommodated overnight in Dublin in order to attend Court. This kind of cost is generally not covered by the Exceptional Needs Payment. Without some formal mechanism for doing this, a person living in Direct Provision may find themselves in breach of the requirement due to their being unable to travel to Dublin and stay in Dublin overnight.

#### **v. Lack of clarity regarding minors coming of age**

One small part of the practice direction relates to a minor coming of age during the currency of the proceedings. The PD reads at paragraph 4. (6):

In the event of a minor applicant coming of the during the currency of the proceedings, the applicant must promptly apply to the Central Office in accordance with Order 15 rule 16 for a certificate enabling the applicant to proceed in his or her own name, which certificate should be included in the book of pleadings.

The order and rule referred to was amended in 2016, which directs that an affidavit of the minor is to be lodged in Central Office in order that the title of proceedings be amended in the Cause Book. When that is attended to and the title has been amended and “(minor)” no longer appears when the matter is listed. However no certificate issues from the Central Office, so it is not clear what document is required to be included in the book of pleadings.

#### **vi. Swearing of documents and disclosure of religion**

For people in the asylum process, their religion may be a particularly sensitive issue requiring confidentiality. For example, apostasy for lapsed Muslims is a very serious matter which could not be disclosed in public documents.

Furthermore, the respectful treatment of the Qur’an by non-Muslims is of enormous importance for those of Islamic faith. In particular, the Qur'an may not be handled by non-Muslims. It is submitted that PD HC81 should take account of religious sensitivities of this nature.

## **Conclusion**

With respect to PD HC81, the concerns of the Irish Refugee Council stem from the vulnerable nature of many applicants on the asylum list. Due to a range of issues – language barriers, cultural differences, trauma and ongoing mental and physical health issues, precarious living situations etc. – the clients who we represent are particularly vulnerable members of society. While we respect the Court’s legitimate concerns, we also ask that these be balanced with the needs of applicants, with due regard to the realities of their particular circumstances. In particular, we ask that guaranteeing access to justice and access to the courts is a primary consideration when reviewing the operation of the PD HC81. The positive experiences of those who were able to progress their court action will be more visible to the Court than those who were, due to PD HC 81, unable to do so. For that reason, we ask that, when reviewing the operation of PD HC 81, due regard is also paid to the rights of those who may have been unable to access the Courts.

**Katie Mannion**

**Managing Solicitor, Irish Refugee Council, Independent Law Centre**

**Nick Henderson**

**CEO, Irish Refugee Council**



## **Providing Protection**

Access to early legal advice for asylum seekers



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## Acknowledgements

This report is the culmination of a collaboration between four organisations, two of which we represent, the Centre on Migration, Policy and Society (COMPAS) and the Irish Refugee Council (IRC). Sanobar Umar worked on the project with COMPAS at the early stages in order to research and prepare a first draft of the situation in the UK, Ireland and Estonia. Within the IRC, Nick Henderson worked to frame the agenda for the research, conducting some of the interviews in Ireland and contributing to an earlier draft of the report. Jacqueline Kelly was also instrumental in conducting interviews within Ireland. Throughout we have also been assisted by Patrick Jones at Asylum Aid in the UK who took over from Maurice Wren and by Kristi Toodo at the Estonian Human Rights Centre. They participated in the discussions from the outset and the work in the UK and Estonia rested with them alone. They also participated in discussions around a draft of this report. In addition, Patrick was also responsible for providing us with an analysis of a report in the UK about the Early Legal Advice Project and extracts from his notes appear as Appendix Two.

We are indebted to Emma Dunlop for researching and collating the information about key issues and developments at an EU level, not just a first draft but for revisiting it to bring it more up to date. Emma's work appears as Appendix One of this report.

We are of course very grateful for the time given to us by all those who agreed to be interviewed, all of whom, in one way or another, have a stake in the development of Early Legal Advice, whether as recipients of legal advice and representation, those responsible for the allocation and oversight of public funds to provide legal advice or indeed as people who either administer the asylum systems in the respective countries or are even closer to the process of decision making. They all gave their time to enable us to gather a sense of what is understood by Early Legal Advice and the place that it has or should have in a fair and transparent process to ensure that international protection is given at the earliest opportunity to people who cannot return safely to their own countries. Some of those who were interviewed also took time to read through a draft of this report and provide us with comments or responded to questions that we put to them in the light of our analysis and conclusions. That would not have been easy as the report contains criticisms of some of the departments that they represent as the report is based on interviews across the spectrum of people who experience it, some of whom have been on the sharp end of systems that have not always worked well.

We would also like to thank the Network of European Foundations who have funded the research and report through the European Programme for Integration and Migration (EPIM). Without their support and encouragement, this report would not have been possible.

The commitment to taking this forward rests with the IRC, Asylum Aid and the Estonian Human Rights Centre, all of which are engaged on a daily basis in providing legal advice to people in need of international protection. But any errors or omissions in this report are ours alone.

Bridget Anderson, Oxford  
Sue Conlan, Dublin

## Preface

We are witnessing the biggest refugee crisis in 20 years and the biggest displacement of people since the Second World War. In the first six months of 2014, the southern states of the EU have received five times more people who have faced the dangers of crossing the Mediterranean than in the whole of 2013, many of them fleeing violence and repression in their countries of origin. Whilst many of these people would be described as refugees by governments and the media when they remain in countries closer to home, they can be viewed with suspicion and their stories treated with scepticism when they present themselves to claim asylum in the EU.

Part of the refugee experience can mean subjecting yourself to an asylum process with close investigation in a strange environment, telling your account when you do not have a clear understanding of what you are meant to disclose and whether it will be treated with respect and held in confidence.

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“It is an alien and all too often a debilitating experience that can exacerbate the trauma of being a refugee”

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Whilst the greatest impact is on those who are seeking refuge, the responsibility of those tasked with deciding claims for international protection can be made harder by the strictures of systems that require clarity where it is lacking. Suspicion can build up and lead to the process becoming more adversarial and hostile towards those seeking asylum.

Early legal advice is intended to assist the process by trying to ensure that the experience of claiming asylum and the task of the decision maker are not made harder by misunderstandings, mistrust and an inability or unwillingness to engage in what can be a very intrusive process. At its best, it enables the asylum seeker to participate in the system in a way that gives them trust and the decision maker confidence.

The intention in this research was to gather together the understanding of early legal advice in three different EU member states and the court decisions, statements and obligations which informed it an EU level. This was in order to ascertain what understandings of early legal advice existed and what level of commitment there was to provide quality legal advice at the beginning of the asylum process. The results are varied and perspectives differ even within the individual countries which were examined for the national reports. But the overriding view was that early legal advice can assist in ensuring that the right decisions are made at the earliest opportunity.

The EU is at a stage where most states are committed to bringing in some form of ‘frontloading’ by July 2015. This report is a contribution to the commitment that many are engaged in to not only comply with an EU directive but to ensure that those in the greatest need of protection receive it and are therefore able to begin the process of rebuilding their lives and making a contribution to their host countries as soon as possible.

## Glossary

### Applicants

People applying for either refugee status or subsidiary protection.

### Asylum Procedures Directive

A component of the Common European Asylum System. It sets out procedures in the EU for determining applications for international protection. The original directive, which continues to apply until July 2015 (and will still apply after that date in the UK and the Republic of Ireland), was introduced in 2005. The full title of the recast directive is Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast). It will come into force on 21 July 2015. The recast directive contains a reference to frontloading.

### Asylum seeker

A person who has applied for either refugee status or subsidiary protection (or both) and is awaiting the outcome of their application or appeal against a negative decision.

### CEAS

The Common European Asylum System (CEAS) is a series of legislative measures at an EU level which were introduced to bring in common and minimum standards to the consideration and determination of claims for international protection. The main directives are the Asylum Procedures Directive, the Qualification Directive and the Reception Conditions Directive. There is one regulation which is the Dublin III Regulation (previously the Dublin Convention and Dublin II Regulation).

### Dublin Regulation

A component of the Common European Asylum System. Originally the Dublin Convention 1990, it establishes responsibility for determination of an application for international protection. The Convention was replaced by the Dublin II Regulation and, from 1 January 2014, this has now been replaced by the Dublin III Regulation. The full title is REGULATION No. 604/2013 of THE EUROPEAN PARLIAMENT AND OF THE EUROPEAN COUNCIL of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

### Early Legal Advice

A form of frontloading (see below) which can also include the provision of legal advice before an application for international protection is made.

### Frontloading

The provision of legal aid at an early stage in an application for international protection.

### International Protection

The provision of support by a country other than a person's country of nationality or origin in circumstances where the person's own country cannot or will not provide protection. There are two such systems in existence in the EU. The first and main one is under the Refugee Convention and the second is under the Qualification Directive.

### Legal Advice

Advice given by or under the supervision of a qualified lawyer. In the asylum field, it would include advice about the law, international, European and domestic, as well as the person's individual claim in relation to the law.

### Legal Advisor

A generic term for the person who provides legal advice. The advisor may not be a qualified lawyer but they act under the supervision of a lawyer who is ultimately responsible for the advice given.

### Legal Aid

Legal advice, assistance and representation paid for by the state in circumstances where the person in need of legal advice cannot afford to pay for it themselves. It is usually but not always free. A person in receipt of legal aid may nevertheless be required to make a contribution towards the cost. The availability of legal aid may not extend to all areas of law affecting an individual.

### Legal Information

Information about a process within a legal system. In the asylum field, it would include information about how to apply for asylum or subsidiary protection but not advice about the merits of an application or assistance with submission of an application.

### Legal Representatives

A person acting in an official capacity on behalf of another person in relation to a legal matter and responsible for assisting with the legal issues in their case. They are usually but not necessarily a qualified lawyer but would be expected to act under the supervision of a qualified lawyer.

### Qualification Directive

A component of the Common European Asylum System. It establishes common grounds to grant international protection and therefore refers to both refugee status and subsidiary protection. The original directive of 2004 was transposed into domestic law by 2006 and it continues to apply in the UK and the Republic of Ireland. It was recast and replaced in 2011 and the new directive is in force from 21 December 2013 in those countries to which it applies including Estonia. The full title is DIRECTIVE 2011/95/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

### Qualified Lawyers

Professionals who have been accredited according to the national procedures laid down in a country and who have therefore passed examinations and completed training under the auspices of a professional body.

### Recast Directive/Regulation

A recast directive is a directive or regulation which has been revised in the light of experience. The recast directive replaces the original directive (the latter only remains on force in relation to an EU member state which opted in to the original but not the recast directive).

### Reception Conditions Directive

A component of the Common European Asylum System which establishes common standards for the living conditions of asylum seekers. The full title is the COUNCIL DIRECTIVE 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. It has now been replaced by the 2011 recast directive but the 2003 directive will continue to apply until 21 July 2015.

### Refugee

A person outside their country of origin/nationality who has a well-founded fear of persecution for reasons of their race, religion, nationality, political opinion or membership of a particular social group. The definition is found in the Refugee Convention 1951 as amended.

### Refugee Convention

The full title is the Refugee Convention Relating to the Status of Refugees. It was passed in 1951 and amended by a Protocol in 1967. It is the overriding document establishing the rights of refugees.

### Subsidiary Protection

Protection given to people who are at risk of “serious harm” in their own countries but who do not meet the definition of a refugee. It is a status that derives from the Qualification Directive.

## 1. Introduction

### 1.1 Purpose of the project

Good quality early legal advice critically shapes people's experiences of claiming asylum. For those often highly traumatized and vulnerable people who obtain protection, it helps to minimize what can potentially be years of emotionally exhausting uncertainty. It can also discourage those who are not suitable candidates for protection from pushing ahead with a costly and exhausting process. In this way it benefits both those seeking asylum, but also the individuals or bodies tasked with the responsibility of deciding if a person is at risk of persecution under the Refugee Convention<sup>1</sup> or of serious harm as defined in the Qualification Directive<sup>2</sup>. The European Union recast Procedures Directive is clear that 'frontloading' is beneficial.

The 'Early Legal Advice' research project was undertaken to examine the provision of legal advice to people seeking international protection in three EU Member States: Estonia, the Republic of Ireland and the United Kingdom. We hope that this report will be useful to those required to implement the Procedures Directive, as well as those who want to advocate for early legal advice. By examining what early legal advice means in very different EU member states, with variations in terms of numbers seeking asylum, the countries from which asylum seekers come and different administrative systems for the determination of asylum claims, this report will demonstrate that 'early legal advice' is not only beneficial but also adaptable to a wide range of contexts.

### 1.2 Project Partners and Funders

The project was overseen by the Irish Refugee Council which also had the responsibility for conducting the research in Ireland. The other two national partners were Asylum Aid in the UK and the Estonian Human Rights Centre. The research partner was the Centre on Migration, Policy and Society (COMPAS) at Oxford University.

The project was funded by the European Programme for Integration and Migration (EPIM) of the Network of European Foundations, under its 2012-2015 programme.

### 1.3 Methodology

We believe that a fair asylum system is to the benefit of both asylum seekers and host societies, and we are interested in encouraging collaboration between legal advisers, decision makers, civil society and asylum seekers, and to move away from current, often adversarial, models. This report therefore does not claim to be 'objective' but rather starts from the position that early legal advice is effective, fair and efficient, and that it has the possibility of being to the advantage of all parties in protection claims. The research was commissioned with a view to being used for the purpose of advocacy and was principally concerned with evidence gathering.

The three selected countries, Estonia, Ireland and the UK, are all states where there were legal support organisations with an active interest in ELA. They were selected to reflect differing experiences and understandings of early legal advice. All three countries have quite different experiences of dealing with asylum seekers and different ways of processing applications and dealing with people during the asylum process.

We began the project with a two day workshop on the asylum process and the legal context in each state. In these discussions we developed four arguments in favour of ELA that we wanted to explore with asylum seekers, refugees and other stakeholders:

- ELA means better decisions, resulting in a reduction in the volume of appeals and reduction in expenditure;
- ELA encourages trust in the system on the part of asylum seekers, meaning more engagement, and reduced likelihood of absconding;
- Late or no legal advice means poor decisions, creates problems for genuine claimants, increases complex appeals;
- ELA facilitates co-operation between different stakeholders, including NGOs, legal representatives and decision makers.

In this initial workshop we also considered arguments that might be used against ELA. We thought that these might include: set up costs; running costs; vexatious claims; acting as a 'pull factor'; and the possibilities of the promotion of poor quality advice. The outcomes of the workshop were used to design the interview schedules. Separate schedules were designed for asylum seekers and for stakeholders. In total, we interviewed 19 people, seven of whom were asylum seekers or refugees, three were from NGOs and nine were in some way involved or had an interest in the decision making process, for example as providers of legal aid or with oversight of decisions at the first level. All of the individuals were already known to the organisations at a national level through their own practice.

We originally intended interviews to be supplemented by analysis of case files. However, given that the researchers were all legal practitioners conducting this project alongside their own advice work, this was considered to not be necessary given their extensive knowledge of the area.

The evidence for this report was gathered between September 2012 and May 2013. Interviewees were accessed and interviewed by project partners all of whom worked in legal advice provision in the asylum sector. All interviewees were given information about the project and signed consent forms. Interviews in the UK and Ireland were taped and transcribed; those in Estonia were noted. In the UK, time constraints meant that it was not possible to interview asylum seekers, but stakeholder interviews have been supplemented by an analysis of the evaluation of the Early Legal Advice Project. As agreed with interviewees, they have been anonymised and any identifying information has been removed. Interviewees are identified by the country where they reside (I=Ireland, UK=UK, E=Estonia), whether they are an asylum seeker/refugee or other stakeholder (R=Asylum seeker/refugee, S=Stakeholder), and then a distinguishing numerical descriptor. Thus IS3 means number 3 of the stakeholders interviewed in Ireland.

## 1.4 Definitions

### 1.4.1. Refugee status and subsidiary protection

A person is a refugee if they have left their country and have a well-founded fear of persecution in their country of nationality or habitual residence and if that fear is because of their race, religion, nationality, political opinion or membership of a particular social group. In addition to refugee status, EU countries have a separate form of protection known as Subsidiary Protection which is given to those who do not qualify as refugees but are in need of protection from “serious harm”. Asylum seekers are people who have applied for refugee status, subsidiary protection or both but have not had a decision on their application or are challenging a negative decision through the courts.

### 1.4.2. Early Legal Advice

At the original project workshop, we discussed how to define Early Legal Advice (ELA). The differing country contexts meant we had to be flexible in our approach, so rather than instrumentalising a cross country definition, we set the following parameters:

‘Early’ means any stage in the process up to a first instance decision. It can include

- Referral into the asylum process
- The first submission of evidence to a first instance decision maker (e.g. including a statement of claim)
- Attendance at substantive asylum interviews
- Post-interview submissions (e.g. clarification on points of dispute following initial interviews or submitting further supporting evidence such as medico-legal reports)

‘Legal Advice’ is either given by or overseen by a qualified lawyer. However, whatever the training of the person responsible for the legal advice, we understand that this advice would be competent. Therefore, the mere fact that someone is a qualified lawyer is not sufficient. A certain level of expertise in international protection law is required<sup>3</sup>. All interviewees and interviewers used these parameters to analyse early legal advice.

In the course of the project it became evident that the distinction between advice and information was crucial, although stakeholders sometimes use the two interchangeably. We distinguish between information, which is an explanation of the requirements of the asylum process and could also include referral to other organisations, and advice which equips the person seeking asylum with the knowledge and support that they need to put forward and substantiate their claim to be a person in need of international protection. Explaining to an asylum seeker that they will, for example, be interviewed and their fingerprints taken is important information but does not constitute advice.

Distinguishing between information provision and legal advice is crucial precisely because, in practice, information can slip into advice and advice on the process of claiming asylum can quickly turn into advice on the substance of a claim. If the advisor is not qualified or experienced and does

not understand the full implications of the information that they are providing, it can negatively impact on the asylum seeker’s claim. It is important that a person providing information understands the consequences of the information/opinion they are providing. This can influence how cases are progressed and ultimately determined. Advice on the process of claiming asylum given by very well-meaning people can have an adverse impact on asylum claims if they do not fully understand the implications of their counsel.

### 1.4.3 Legal Aid

It is necessary to distinguish between legal advice/assistance and legal aid/free legal assistance. Asylum seekers who have access to financial resources may obtain legal advice from a range of organisations, charities and individuals, both publicly and privately funded. The regulation of these legal advisers will vary between states and depend also on the type of adviser they are. Those asylum seekers who do not have access to resources (the majority) require free legal assistance/legal aid. This is funded by the state either using their own resources or using funds made available by the European Commission. For the purposes of clarity and to distinguish between assistance with a claim and assistance with the cost of a claim we use the term ‘legal aid’ which is a term usually used in the UK and Ireland rather than ‘free legal assistance’. However we are not restricting its meaning to the UK/Irish arrangements, but use the term to refer to the full range of arrangements used by states to pay for asylum seekers’ legal advice when the asylum seekers cannot afford to pay for it themselves.

## 1.5 Structure of the Report

Section 2 of this report addresses the context for the research. In particular we look at the issue of procedural justice and the concepts of fairness and compliance with the law, drawing on research in other fields. We then examine the Common European Asylum System, its contents and purpose which is the framework for this project. That section also examines the separate but related issue of legal aid and, finally, the particular issues surrounding the detention of asylum seekers.

Sections 3, 4 and 5 then go into detail about the three jurisdictions of the UK, the Republic of Ireland and Estonia. Each one sets out the background to the asylum systems, details the procedures which exist in each jurisdiction and addresses the specifics of legal and early legal advice as they are understood or have been experienced in each region. Finally, each national section draws upon the interviews conducted for this research and the issues that they raised<sup>4</sup>.

Section 6 set out the conclusions arising from the research at a national level, drawing upon the information and evidence available at a wider EU level as set out in Appendix One which also informed the research.

Finally section 7 sets out the recommendations arising from the research.

## 2. Understanding the Context of Early Legal Advice

In this section we first discuss the question of early legal advice and understandings of procedural justice, drawing on a broader literature on fairness and compliance with the law. We then move to outline the policy and practice context in terms of the Common European Asylum System, Legal Aid, and questions of detention.

### 2.1 Procedural Justice and early legal advice

This project assumes the need to work towards a common goal of compliance with an effective asylum policy, where this effectiveness is judged in terms of the fairness of the final decision and the smoothness of the process in arriving at that decision. Thus at the same time that asylum seekers have a responsibility to comply, decision makers have a responsibility to be fair and responsive. Early legal advice, this report argues, is crucial to both these sets of responsibilities: properly dispensed it means better decisions, reduces adversarial tensions, and encourages trust and compliance on the part of asylum seekers. It can also help increase public confidence in the asylum system more generally by making it ‘fit for purpose’.

Before considering the specificities of this with reference to compliance with asylum law and procedures, it is worth remembering that there is a considerable body of regulatory research examining what motivates compliance with the law, and how regulators can encourage this. While little has been written about this as applied to immigration and asylum (however, see Braithwaite, 2010<sup>5</sup>), it is worth reminding ourselves of some of the principles of this work. There are particular issues that arise in the field of migration but the question of how to encourage voluntary compliance with the law has broad ramifications. Criminologists and legal theorists are generally sceptical of the extent to which compliance can be elicited through the implementation of harsh penalties (the deterrence view) or even through appeals to self-interest, preferring instead to emphasise the role of procedural justice. Justice must not only be done, but it must be seen to be done.

**“Research into the effects of procedural justice has consistently found that people and organizations are much more likely to obey the law and accept decisions made by authorities when they feel that the decision-making procedures are fair, respectful and impartial” (Murphy et al. 2009<sup>6</sup>: 2)**

Asylum seekers who cannot engage with the process of their claim will not feel that it is fair (“when we don’t know something we can’t trust it easily” as one asylum seeker in Ireland put it). Given their difficult situations, lack of knowledge of the law and of the country where they are claiming asylum, and often limited language knowledge, asylum seekers need legal advice to enable such engagement. Furthermore, Braithwaite (2010) argues that the three elements that are necessary to facilitate compliance are a) ensuring asylum seekers know and understand what is required; b) ensuring they have the capacity and resources to comply; c) ensuring that they are willing (if not committed) to comply. If the system does not elicit these elements, and if it is felt that asylum seekers are not treated with procedural justice, this undermines co-operation with the

authorities, not only on the part of asylum seekers, but on the part of their communities and supporters.

Knowing and understanding what is required in order to comply with the system is particularly challenging for asylum seekers. In addition to not knowing the law, they may often not speak the language of their country of reception, be unfamiliar with its culture and bureaucracy, have extremely limited resources, and a fear of return. Thus Braithwaite’s first condition, knowing and understanding requirements, is a critical hurdle, and one that requires early legal advice: people must learn how to comply, particularly when the law is complicated. ‘Complexity creates conditions that are not conducive to generating compliance’ (Braithwaite, 2010: 41). Early legal advice is also an important element in generating a sense of procedural justice. It is not only about ensuring an asylum seeker understands and engages with the process, but also that all parties can work together with the goal of their fair treatment.

**“Interpersonal relationships and fair treatment by a regulator are more important in nurturing voluntary compliance and deference to rules than a relationship that relies on an instrumental tit-for-tat strategy” (Murphy et al, 2009: 2).**

This suggests that ELA should be seen in the context of a process that is respectful towards asylum seekers, and an intensely adversarial process may militate against deference to rules.

Procedural justice concerns the perceived fairness of the procedures involved in decision-making and the perceived treatment one receives from the decision-maker. According to Murphy et al’s (2009) study on procedural justice<sup>7</sup>, people’s compliance with the law is strongly linked to their views about justice and injustice. They argue that perceived procedural justice plays an important role in people’s decisions to comply with rules and regulations and nurtures long-term voluntary compliance with laws and decisions, even when the legitimacy of those laws and decisions is called into question.

Applying these arguments to asylum seekers suggests that early legal advice could not only prevent them from the stress of lengthy procedures, but also enable them to view the system as efficient and thereby increase the likelihood of compliance and decrease the possibility of absconding. If the legal system of a country is seen to reflect the values of justice, its moral standing is increased and therefore this facilitates greater compliance. In contrast, if the system is not seen to be just, and particularly if it does not give asylum seekers a proper opportunity to make their case, if it is complex and people find it difficult to represent themselves from an early stage, then the chances of non-compliance and dropping out of the system increase. It could also lead to the possibility that they will avail themselves of any means to challenge a decision they feel is flawed for lack of fairness. Conversely a review report by UNHCR on engagement with Assisted Voluntary Return (AVR) programmes in 2013<sup>8</sup> suggested that frontloading support might also increase uptake of AVR by refused asylum seekers.

## 2.2 The Common European Asylum System (CEAS)

Asylum and international protection are considered extremely important for the European Union. Article 18 of the EU Charter of Fundamental Rights guarantees the right to asylum and a series of legislative measures have been adopted with the aim of defining the minimum standards to be applied by member states regarding the reception of asylum seekers, recognition criteria and procedures to be followed during the asylum examination. EU member states undertook to establish a Common European Asylum System (CEAS) by 2012 with the goal of achieving minimum and common standards of protection, fairness, effectiveness and a system that is resilient when in the face of abuse.

Between 1999 and 2005 the first phase of the establishment of the CEAS saw a range of legislative measures adopted to establish common minimum standards<sup>9</sup>. These measures included

- The Reception Conditions Directive
- The Qualifications Directive
- The Asylum Procedures Directive
- The Dublin Regulation

The second phase initiated a public consultation, and, together with an evaluation of existing instruments, this formed the basis for the 2008 European Commission Policy Plan on Asylum.

This plan has three pillars:

- Bringing more harmonisation to standards of protection by further aligning Member states' asylum legislation;
- Effective and well-supported practical cooperation;
- Increased solidarity and sense of responsibility among EU States and between the EU and non-EU countries.

This approach was confirmed by the Pact on Immigration and Asylum of 2008 and the Stockholm Programme of 2009.

The Dublin III Regulation<sup>10</sup> came in to effect on the 1st January 2014. Considering the possible negative impact on a person's fundamental rights<sup>11</sup> that the Regulation can have, good quality early legal advice has always been necessary for a person who is subject to the Regulation. That need remains the same under the Dublin III Regulation but the regulation arguably greater scope for a lawyer to have impact considering that the regulation requires that a person be given a personal interview, it expands the scope of an appeal against a decision to transfer someone under the regulation and makes the appeal suspensive<sup>12</sup>.

For the purposes of this report, the key directive is Directive 2005/85, commonly known as the Asylum Procedures Directive. This was adopted by the EU to reduce differences between national asylum systems, while still enabling states to preserve their own procedures. The Directive sets out minimum standards for asylum procedures and contains the main provisions on legal assistance and representation. It had to be transposed into national law by December 2007, with the exception of the legal assistance provision which

was given a further year. The Commission's 2010 evaluation report<sup>13</sup> of the directive found that legal assistance was one of the areas where differences in asylum legislation and practice persisted. Although the right to consult a legal adviser or counsellor is formally recognized across the EU, member states are divided as regards the provision of free legal assistance. Estonia sticks to the Directive's wording, hence making it available only at the appeal stage, but the UK and Ireland are part of a group of countries who grant legal aid or free legal advice in first instance procedures. However, a lack of sufficient resources is a formal precondition of legal aid in most member states, and in the three member states that are the subject of this report there is a merits test before granting legal aid.

The European Commission's proposal for the recast asylum procedures Directive stated that "Frontloading means putting the adequate resources into the quality of decision making at first instance to make procedures fairer and more efficient. A standard asylum procedure of no more than six months remains a major objective of the proposal." Article 19 of the recast Asylum Procedures Directive states that in first instance procedures Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge including, at least, information on the procedure<sup>14</sup> in the light of the applicant's particular circumstances.

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**"In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information in order to clarify the reasons for such decision and explain how it can be challenged"**

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It is a requirement that those countries which are bound by the directive must transpose it into their national legal framework by 21 July 2015 and it will replace the original directive from that date.

Both the UK and Ireland secured what are commonly referred to as 'opt-outs' from EU measures introduced in the field of immigration and asylum as they wished to maintain national control of their borders. This followed the move to secure agreement on such matters from the Treaty of Amsterdam 1999 onwards. A protocol to Title IV of the Treaty gave both the UK and Ireland the right to opt-in to any of the measures if they considered it to be appropriate. Both countries chose to opt-in to the original Asylum Procedures Directive which, for example, deals with access to legal advice but only at the appeal stage<sup>15</sup>. Neither have opted-in to the recast Procedures Directive which includes a provision for the 'frontloading' of legal advice. Therefore the only country in this study which is signed up to all of the measures in the Common European Asylum System is Estonia. Regardless of the 'opt-out' by the UK and Ireland, both countries are of course free to adopt any measures they consider to be appropriate<sup>16</sup>.

### 2.3. Early Legal Advice and Legal Aid

Legal aid has received considerably more attention than early legal advice. In her article “The Asylum Seeker’s Right to Free Legal Assistance and/or Representation in EU law”, Elspeth Guild analyses the provisions of legal aid (which she terms “free legal assistance”) to asylum seekers within the context of the CEAS, and in particular within the context of the Asylum Procedures Directive<sup>17</sup>. Legal aid is highly relevant to ELA because legal assistance is “necessary to give full effect to the right to asylum” (Guild 2011: 10) and in many cases asylum seekers cannot afford to pay. Lack of legal aid at a pre-appeal stage restricts access to ELA, and equally the lack of ELA makes the provision of legal assistance more costly, making it more difficult to argue that it should be free. Moreover, the application for legal aid may in itself require legal advice as the forms are long and complex. Legal advice to obtain legal aid is likely to be even more necessary in the case of a means or merits tests in order to ensure that asylum seekers are not denied legal aid for which they are in fact legally eligible.

Guild notes that there are five main stages where legal assistance is of relevance:

- In the preparation and submission of the asylum claim;
- In the event of rejection of the claim, the preparation and submission of an appeal;
- In the representation of the appellant at the appeal hearing (if there is one) or submissions for appeals which do not include an oral hearing;
- In the event of a negative court decision advising the appellant after the appeal’s determination and on any further appeal avenues;
- In assistance regarding any expulsion decision which may be taken by the authorities.

Guild’s discussion of the 2005 Directive focusses on Article 15. Article 15(1) stipulates that states must permit the provision of legal advice to asylum seekers, but it is explicitly stated that this can be ‘at their (i.e. asylum seekers’) own cost’. Legal aid only has to be given to appeal a negative decision (15(2)). Moreover this right to legal aid is not absolute. It may be restricted to certain types of appeal procedures, and limited to those who lack sufficient resources and/or who pass a merits test. Member states can also designate the legal advisers who may take on this role. These restrictions together militate against early legal advice firstly and most obviously because free legal advice is only available for the appeal stage. Twelve member states (including Estonia) only make assistance available at this stage. This means claimants in those states who cannot afford it are not able to access legal advice when they first submit their claim. In practice asylum seekers generally only look for legal representation after their claim has been refused<sup>18</sup>. Secondly, means and merits testing may take time, effectively either delaying the case or delaying access to advice. Thirdly it may be difficult in practice for asylum seekers to access legal advisers who are qualified and willing to provide free legal aid. Thus both the practicalities and the formal procedures for accessing legal assistance can prove serious barriers to obtaining it, and this is particularly problematic when combined with requirements to submit applications or appeals within a certain time frame.

In 2010 the European Union Fundamental Rights Agency (FRA)<sup>19</sup> published a report on asylum procedures as part of a project to assist policy makers in rendering EU asylum legislation more effective<sup>20</sup>. Its findings suggested that there is a lack of systematic procedures for asylum applicants seeking legal aid. Many of them are not informed clearly about provisions and places to look for legal aid. The FRA report additionally notes that often asylum seekers find it difficult to access legal advisers within strict application time constraints, and it is often particularly difficult when they are housed in rural or remote areas. These findings were supported by a further report produced by the European Council on Refugees & Exiles (ECRE), a pan-European Alliance of refugee-assisting non-governmental organisations. In contrast to the FRA report which examined the asylum system from the applicant’s perspective, the 2010 ECRE report<sup>21</sup> focusses more on the perspective of NGOs and other stakeholders concerned to support asylum seekers. Nonetheless, both have similar conclusions about how the complexity of the system results in the erosion of the right to “effective judicial protection.” ECRE is especially concerned about the stage at which legal aid is provided.

### 2.4 Early Legal Advice and Detention

Early legal advice is particularly relevant in cases where asylum seekers are detained. Several of the recommendations in the ECRE report suggest the importance of early legal advice for those who are detained. These include:

1. All detained asylum seekers should automatically be granted a legal aid representative both for the purposes of their asylum application and review of their detention. Such a measure requires the facilitation of early legal advice.
2. Upon arrival, detention centre officials should provide asylum seekers with an information leaflet (translated into relevant languages) on their rights including the right to legal aid. Such a leaflet should also contain a contact list for lawyers and/or legal advisers, thereby giving asylum seekers the possibility of seeking advice at an early stage.
3. States should facilitate ‘legal aid clinics’ on a regular basis within detention centres. The purpose of such clinics would be to provide general legal assistance to all detainees. If further legal representation is required on an individual basis, legal aid providers could then be instructed to represent individual asylum seekers.

One could argue that those who are detained at an early stage in their claim, especially those who are detained on arrival, are particularly accessible for the purposes of giving early legal advice as they are identifiable and the site should be easy for legal advisers to visit. However, in practice the constraints imposed by detention centres mean that provision of adequate legal advice, let alone early legal advice, is rarely achieved. Increased logistical challenges arising from limited access, difficulty in securing competent interpreters and the remote location of many immigration detention centres, not to mention the increased tension that detainees experience as a result of their detention, all make it particularly difficult to provide effective advice and representation to people in detention. Moreover the further damage to vulnerable people’s health and wellbeing that can be caused by detention significantly outweigh any potential benefits derived from early access to legal advice. Alice Edward’s report on ‘Alternatives to Detention Centres’<sup>22</sup>

points out that Article 18 of the Asylum Procedures Directive requires Member States to ensure that there is the ‘possibility of speedy judicial review’ of the decision to detain. This suggests the importance of legal aid, not only to assist applicants’ asylum claim but also in challenging detention. However, given the multiple difficulties detainees face accessing legal advice in detention, the ‘possibility of speedy judicial review’ remains purely theoretical.

The experience of certain states provides evidence of how detention can make it more difficult to access effective legal assistance, despite the importance of ELA (especially in the case of fast track decisions). In Ireland the visit times and durations are limited which can be problematic for taking instructions from asylum seekers in detention. In the UK the practice of detaining asylum seekers is widespread, including routine routing into the fast track system and use of prisons for the purpose of immigration detention<sup>23</sup>, and detainees have experienced acute difficulties accessing legal advice. With further restrictions to legal aid now being implemented this problem is getting worse.

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“While those detained in prisons experience particular difficulties because there is no scheme to facilitate their access to legal aid”

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In theory those detained in Immigration Removal Centres<sup>24</sup> are supposed to be able to access Legal Aid Agency funded advice surgeries or, if they are routed into the fast track system, a legal representative is appointed for them, meeting at least in part 2 out of the 3 recommendations from the ECRE report discussed above. However there is a growing body of evidence suggesting that the capacity of legal aid providers does not meet demand and that detainees are finding it increasingly difficult to access legal aid. There are also serious concerns over the quality of legal advice and representation provided. For example, fast-track cases are frequently dropped by legal representatives on the grounds that they assess poor prospects of success on appeal following an initial decision to refuse asylum. At this stage, with extremely tight timescales to appeal, it is virtually impossible for people to obtain second opinions or to access further legal representation even where merit has been identified. The organization, Bail for Immigration Detainees, provides regular surveys of legal representation across the UK detention estate<sup>25</sup>. In their latest survey conducted in May-June 2013<sup>26</sup> they reported that 26% of respondents had never had a lawyer while detained and also a drastic fall in the number of detainees they spoke to who had a legal representative, down from 79% to 43% (a third of whom were paying privately) in a six month period.

## 2.5. Conclusion

A standard asylum procedure of no more than six months remains a major objective of EU frontloading proposals. The recast Asylum Procedures Directive makes a number of clarifications to enable an easier implementation of this concept taking into account the particularities of different Member States. It acknowledges that early access to support to help an applicant understand the procedure is a key aspect of frontloading, and clarifies what constitutes basic support to distinguish it from the free legal assistance available in appeals procedures. Member states are free to find the appropriate modalities to provide the support, including through non-governmental organisations, govern-

ment officials, or specialised services of the state. It simplifies the rules on the training that Member States have to provide to the personnel examining and taking decisions on applications. The provisions for applicants in need of special procedural guarantees are also simplified. The new rules are less prescriptive to give Member States more latitude and flexibility to take into account in the appropriate way the variety of potential specific situations of applicants. These amendments should make the implementation of this key provision more cost-effective and dispel misunderstandings which could lead to conflicts between these rules and the general administrative law of several Member states but, at the same time, the rules continue to provide for a high level of guarantees for these persons.

The Jesuit Refugee Service Europe Report (2011-12)<sup>27</sup> confirms the validity of this kind of approach. It recommends that ‘frontloading support’ or early legal advice works well if provided at the outset of a person’s asylum or immigration case with as little delay as possible. When non-citizens are informed of all conditions, procedures and opportunities, and offered holistic social and legal support, they can feel more predisposed to trust the authorities. There have been attempts to explore this possibility, particularly in the UK. As will be discussed in the country reports, the Solihull Pilot (2007-08) and ELAP (2010 -12) were both projects developed to test the hypothesis that “frontloading” the asylum process leads to higher quality, initial decision making. Frontloading gives asylum applicants access to legal representation at the start of the process and enables the legal representative to engage actively with the decision maker. The poor quality of decisions undertaken in the asylum procedures of the UK had led to the UNHCR, several NGOs, the British Parliament and Judiciary to express concerns about the inefficiency of the system.

All of these provisions as discussed with reference to ‘frontloading’ point to the relevance of ELA. The emphasis on quality decisions deliberated over a reasonable time span indicates the importance of Early Legal Advice at the initial stages of the application. Asylum seekers are often subject to multiple formal and informal limitations. Of course each person’s history and circumstance is different, and member states treat asylum seekers in disparate ways: asylum seekers may be detained or have to reside in reception centres for months or even years; they may not be able to work or have severe restrictions placed on their right to work; they may not be entitled to state benefits; they may experience racism and racist and misogynistic violence. Their movements within the host state may be heavily controlled, they may be forcibly dispersed and required to live in areas where they are isolated where the local population may be hostile to them. They may not speak the language of the place where they are staying, they have often endured dangerous and traumatic experiences (including torture) even before coming to or on their way to Europe, and they may be separated from those that they love. Thus while this research is concerned with the legal context, the more general factors that shape asylum seekers’ experiences of the system should not be overlooked as these have an impact on their ability to engage with a decision making process.

Having considered the general research context, we now turn to the findings within the three states that are the focus of our interest. In each case study we lay out the asylum procedure and other features that will enable readers to understand the particularities of each state, before proceeding to our research findings.

## 3. National Report: the UK

### 3.1 Background

The United Kingdom has long been a country of immigration, in particular from the Republic of Ireland and from the former colonies and territories of the British Empire such as India, Bangladesh, Pakistan, some islands of the Caribbean, South Africa, Kenya, Nigeria and Hong Kong. In the early 2000s, 4.9 million people (8.3 per cent of the population) were born abroad. In recent years there has been a shift in the countries of origin of new migrants and there has been a marked increase in the proportion of entrants from Central and Eastern Europe.

The number of people seeking asylum in the UK peaked in the early 2000s with 84,130 applications (excluding dependants) in 2003. It has since dropped significantly. In 2010, 17,990 people applied for asylum in the UK. Countries of origin have varied over the years, and recently have included Afghanistan, Eritrea, Libya, Nigeria, China, Sudan and Zimbabwe. In 2011 most asylum seekers in the UK came from Iran, Pakistan and Sri Lanka, countries that have either recently experienced conflict or have well-documented human rights abuses (UNHCR, 2009). In the second quarter of 2011, 4,253 initial decisions were made on asylum claims and 70 per cent were refused. Twenty seven per cent of asylum appeals were accepted in this same time period, “indicating that in these cases the individuals in question were wrongly refused protection when their asylum claims were initially determined.”<sup>28</sup> This not only suggests poor quality decision-making, but also considerable state expenditure.

### 3.2 Asylum Procedure<sup>29</sup>

An asylum seeker in the UK is defined as a person who has lodged a claim for protection under either the 1951 Refugee Convention or where there is a risk that they will face torture or inhuman or degrading treatment or punishment contrary to Article 3 of the European Convention on Human Rights. Consideration is automatically given to both the refugee claim and the claim to “serious harm” as defined in the Qualification Directive<sup>30</sup>.

A preliminary interview known as a ‘screening’ interview initiates the first instance proceedings. UK Visas and Immigration<sup>31</sup> (UKVI) defines a “screening interview” as the interview conducted before allocating a “case-worker”<sup>32</sup> to an applicant. The purpose of screening is to record personal details, establish particular needs, detail how the person arrived in the UK and briefly explain their reason for claiming asylum. The screening interview has consequences for decisions relating to accommodation and support including whether to detain under the fast track procedure. It may also be used to check the consistency of any information provided during the substantive interview. The applicant is expected to produce their passport or the document on which they travelled and other identification papers and give biometric physical details. Dependents should accompany the relative applying and they may be subject to separate interviews. The screening interview is taken into account when a first decision is reached and therefore should be considered as part of the first instance proceedings.

Following the screening interview, applicants attend a substantive interview to discuss their asylum claim. Most applicants are not required to submit a written account of the reasons for requesting asylum but as a matter of good

practice some legal representatives do so. The UKVI will provide an interpreter if one is required but applicants who want to rely on documents which are not in English are required to submit a certified translation with the documents. Interviews are tape recorded if requested unless a legal representative is present (which is rare). After the screening interview, an applicant can be subjected to detention. There are 11 immigration removal centres (IRCs) across the UK. In 2012 a total of 28,909 people entered IRCs and short term holding centres (i.e. this number does not include those held under Immigration Act powers in prisons).<sup>33</sup>

Asylum applications are examined by civil servants at the Home Office<sup>34</sup>. If refused, the aim is for all appeals to be heard within two months of the initial decision, although these timescales are much shorter for cases that have been ‘fast-tracked’ in removal centres (sometimes referred to as Detained Fast Track or DFT).

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“A 2011 report by the Independent Chief Inspector of the UK Border Agency, John Vine, expressed some concerns both about the costs associated with DFT and relatedly about the expedited process that risked poorer quality of decision-making<sup>35</sup>”

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Not all asylum-seekers have a right of appeal, for example if they come from countries that are presumed by the Home Office to produce ‘clearly unfounded’ asylum claims, or if they have already claimed asylum in a ‘safe third country’. These applicants are usually only allowed to make an appeal after they have been removed from the UK. For those who have the right to appeal, the deadline for giving notice of appeal after a refusal decision is ten working days and two if detained under the fast-track system. Entitlement to publicly funded legal representation (legal aid) is only available if the appellant is deemed to have a 50 per cent or more chance of success. Legal representatives are tasked with assessing the merits of an appeal and the justification for granting funding for an appeal must be evidenced on the case file. Appeals are heard by an Immigration Judge at the First Tier Tribunal Immigration and Asylum Chamber (FTIAC). This judge is not employed by the Home Office. Asylum seekers are allowed to remain in the UK while they await the outcome.

The appeal decision usually arrives within two weeks and if it is rejected it is only possible to make a further appeal on a point of law. Legal advice is necessary to decide whether there are grounds for a further appeal. The timescale for making an application for leave to appeal is very short (usually five working days)<sup>36</sup>, and funding for submitting an appeal is only granted retrospectively if the application is successful (i.e. this work is done at risk of no funding). The process is complex and lengthy and dealt with by different administrative bodies depending on the nature of the appeal. The Institute for Race Relations has noted the harmful effects of complex appeal procedures, and the fact that because asylum seekers are only entitled to the most limited support (known as ‘section 4’ support) when

applying for or progressing Judicial Review applications, they are often at risk of destitution due to delays in court decisions, which can result in them absconding. Poor decision making also carries with it similar risks, as people continue to maintain that they have a fear of persecution and drop out of the system because of their fears of return. Since asylum seekers are not legally permitted to work in the UK, it also exposes them to multiple forms of exploitation.

### 3.3 Legal Aid

All practitioners who offer legal advice in the field of immigration and asylum and who are not regulated by professional bodies, whether or not they receive payment for it, must be registered with the Office of the Immigration Services Commissioner (OISC). The OISC is an independent, non-departmental public body set up under the Immigration and Asylum Act 1999. It has regulatory powers and can prosecute for the illegal advertising and provision of unregulated immigration advice, including asylum. In addition, legal advisers who wish to receive public funding in the form of legal aid need to be accredited through the Immigration and Asylum Accreditation Scheme administered by Central Law Training on behalf of the Law Society. Their firm or organisation must also hold a contract with the Legal Aid Agency to give legal advice to asylum seekers (see below). Legal advisers can assist in deciding whether an asylum claim or another form of application is appropriate to their circumstance although, in practice, limitations on legal aid may limit the opportunity for this initial advice and it can be particularly difficult to access initial legal advice or representation when a person claims asylum immediately on arrival at the port. The applicant may also get legal advice to help prepare their application including a statement of claim (although this is no longer a requirement and is not specifically remunerated under legal aid so rarely undertaken by legal reps) and to gather evidence in support of their application. This support, including sourcing country of origin information and commissioning expert reports for submission to the decision maker, is considered to be best practice because it helps both the legal advisor and the decision maker make an informed assessment of the need for international protection.

In theory, legal aid is available to all asylum applicants who meet the financial eligibility criteria. There are different rates of legal aid payments for different areas of law, and rates for providing legal representation to asylum seekers is one of the more complex areas of legal aid funding. This is because there are different rates of payment depending on when the application for asylum was first made and different types of cases can attract different types of payments. For example, while the majority of cases are now paid for on a fixed fee basis, representation for separated children in relation to their asylum claims is paid at hourly rates<sup>37</sup>. As long as a client's claim for asylum has been assessed by their legal representative as having an above 50% chance of success and this is clearly evidenced on the file, then in theory legal aid is available at all stages of the legal process (making applications for leave to appeal to the Upper Tribunal, is an exception, and in these cases funding is only available once the application is granted leave to appeal). However, eligibility and funding rules become more restrictive when cases progress to the higher courts such as the High Court and the Court of Appeal

### 3.4 Legal Aid Sentencing and Punishment of Offenders Act (LASPO)

Following the implementation of the Legal Aid Sentencing and Punishment of Offenders Act (LASPO) in April 2013, England and Wales have seen restrictions to legal aid imposed across the board. This has resulted in immigration work being removed from the scope of legal aid almost completely<sup>38</sup>. There have also been significant further restrictions placed on undertaking judicial reviews on immigration matters. These include removal of funding for judicial review application unless the High Court grants permission to proceed (with some exceptions<sup>39</sup>), and the removal of borderline cases as part of the merits assessment. Providers will now not know at the outset whether they will be paid for bringing a case. LASPO has also introduced a much more stringent means test for both contract and certificated work which acts to further restrict access to legal aid.

Legal aid can only be provided by suppliers who are contracted to the Legal Aid Agency (LAA). The LAA was previously a non-departmental public body sponsored by the Ministry of Justice but became an Executive Agency of the Ministry of Justice on 1 April 2013<sup>40</sup>. It commissions and procures legal aid services from providers (private practice and not-for-profit organisations that employ solicitors and/or barristers) that supply legal services. Legal advisers are able to undertake all aspects of legal aid in initial applications and appeals to FTTIAC and the Upper Tribunal if they are suitably accredited and meet regulatory requirements. Advocacy in the High Court, Court of Appeal and the Supreme Court can only be undertaken by barristers or solicitors with higher rights of audience. The cost of interpretation for discussions between the legal adviser and the client and costs related to experts may be covered by legal aid.

While in theory, legal aid is supposed to fund sufficient provision of time and contact with applicants to guarantee a minimum level of quality assured representation, in reality the fixed fee rarely covers the full extent of the work that needs to be carried out. Due to the increased time constraints and added difficulties in accessing appropriate legal advice, this is even more problematic for detained fast track cases, even though these are paid at hourly rates. Furthermore legal aid funding is only exceptionally provided to attend interviews, so while in theory legal advisers may attend all interviews and hearings, in practice this is limited by the non-availability of legal aid. Advisers may make comments at the end of the interview. However, with the exception of the Early Legal Advice Project (see below), legal advisers are not allowed to participate in the interview for example by asking additional questions that will enable their clients to clarify statements.

If an asylum seeker is detained, they should have access to legal aid surgeries and the on-site appointments for legal advice that are usually held twice weekly at every immigration removal centre but not at prisons where some immigration detainees are also held. There is also a fast track duty rota for provision of advice and representation for asylum applicants whose claims are being examined under the detained fast track procedure. Legal advisers who take part in these schemes need a special contract from the Legal Aid Agency.

### 3.5 ELA in the UK

Limitations on early legal advice in the UK include the following: Firstly, legal aid is not provided for attending the initial screening or substantive interviews (except in exceptional circumstances), which are arguably the most important aspects of the process where representation is most needed. Secondly, the legal aid framework can act as a disincentive to providing early legal advice. For example, where pre-screening advice and representation is provided to asylum seekers, if the person is detained or dispersed and less than five hours work have been undertaken on the case, then the provider must cease representation and can only claim a maximum of £100 for any work undertaken, including disbursements<sup>41</sup>. Dispersal makes providers reluctant to take cases on before the screening interview takes place, but also prevents them from taking on the case following decisions to disperse, due to geographical restrictions imposed by the legal aid contract that restricts work to certain areas of the UK. This makes it more difficult for asylum seekers to access advice *pe se*, not to mention early legal advice. There have been two projects designed to explore the potential for ELA within the UK: the Solihull Pilot and the Early Legal Advice Project.<sup>42</sup>

#### 3.5.1 The Solihull Pilot (2007-2008)<sup>43</sup>

The Solihull<sup>44</sup> Pilot was developed to test the hypothesis that ‘frontloading’ the asylum process (i.e. giving asylum applicants access to legal representation at the start of the process) leads to higher quality, initial decision making. The project had its origins in concerns about asylum delays, backlogs and successful appeals and in the move to the so-called ‘New Asylum Model’ (NAM)<sup>45</sup>, under which management of cases was to be given to single UKBA ‘case owners’ and where greater emphasis was placed on the quality of initial decision making. Under NAM the role and importance of legal representation for asylum seekers was acknowledged, but in practice there was no structured integration of legal services, and the relationship between legal representatives and UKBA remained highly adversarial.

The Solihull Pilot provided for early access to competent legal representation<sup>46</sup>, facilitated an interactive and flexible process before, during, and after the asylum interview with greater decision maker/legal representative liaison and NGO/UNHCR involvement in oversight and evaluation. It also allowed for flexible funding for legal work. The evaluation found that the case conclusion rate was significantly higher than the control group, with a higher initial grant rate and a lower allowed appeal rate. It was cost neutral (with some evidence of cost reductions) and there was significant qualitative evidence of cultural change. It seemed to offer evidence for the value of frontloading in terms of efficiency and savings and improved decision maker/legal representative relationships. However, the sample size (450) was small.

#### 3.5.2 Early Legal Advice Project (ELAP) (2010-2012)

As a direct result of the positive findings from Solihull, ELAP extended the Solihull pilot across the whole Midlands and East of England regions with the aim of testing the impact of providing asylum seekers with access to free legal advice early in the process. The objectives were to increase the quality of decisions, to reduce the volume of appeals, to improve the efficiency of the asylum system (including working relationships and confidence in decision making)

and create savings across government. It was available to every asylum case routed to the Midlands and East region, between November 2010 and August 2012 providing they accepted publicly funded legal representation from Legal Service Commission<sup>47</sup> contract holders (i.e. it was not available to applicants who instructed a privately funded legal representative, or who did not have a legal representative). The design of the ELAP developed lessons learned from the Solihull Pilot. The applicant was referred to a legal representative within 5 days of lodging an application and prior to the substantive interview the legal representative would assist the applicant in the production of a witness statement. They were encouraged to provide all evidence at the earliest possible stage, and an appointment with a legal representative 14 days before their substantive asylum interview was intended to provide the basis for pre-interview engagement with the case owner. While the pre-interview meeting was supposed to take place at least 36 hours before the substantive interview, in over one third of cases it occurred immediately before or on the morning of the substantive interview<sup>48</sup>. In theory the legal adviser was able to attend the substantive interview and to play an active role in it. The ELAP evaluation found that while the majority of asylum seekers found the presence of the legal representative at the interview to be helpful, and their presence improved the system’s credibility, approximately a quarter of legal representatives did not play an active role in the substantive interview<sup>49</sup>. This was followed by a post interview discussion between the legal representative and the case owner. There were also user group meetings between legal reps and case owners to share good practice and improve working relationships.

The evaluation of the project was published in May 2013. It comprised 83 case reviews (including substantive interviews with ELAP and non-ELAP applicants), 1 to 1 interviews with 10 asylum applicants, 1 to 1 interviews with 5 immigration judges, one informal focus group with 9 immigration judges and 1 to 1 interviews with a range of stakeholders. A summary of the ELAP evaluation can be found in Appendix 2.

### 3.6 Stakeholder interviews

Stakeholder interviews undertaken for this report offered insights into the importance of early legal advice, and into some of the findings of the ELAP project evaluation. There were three common themes: the importance of the relation of ELA to asylum procedures more generally, the need to nuance understanding of efficiency, and the added value ELA can give to improving the personal and professional relations between the different actors (case owners, legal representatives and asylum seekers). Interestingly, one issue that came up in UK interviews but not elsewhere, was the question of whether ELA covers advice given about whether it is appropriate to submit an asylum claim in the first place (which could entail giving advice about making a different kind of immigration application – as a family member for instance). This is an important matter: asylum seekers become asylum seekers when they submit an application, the initial decision to submit the application is a critical element in the process but it is currently overlooked. Moreover, by restricting remuneration under legal aid for pre-screening advice, the legal aid framework acts as a disincentive for providing timely advice on the merits of applying for asylum, which could play an important role in filtering out unmeritorious claims pre application, not to mention the difficulty asylum seekers face accessing good quality legal advice at this stage generally. Unfortunately,

this included ELAP, where according to UKS4, the assumption was that the decision to apply for asylum was a matter of information rather than advice: “When ELAP was being developed there were discussions about pre-screening advice... we thought it [i.e. pre-screening advice] merely an information giving service” (UKS4).

### 3.6.1 ELA and asylum procedures

Interviewees were clear that early legal advice was a critical component of a high quality system. “Let’s say I could design the perfect system... would ELA be necessary? And my answer is yes” (UKS1). However, they all emphasised that ELA cannot, in itself, solve the profound challenges facing the UK’s asylum system let alone transform a poor system into a good one: ELA is “not a panacea in itself, but we would argue it is an essential characteristic of a fair, just, humane decision making process” (UKS3). Its benefits do, however, need to be seen within the constraints of the current system, and it was felt that it would be an important element of facilitating more sustainable decisions.

One of the key problems facing the UK asylum system was the poor quality of advice that applicants receive. This is compounded by the ‘culture of disbelief’ among decision makers (a phrase used by all stakeholder interviewees), but importantly, as one stakeholder put it, good decisions on the part of the case owners also require that applicants receive sound legal advice, know what evidence to submit and how to best present their case. “Poor legal representation will undermine any attempt to develop an early legal advice initiative as much as poor decision making will” (UKS3). Early legal advice is not the same as good legal advice, and certainly not the same as good legal representation. The quality of the legal advice given was not evaluated by ELAP which is unfortunate as the benefits of ELA need to be assessed in the light of good quality advice. While ELAP advisers were paid at a higher rate than conventional legal aid, this does not mean that all firms provided the same high quality advice (though some undoubtedly did). For example, the Asylum Quality Audit Team (AQAT) found a conflict between frontloading evidence and the inclusion of unnecessary and irrelevant material suggesting that not all of the advisers were offering a high quality service, and that the parameters of the project were not always clear to the legal representatives (notably the UKBA and the LSC had dedicated project managers for ELAP, but the legal representatives did not).

Poor quality legal representation is already a problem within the UK system, and the recent cuts to legal aid as a result of LASPO are anticipated to make this even worse, as reliable firms are pushed out of business or away from complex asylum cases. They are no longer funded to provide advice on immigration aspects of mixed immigration/asylum cases and cannot cross-subsidise their asylum work through immigration practice, which is now out of scope. The relation between ELA and the map of legal provision more generally was apparent in the demise of the Immigration Advisory Service, the largest legal aid provider in the ELAP region, which folded in the course of the project. Stakeholders interviewed anticipated that pressure on legal aid was likely to make early legal advice even more important in order to ensure that cases were correctly classified – e.g. not wrongly put in the detained fast track procedure for instance. So while interviewees generally cautioned against seeing ELA as a ‘quick fix’, they felt that the need for it was becoming more rather than less

urgent, particularly in the light of cuts. UKS2 emphasised the importance of the provision of legal advice early in the asylum process: “you should not make those sort of (LASPO) changes to legal aid until you are fully satisfied that the initial decision making system is the best that can be devised” (UKS2). Legal aid cuts make it imperative that initial decision making is further improved, but also require the structure of the legal funding system to be re-examined. “The existing legal aid pot could be changed to incentivise better provider behaviour in the process that would be of benefit to the decision making system” (UKS3). UKS1 also believed that, with diminishing legal aid, strategic targeting including advice at an early stage was necessary and agreed with UKS3 that one response might be for legal aid to impose a requirement that providers produce witness statements prior to the first interview. This was a practice that the ELAP evaluation found to be very positive: “Witness statements added credibility to the asylum system, ensuring that a minimum level of information/evidence was available at the earliest opportunity for all cases” (ELAP evaluation:7). It is particularly worth noting that the ELAP evaluation found that UKBA case owners found witness statements most useful in the more complex cases. The Asylum Quality Audit Team (AQAT) also found that witness statements were a highly beneficial aspect of the process, though cautioning that they should not be over relied on.

### 3.6.2 Efficiency

All interviewees also commented on the importance of a temporally sensitive approach to the asylum process. The ELAP project allowed for an extended time frame, with the substantive interview scheduled on days 23-25 after claiming asylum, rather than days 7-10 in the usual national process, although anecdotal evidence suggests that due to a lack of resources following UKVI cutbacks, this time frame is no longer being adhered to and a growing number of applicants are waiting over six months for their substantive interview following initial screening.

The performance indicator of 20% of ELAP cases to be decided within 30 days was set. The evaluation found that early legal advice did not expedite the timescales for decision. It is clear from the stakeholder interviews that there is a limit to the extent to which ELA can influence the overall timeframe of a decision and indeed it may mean that the decision takes longer (as the evaluation in fact found).

**“It only lengthens the process if the process is arbitrarily set at a certain length in the first place that’s shorter than the time needed, which is certainly the UK experience. But a reasonable asylum process, even one that strives to be efficient and relatively swift in reaching a decision, needs to allow sufficient time for an applicant to build confidence in the legal rep which ...leads to disclosure of evidence which is critical for the decision maker. So any efficient system would need a reasonable timescale.” (UKS3)**

This relates to the point above, that ELA needs to be understood within the context of the specifics of an asylum system. While early legal advice might seem in keeping with the emphasis in the UK system on efficient and speedy procedures, in practice it can have the consequence of slowing down unduly speedy initial times. Stakeholders were clear that this should not be confused with inefficiency,

and that the current system has a problem of “more haste less speed and the insistence on time element can be inimical to the interests of getting a good decision” (UKS2). It is understandable that a more considered decision may take more time, particularly in a context of understaffing.

Interviewees emphasised the importance of understanding the relationship between legal representative and asylum seeker as one that needs to be developed and that often requires a considerable degree of trust. Applicants may have been severely traumatised, and this can have a significant impact on the time it takes to disclose important evidence particularly for torture survivors and victims of gender based violence. There are also practical problems associated with evidence gathering, and one interviewee mentioned that medico-legal reports can take much longer to arrange than is allowed for in the timeframe between a legal representative first meeting a client and the substantive interview – even allowing for ELA. The ELAP evaluation also found that difficulties with interpreter availability were an important reason for cancellation of interviews. This does not detract from the benefit of ELA, but suggests its importance. However, it also suggests that if a truncated timescale is imposed for the substantive interview the benefits of ELA are not maximised – and ELAP found that in these circumstances problems did occur with front loading evidence (i.e. provided at the earliest possible opportunity and before the substantive interview). UKS1 hypothesized that the advantages were more likely to appear at the appeal stage, which is when the evidence gathered would be ready. Presenting officers reported to the ELAP evaluation that they could not distinguish between ELAP and non-ELAP appeals and that they were still hearing appeals based on new evidence, supporting UKS1’s hypothesis. This suggests that the time constraints, even if they are more generous than those currently allowed under the system, might mean that case owners still have limited access to the evidence for the first decision.

Case owners’ complaints that, with the exception of witness statements, too much evidence was presented at a late stage, including post interview, suggest that even with the extended timeframe of ELAP, the rigorous timing was still a problem for the process. Indeed, while the production of witness statements was a highly praised element of ELAP in general, over half were submitted ‘late’ in terms of the ELAP timeframe, and this seems to have been linked in some cases to late dispersal. Similarly pre-interview meetings were often late, with over one third being conducted on the morning of the substantive interview, thereby reducing their effectiveness. Although the cultural behaviour of legal advisors cannot be ruled out as a factor here in terms of the buy-in and understanding of the benefits of front loading as well as increased emphasis on early and improved communication with case owners, it does seem that the time requirements of the project were not flexible enough to permit the full benefits of ELA to become apparent. Furthermore, while a decrease in refusals at initial decision did lead to an overall lower volume of appeals under ELAP, thereby meeting one of the key objectives of the project, the evaluation found that the appeal rate against negative decisions did not decline. This must be seen within the context of the system as a whole which tends to create additional pressures to appeal decisions, as UKS4 indicated: “If he doesn’t appeal his NASS benefits will stop 21 days, I think, after a negative decision. So... the client will still appeal because otherwise he’ll be destitute so there

are other drivers there.” It should be acknowledged that applicants have every right to exercise their appeal right following a refusal, even where legal aid has been withdrawn due to low prospects of success at appeal. Moreover, the evaluation found that ELAP did not have an impact on the rate of legal aid funded appeals which suggests initial decisions to refuse that progressed to appeal were challengeable. However, given these other pressures one might expect that the impact of ELA on appeals is more likely to be apparent in fewer fresh claims<sup>50</sup> (because legal representatives will be in full possession of the relevant facts) and fewer judicial reviews rather than first appeals but unfortunately the ELAP did not have the scope to explore this.

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“The emphasis on time goes along with a concern to save costs. One of the ways in which ELA might be argued to benefit all parties is by saving money through enabling the best case to be put at the earliest stage”

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However, as stated previously, ELA in this case is not enough, and the quality of the legal advice and the timing of the process are integral to improving procedures. Furthermore, as the ELAP evaluation makes clear, it depends on how ‘cost’ is defined. The ELAP evaluation found that ELA was more expensive because of the extended time frame and because legal representatives were paid differently to the way they were normally recompensed. However, fewer cases were going to appeal, not because of a decline in the rate of appeals against refusals, but because of the overall fall in the volume of refusals due primarily to the increase in grants of discretionary leave. This resulted in savings by the Ministry for Justice “[b]ut in a world of short term-ism...it is a tough political ask to get Government funding anything on the possibility of making savings. Investing to save is a difficult concept in a time of austerity” (UKS3). Furthermore, there is more to the cost of prolonged and poor asylum claims than the cost of legal aid – the costs of detention, of supporting a person with no right to work or access to the mainstream benefits system, of housing and dispersal and so on.

### 3.6.3 Benefits to case owners, legal representatives and applicants

There was an interesting distinction drawn between ELA as facilitating more evidence and consideration, and ELA as facilitating a less adversarial system. All interviewees commented on the problem of the ‘culture of disbelief’ compounded by an adversarial rather than an inquisitorial system. The provision of evidence and the possibility of pre-interview collaboration could enable the decision making system to be less adversarial, making it easier for UKBA to reach a sustainable decision. Again, ELA was not felt to be sufficient in enabling this, but it was suggested that it could be helpful. There are also other ways in which case owners and legal representatives are collaborating with each other. One organisation interviewed is facilitating training for immigration officers and has been approached by UKBA staff in reporting centres, all suggesting a less adversarial approach. The ELAP evaluation supports this with both case owners and legal representatives reporting improved relations, and post-interview discussions and user group meetings being held up as extremely useful in

enabling collaboration and greater understanding of each other's perspectives. It should be noted that this benefit was associated with the particularities of the ELAP design, and is not integral to ELA per se, though arguably greater attention to evidence could also enable a "culture of mutual respect between decision makers and representatives" (UKS3). This is an example of the importance of the particular design of the scheme and how it fits into the national asylum process more generally. It also suggests that ELA can have feedback effects and more generalised and diffuse benefits to the asylum process but that are by definition, difficult to capture in statistics, for example:

"Any positive effects from the ELAP process may have impacted on the quality of decisions and interviews conducted under the national asylum process... over time, with an overall increase in quality. This would be a result of the same case personnel working on cases in the ELAP process and under the national asylum process" (ELAP Evaluation: 23)

The importance of consistency in personnel has consequences beyond ELA, and this was a further difficulty with ELAP, where legal representatives and case owners were not always consistent, and the LSC's ELAP file review found that the legal representative who drafted the witness statement was not the same as the one who attended the substantive interview in 30% of cases. There were similar problems with case owners.

ELA was felt to increase asylum seeker confidence (as asylum seeker interviews indicated in Estonia). All interviewees felt that explaining the system to asylum seekers was important and that this should be at an early stage – though one person commented that it could be difficult for people to take on if it ran alongside lots of other information<sup>51</sup>. ELA has the potential to help asylum seekers become more active in supporting their claims, not least because they know what they need to do as they have a better understanding of the process:

"it makes the asylum seeker think that they can participate in the system rather than being objects to which the system is doing something" (UKS2)

Thus a more informed applicant can contribute to a better decision. This was confirmed by the ELAP evaluation which found that asylum seekers felt better prepared and more able to explain their circumstances if they had been given ELA (90% of ELAP respondents as compared to 70% of non-ELAP respondents). As in Estonia, stakeholders were clear that this advice did not have to be given by a solicitor – one person referred to the Norwegian system of befriending whereby asylum seekers are allocated a lay person who can explain the system to them. A distinction was drawn between an introduction to the process and going through people's individual claims. However, where there is an emphasis on information provision rather than legal advice at an early stage it should also be noted that early legal advice can play an important role in facilitating the correct routing of claims, and this has the potential to reduce 'speculative claims', as people would understand that their claims may not be suitable for asylum..

"a client who may have begun the interview very defensively, very aggressively... would soften as you gave them the opportunity to... explore all the facts. And then when you explained to them that, notwithstanding what they are saying, the simple fact is that a judge is not going to believe the sequence of events they are outlining, or they simply wouldn't fit into the refugee and human rights conventions, once that was explained to them, their level of resistance dropped and the level of acceptance greatly increased" (UKS1)

However, for this to be done effectively, it is vital that the distinction between information provision and legal advice is clear as discussed in the introduction to this report. The danger is that without good quality legal advice at this stage, people are "merited out" incorrectly or, conversely, led to believe that they have a meritorious claim when they do not. Well-meaning people can have an adverse impact on asylum claims if they do not fully understand the consequences of the information/opinion they are providing (such as accepting a grant of Discretionary Leave when it might be better to progress with an upgrade appeal against the refusal of asylum/humanitarian protection).

The above quote provides a clear example of the benefits of early legal advice while also dealing with procedural aspects of how the system works, thus demonstrating the overlapping nature of these two important aspects of the process. Unfortunately ELAP was designed in such a way that asylum seekers were referred to legal advice after putting in their claims so the benefits of providing legal advice at this stage were not tested. Nevertheless the most important finding was that ELA did not have an impact on the asylum grant rate, or on the grant rate for humanitarian protection, but it did lead to a significant increase in the grant rate for Discretionary Leave (DL).<sup>52</sup> This may be a consequence of a failure on the part of the legal representative to progress the case to appeal, leaving a grant of DL as the only option remaining, or there may have been evidence at an earlier stage that DL was appropriate. Unfortunately the ELAP evaluation does not explore this.

In the final analysis, the example of delivering ELA in the UK demonstrates how ELA helps to produce more considered decisions, and that if asylum seekers have been engaged in the process they can at least understand why it is that they have been refused. It reduces arbitrariness, which is beneficial overall because arbitrariness incentivises people to try their luck. As one interviewee put it, there is a distinction between trust in an adviser or a legal representative and understanding the system. The ELAP evaluation found no impact on decision quality, but importantly this was in a context where quality of decision making had been intensively monitored, as the UNHCR had a team working with UKBA to improve the quality of decision making at the same time as the ELAP project. Furthermore, the evaluation did find an improvement in decision making for complex cases. Importantly, it was not only asylum seekers who felt more confident, but case owners reported having greater confidence in their initial asylum decisions as a result of ELAP, with over half saying that the process had improved their confidence in making correct decisions/handling the more complex cases.

## 4. National Report: The Republic of Ireland

### 4.1 Background

Before the early 1990s Ireland was a country of net emigration. However, the economic boom resulted in increasing immigration from the mid-1990s onwards. At first this was driven by returning Irish nationals, but from 2001 to 2004 non-EU immigration and asylum applications increased significantly. Among the categories of non-EU nationals coming to Ireland in the last decade, the majority have been workers (about 280,000 work permits were issued during from 1998 to 2008), followed by asylum seekers (74,000 applications made from 1998 to 2008), students and dependants.<sup>53</sup> Post EU Enlargement in 2004, there was a marked shift from non-EU immigration flows to EU flows, though this began to drop with the economic crisis.

In 2013 ORAC made 878 substantive decisions<sup>53</sup> on refugee applications (excluding deemed withdrawal decisions), 128 were recommended for a grant of refugee status, a recognition rate of 15%. The largest numbers of applicants in 2013 came from Nigeria (14%), Pakistan (10%), Democratic Republic of Congo (8%), Zimbabwe (7%) and Malawi (6%).

Key factors shaping Irish immigration and refugee policy include the policy of free movement between Ireland and the UK and Ireland's membership of the EU. Like the UK, and unlike Estonia, Ireland is not part of the Schengen zone.

### 4.2 Asylum Procedure

Ireland became a signatory to the Refugee Convention in 1956 and incorporated the definition of a refugee from Article 1A into Irish law in section 2 of the Refugee Act 1996. This came into force in November 2000 following further amendments. The Act established two independent bodies, the Office of the Refugee Applications Commissioner (ORAC) and the Refugee Appeals Tribunal (RAT). Applicants for asylum are required, under the provisions of the Act, to cooperate with the asylum process. 'Cooperation' here means comply with the requirements of the procedure for asylum including fingerprinting and attending for interview when required. In 2013, a total of 135 applicants, (12% of all applications) failed in their duty to co-operate meaning that their applications were consequently deemed withdrawn under the provisions of the 1996 Act.

Refugee and subsidiary protection applications are not considered simultaneously. A person must first apply for asylum, and can only apply for subsidiary protection after the asylum process has been completely exhausted.<sup>54</sup> From 14 November 2013 subsidiary protection applications have been decided by ORAC (they were previously decided by the Department of Justice). As part of ORAC's investigation of the subsidiary protection application, a person has an oral interview which they previously did not have. In addition, a person receiving a negative decision on a subsidiary application has the right of appeal to the Refugee Appeals Tribunal (RAT). If the person is unsuccessful in their subsidiary protection application, the Minister writes to them notifying them of the intention to make a deportation order under section 3 of the Immigration Act 1999 requiring them to leave the State. The person then has the option of making representations to the Minister within 15 days and set out the grounds upon which they should be granted Leave to Remain. A person's period of period of entitlement to remain in the State also expires.

Regardless of where the application for asylum is made – at the port or after entry to Ireland, whilst detained, after detection for illegal entry in the country – the responsibility for consideration of asylum claims rests, in the first instance, with ORAC. Applications are made in person to the ORAC office in Dublin unless the person is detained in which case the Governor of the relevant prison notifies ORAC that the person wishes to claim asylum. Although in theory it is an option for any individual to apply for asylum, the practice in Ireland is that if one member of a family applies, all adult members must make their own applications. Children have the right to apply independently but, if they are accompanied by a parent, they can be considered dependent on their parent's claim. Children born in Ireland after an asylum claim has been made by their mother are required to apply for asylum or she risks losing financial support and accommodation for them.

Applicants formally confirm their decision to seek a declaration that they are a refugee at the first interview. This interview establishes identity, details of the journey taken to Ireland (including countries that they passed through and may have claimed asylum in), any assistance given with their journey, the method of entry (including legally or otherwise) and brief details about why they have claimed asylum. It is also used to identify what language(s) the person speaks or prefers to be interviewed in. Fingerprints are taken from all those over 14 years of age. The interview normally takes place on the day that the person attends ORAC to apply for asylum. The person or family will also be informed that, if they cannot provide for themselves, they can register with the Reception and Integration Agency (RIA), part of the Department of Justice. If they register with RIA, they will be accommodated in a reception centre in Dublin before being dispersed to another centre elsewhere in the country. In addition to this full board accommodation, they are given an allowance of €19.10 per adult per week and €9.60 per week for each child. They will also be given a Refugee Legal Service information leaflet and advised to register with them. At the end of the interview, the person will be given detailed information about the asylum process and a questionnaire to complete and submit within a specified time limit. This is usually ten working days but can be shorter<sup>55</sup>.

The questionnaire is available in 24 languages. The notes which accompany the questionnaire state:

**“The questionnaire seeks relevant information from you as an applicant for a declaration as a refugee in Ireland. This information will form the basis of the investigation at your interview.”**

It is usually completed by the person without any assistance and, in particular, without any legal advice even if they are registered with the Refugee Legal Service (RLS – see below). After submission of the questionnaire, the applicant will attend an interview at the ORAC office in Dublin. The interview is a crucial part of the examination process. After the interview ORAC make a recommendation as to whether that person should or should not receive a declaration that they are a refugee. Interpreters' presence can be vital for assessing asylum claims, but while interpreters are trained on the refugee status determination process in association

with the UNHCR, there is no formal qualification for public service interpreters in Ireland. There are no guidelines or minimum standards for interpreting and in practice the quality of interpreting available is variable and can be poor. The officer conducting the interview will make a record that is read back to the person being interviewed before the interview is concluded. There is no system for independent recording of the interviews, even when a legal representative is not present. The official record of the interview remains the possession of ORAC and a copy is not given to the person interviewed or their legal representative (if one is on record) unless and until the person is refused by ORAC and appeals against that decision.

Following the interview and within a relatively short period, the person will receive ORAC's decision which will inform them either that ORAC is recommending that they should be issued with a declaration that they are a refugee or that their recommendation is against such a declaration being issued. This is called a section 13 recommendation. A negative decision normally refers back to the documents that the decision maker has considered including statements made by the person in the questionnaire or at interviews. A negative decision attracts a right of appeal. The deadline for submission of the appeal varies. If it is an unrestricted appeal, the deadline will be 15 working days to submit the appeal to the Tribunal. Depending on ORAC's categorisation of the claim, it is either a full oral hearing or on the papers only. There are no limits on the period, after submission of the appeal, before the hearing must take place before the Tribunal.

The RAT or Tribunal is comprised of a Chairperson and part-time Tribunal Members appointed by the Minister for Justice. The Chairperson is appointed through an open competition per the Civil Service Commissioners Act 1956, for a term of five years that may be renewable for a second or subsequent term. Tribunal Members are practising barristers or solicitors with not less than 5 years' experience before his or her appointment. There is no requirement to have expertise in refugee law. The appeal takes place in private. The applicant is usually represented, either directly by a solicitor with the RLS, a solicitor or barrister instructed by the RLS (from their panel of private practitioners) or a private solicitor instructed by the person themselves. With the exception of the consultation with the solicitor or barrister before the appeal is submitted, the opportunity for meeting the person who will represent them at the appeal is often only on the day of the hearing itself. In practice the quality of representation before the Tribunal varies considerably. The Refugee Applications Commissioner is also represented by a Presenting Officer.

The Tribunal Member has responsibility to determine whether he or she will approve ORAC's recommendation to the Minister that refugee status should not be granted or overturn that decision and issue their own positive recommendation. The decision will be sent by the RAT administration to the applicant and their legal representative. There is no statutory obligation to issue a determination within a specified period after the hearing has taken place. In 2013 the median processing time of an asylum application, from initial application to final decision on appeal was 36 weeks<sup>56</sup>.

In the event that the appeal is dismissed by the Tribunal Member, the only way to challenge that decision is by way of an application for Judicial Review in the High Court. An application for Judicial Review must be submitted within 14 days of the Tribunal's decision being issued<sup>57</sup>. In Judicial Review applications in asylum claims, solicitors representing the state must be put on notice and any application, even at the 'leave' or 'permission' stage, must be a hearing with both sides represented<sup>58</sup>. The Courts Service state that in asylum matters the average waiting time for a pre-leave application to seek judicial review in asylum-related cases is 33 months. Waiting time for final hearing is 3 months<sup>59</sup>.

It should be noted that in the course of writing this report there have been some adjustments to the Irish system, partly as a result of training arising from the CREDO project and the UNHCR report 'Beyond Proof: Credibility Assessment in EU asylum system'<sup>60</sup>. This project aimed to contribute to better structured, objective, high-quality, and protection-oriented credibility assessment practices in asylum procedures conducted by EU Member States. As well as a report, it produced judicial guidance and a training manual on credibility assessment for practitioners. ORAC and RAT were trained in accordance with these principles in 2013. There has been a tenfold increase in first instance recognition rate from 1.3% in 2010 to 15% in 2013 and the training associated with CREDO will have been a contributory factor.

### 4.3 Legal Advice

A person applying for asylum can register with the Refugee Legal Service (RLS), a specialist part of the Legal Aid Board, an independent body. All applicants are assigned a solicitor and a caseworker. At first instance, however, an applicant does not normally meet the solicitor but is given legal information about the process by a caseworker under the supervision of a solicitor. It does not usually include advice on the facts of the case or assistance in completing the questionnaire, unless the applicant is particularly vulnerable (e.g. a minor or a person who cannot read or write).

Under the Civil Legal Aid Act, legal advice is advice which is given by a solicitor/barrister. Unless the applicant is a child or a particularly vulnerable person (e.g. a victim of trafficking), a legal advice appointment with a solicitor, where advice is offered on the particular facts of the case, is not normally offered until the appeal stage, when both advice and representation before the Tribunal will be provided.

If they register, they will be allocated a solicitor and a caseworker. Although legal advisers are permitted to attend the preliminary and main interviews this rarely happens. Due to financial restrictions on the service, the RLS normally limits its legal advice and assistance to the appeals stage, that is, after a person has been refused by ORAC<sup>61</sup>. The person will however be seen by a caseworker during the ORAC stage who will provide legal information which complements the information that they are given by ORAC in the information leaflet. It is generally not the practice for a statement to be prepared from interviews by a lawyer with the asylum seeker, either at the initial stage or for the appeal hearing. Therefore, the High Court application is often the first time that a statement in the applicant's name will be prepared in the form of an affidavit. But affidavits are usually prepared

by barristers simply from documents without having taken a statement from the asylum seeker themselves. Severe restrictions on civil legal aid funding means that it is difficult to fund all competing demands in a timely fashion and if a person seeks to challenge a decision on their asylum claim in the High Court or above, they will not be eligible for legal aid if they can get legal representation without it<sup>62</sup>. In practice this means that the RLS requires applicants to attempt to obtain the services of a private solicitor and only if they are unable to do so, will they then consider the merits of the case and make an application for funding if there is considered to be merit.

#### 4.4 ELA in Ireland

In the Irish context, there has been no state service which could be considered 'early legal advice' with the exception of children's applications where they are unaccompanied<sup>63</sup>. A 'frontloading' service was piloted between the RLS and ORAC but the final evaluation was never completed or made public. The only form of 'early legal advice - meaning advice given at any stage, including referral into the process up to and including the response to the ORAC first decision - has come from the Irish Refugee Council Independent Law Centre which commenced its service in November 2011.

There are particularities in Ireland that potentially make ELA particularly beneficial, most obviously, a significant number of asylum claimants in Ireland are sent to other EU states under the Dublin II Regulation. Under the Dublin II Regulation there was no right of appeal before transfer (carried out by the Irish Naturalisation and Immigration Service of the Department of Justice) and it was not unusual for asylum seekers to only learn of the decision to transfer them immediately prior to their being transferred, meaning they had little if any time to contact a lawyer to lodge an appeal<sup>64</sup> against this decision. The Dublin III Regulation, in effect since the 1st January 2014, requires that a person can request an appeal against a decision to transfer and that the appeal should be suspensive of transfer. It is arguable that ELA would ensure a more efficient and just implementation of the Dublin Regulation, whether or not the claim is considered in Ireland. This is on the understanding that if a person has had the opportunity to sit with a lawyer and talked through their claim, then they will be better prepared to go through the decision making process in the country to which they are transferred.

In 2011 the Irish Refugee Council established an Independent Law Centre with four staff, two of whom were solicitors, to support asylum seekers. One of its main priorities has been to provide legal advice and assistance to people at the earliest stage of the asylum process, including preparation of a detailed statement, collation of evidence in support of their claim including medico-legal reports and country evidence and attendance at the interview. Asylum seekers are given two hours of free advice but as a small organisation with only two solicitors the service is limited by the capacity of its staff. However, the Law Centre gives full early legal advice and representation if the individual is particularly vulnerable and has difficulties in otherwise accessing legal services. In addition it will represent a case if it is of strategic benefit to asylum seekers and refugees. Those cases that are not ELA-appropriate are usually forwarded to the Refugee Legal Service to be dealt with under the normal procedure.

This 'frontloading' process is different from the way in which frontloading is generally imagined in Ireland, where it tends to be seen as the lawyer getting 'an idea' of the case often

following just one discussion. She/he may help in a few submissions, but that is not obligatory.

For the purpose of the interviews below, 'early legal advice' was taken to mean advice given at the earliest stage of the asylum process as implemented by the Irish Refugee Council. This involves an initial interview with a solicitor followed by a detailed statement of claim being prepared, often over several appointments and with an interpreter where needed, and the statement with available evidence and submissions being made prior to interview and sometimes in the light of the issues raised at the interview.

#### 4.5 Interviews

It is clear from the interviews with both stakeholders and asylum seekers, that the benefits of early legal advice in Ireland need to be understood in the context of a system that most of the interviewees were highly critical of. According to them the process was felt to be "unsympathetic, strict and unaccommodating" and not focused on core protection issues (IS4). The nature of the process has been experienced by some as adversarial even if the intention was to be inquisitorial which can result in inefficiency from the point of view of some stakeholders and an experience of lack of 'humanity' by asylum seekers. The lack of a separate route to subsidiary protection was also frequently mentioned as a problem that indicated the 'rear-ended' (IS3) nature of the current process<sup>65</sup>. "The pyramid is upside [down] and it should be inverted" (IS4). It was felt that ELA combined with a separate route had the potential to introduce some significant cost savings, making the system more efficient overall and easing stress for claimants.

There were two broad reasons for giving early legal advice according to interviewees: trust and efficiency. It was also felt it had the potential to move the system away from an adversarial stance and towards a greater inquisitorial and collaborative process.

##### 4.5.1 "A Question of Trust: "When we don't know something, we can't trust it easily"<sup>66</sup>

Both stakeholders and asylum seekers claimed that currently in Ireland asylum seekers' understanding of the legal process is extremely poor. They can be detained (though this is a relatively rare occurrence), have their fingerprints taken and questioned without having the first idea of what is happening. IR3 described it as being like taking a bus:

"I have to pass four stops to get to my destination... if you plan your journey, you pass easier, you get the best way. When I don't know my destination, then I have to say, stop by stop, and I don't know what it is going to be or how I will pass these stops... I don't know what is the end of it..."

This ignorance can mean that people do not know what they are and are not permitted to do, and also are not aware of the importance of legal representation until it is too late "you already have a big shock of adjustment and everything develops so fast... you are stepping into an unknown" (IR2). However, even a person who wanted to find a legal representative found that they could not get legal advice before filling in the questionnaire. Asylum seekers complained of not being able to see a lawyer, even if they had one - "I only see her name on letters ... I never met her. I never had even

once spoken on the phone once, and she never even spoke with me” (IR1); “I haven’t seen my lawyer... I went there once. He couldn’t come down to speak to clarify, what does this letter mean” (IR3), and described their sense of desperation, frustration, and, critically, of not being treated with respect as receptionists said caseworkers were too busy, and caseworkers similarly protected solicitors. This heightened the sense of not being given anyone’s full attention at a time when, as one interviewee put it: “The most important thing was that the person I am dealing with, the person on the other side of the table, accepted me, believed me, trusted me” (IR2). That is, they often did not feel listened to by anyone involved in the asylum process, and it was possible for them to feel that even their legal representative was not supporting them. One former asylum seeker said that visiting his legal services was like “I’m going to visit some people that never want me to be in this country. The way they treat and the way they deal with it is just to set you up in this process and then you say, alright, I’ll leave it” (IR3). Arguably one reason for this is that the system was designed over a decade ago when “the asylum landscape was very different” (IS2), and resources and the services of the Refugee Legal Service were deliberately concentrated on the appeal stage, an arrangement that no longer fits the needs of asylum applicants. That is, while perceived by clients as deriving from unsympathetic and unhelpful legal representatives, it is also a structural matter that results in people not meeting their solicitors until their appeal.

Given this, it is hardly surprising that claimants can fall back on asking other asylum seekers what to do. Because they are largely housed in reception centres, these can become sites where information is shared. However, although it might be given in good faith, this information is not necessarily well understood. As one stakeholder put it:

“You often find someone who is at the end of the process who comes clean before they are put on a plane, and you learn of their true situation and you realise that this is a better claim than the fabricated nonsense... you stuck by for the last five years.”

Unsure who to trust and feeling insecure, (“you don’t feel comfortable, safe to speak about your problems” IR3), some people can hide details of their past or give false names and nationalities resulting in unnecessary confusion, delays and complications. The danger then is, as one interviewee put it, that asylum seekers “run away from the system”, when there is no running away from it. Under the current arrangement, people who have been living underground, sometimes for considerable periods, find they are unable to access help and resist coming forward, because by the time they are advised to do so they are completely distrusting of the system. Trust is a two way process, and an asylum seekers’ mistrust of the system can in turn fuel mistrust of their claim. This has been a critical problem in Ireland because of the focus on credibility in decision making and decisions relying almost exclusively on ‘credibility’ have continued to be brought before the courts and asylum applicants left waiting in the system for many years without a final determination<sup>67</sup>. Section 11B of the Refugee Act 1996 requires the consideration of credibility in assessing asylum claims. As discussed above there does seem to have been some recent change in how this is implemented, but it should also be noted that there continue to be significant problems for some people arising from previous poor decisions.

“The approach to decision making which has developed here which as a matter of policy is focused on credibility...I have very rarely seen a refusal of refugee status that does not include adverse credibility findings. This is not realistic. Because of the credibility monster that has developed in Ireland it is so important to have good early advice to try and ensure that good practice is being followed on the issue of credibility. You are going to need all the help you can get to counteract some of these credibility findings” (IS4).

This particular stakeholder claimed that their audit of case files suggest that there is a very real difference when claimants have received early legal advice and support in pre-empting credibility issues. This is likely to be of more importance because of the MM decision<sup>68</sup> which says that an applicant should have the right to be heard before the adoption of a decision on their protection claim.

#### 4.5.2 Efficiency and Engagement

It was claimed that this lack of advice at an early stage made for more complicated cases as more and more documents were requested with the applicant not understanding what they were for. That is, the applicant not being fully engaged in their own case meant that it was conducted more inefficiently:

“Because it was asked after each and every interview I would be asked we need this evidence, we need this evidence, and all this complicates everything. If I had it before I would have been aware of what to get ready and what to bring to my hearings” (IR1)

IR3’s first lawyer had, he later realised, very limited experience with asylum procedures, and this was reflected in IR3’s lack of engagement with the asylum procedure. “Say a reason briefly on a page and you sign it and then send it back to ORAC to tell your reasons but I think it was not enough”. He contrasted his experience with his first lawyer with that of the lawyer who assisted him with his second asylum application. The second lawyer used early legal advice techniques such as attending his substantive interview and who was able to pick up on key elements of his case. There was a stark contrast between those asylum seekers who did not have early legal advice, whose first experiences seem to have been chaotic with a sense that it was out of their control, and an asylum applicant who had access to early legal advice. Contrast IR1, who did not have early legal advice, with IR2’s case:

“When a caseworker is getting all the information categorising, presenting it in a nice way to the Court, or having an index, the decision maker can also make a better decision, a less confusing decision.” (IR2)

It is clear from his responses that he valued the sense of order and control that access to early legal advice gave him, but also that he felt it enabled the court to “get the truth out of this complex mess of informations” and that it had a positive impact on his case.

Stakeholders generally agreed that helping asylum seekers to understand the process from the beginning would mean that critical aspects of their case can be highlighted at the ORAC stage. Even a brief consultation and advice to help with completing the initial questionnaire could make a big difference to the outcome. For asylum seekers it seems that this inefficiency and lack of control can lead to a sense of arbitrariness, as people attend multiple interviews whose purpose they don't understand<sup>69</sup>. Misapprehensions that should be easy to resolve are multiplied because of a lack of advice. One interviewee described how, despite his protestations, the caseworker took the nationality on his fake identification as his true country of origin, even though, from the outset, he had informed the authorities that this was not the case. "I submitted almost twenty different pieces of documents, IDs, birth certificate, professional cards, political membership cards and many, many different documents and that has never been processed and never been corrected" (IR1). This has been the source of continuing problems for him, and interestingly he contrasted the difficulties in establishing his identity within the asylum system to the verification of his identity by other state agencies.

"I used a birth certificate to apply for my driving test and that birth certificate used by the department of transport motor tax office, OK, within three days they were able to verify the authenticity of my birth certificate... and they called me back, come we have your birth certificate verification, and I was delivered my driving licence." (IR1)

There were complaints about inefficiencies, with multiple interviews at ORAC, and confusing requests for different documents, which may also be irrelevant to their case. This is compounded by an historic problem with translation: "they ask you bring this, bring this, bring this and you keep bringing til at the end they tell you they are out of funding to translate documents" (IR1). There are also problems with the quality of the work. One interviewee found himself double checking the translation of his interviews thanks to a large dictionary and making many corrections.

The kinds of criticisms directed against the Irish system were, one stakeholder claimed, not peculiar to Ireland, and across Europe the focus is on credibility rather than core protection issues, and this is a reason for encouraging the provision of early legal advice in all European states. There was an interest in developing a less adversarial approach, concerned with identifying the key issues to be explored, or one where the duty is to the court. While costs are difficult to anticipate, the sense was that the High Court is overburdened and so the system neither serves applicants well nor gives value for money.

#### 4.5.3 Other aspects of early legal advice

One stakeholder pointed out that in other areas of law, the value of early legal advice was undisputed, and adversarial proceedings, in family disputes for example, are discouraged and there was something to be gained by taking a similar view with reference to asylum. While interviewees were generally highly positive towards early legal advice, this was not unreserved. Firstly there were concerns, scarcely surprisingly, about the quality of advice as currently delivered, both in matters of substance and style. "Bad representation could be worse than none at all" (IS4).

Generally people felt that the caseworker system<sup>70</sup>, as long as supervised by a lawyer, would be acceptable, though not everyone agreed. From the interviews it was clear that as well as advice about the inquisitorial process, the applicants also needed reassurance and "humanity". Asylum seekers recognised that they were very stressed and wary, so if they felt people were not helping them the relationship could easily become unworkable, but on the other hand, if people who gave support were recognised and deeply appreciated, and the loss of a good caseworker was very upsetting "when that person changed, I felt like all the sky was falling on my head" (IR1). As well as the quality of legal representation, which tended to be emphasised by asylum seekers, stakeholders raised the quality of presenting officers and need to 'raise the bar generally' with quality guidelines and compliance monitoring that would have to run alongside early legal advice. Too much emphasis was placed on outcomes by decision makers, rather than on process.

"We have best practice guidelines and we have file review processes. Are they perfect? No. Are we sufficiently active in pursuing them? Maybe, but we certainly could be better." (IS2)

There is also a need to continue to improve the quality of decision making at first instance and appeal. There was criticism of first decisions but reference was also made to problems with appeals. One stakeholder who had observed many hearings claimed, regarding the standard of proof, which in theory is lower than the balance of probabilities, that "adjudicators are very uncomfortable with doubt" (IS4) and applying the correct standard of proof.

Stakeholders felt that ELA should be structured so as to encourage greater interaction between legal representatives and ORAC as this had the potential to decrease tensions. Initial work at the Irish Refugee Council has found that ELA facilitates a more conducive interaction between lawyers and the applicants, and allows for the recording of statements rather than simply providing only documentary information to the decision maker<sup>71</sup>.

It was also acknowledged (as confirmed by the UK study) that some clients might not be able to fully disclose all aspects of their case immediately. That is, even if they have a good legal representative, there might be understandable reasons why they would be reluctant to tell them of certain details within a tight time frame, and sometimes a period of counselling is necessary. Medico-legal reports and documentation from the country of origin might also not be possible within an overly inflexible timeframe (again as confirmed by the UK study). There were indications that early legal advice should not be bound by a strict timetable, and that a front loaded system did not mean that it would necessarily be shorter. A distinction was made between length of time and efficiency – a longer process in itself does not necessarily translate into a more expensive, or a more inefficient process. "Efficiency is about a good quality claim" (IS1). That said, stakeholders felt that the process could be significantly shortened with attention to other mechanisms and that this was long overdue. Asylum seekers too complained about the length of the procedure, and pointed out the kinds of consequences it had for mental health for people in hostel accommodation, who are unable to work or use their abilities. It seems to have detrimental consequences even after status has been granted:

“Six years I was in limbo somehow, living with no hope, no future, and don’t know what’s happening to me tomorrow. I’ve got this status now, but I still feel lost. ... I feel a lot easier, less pressure, but the other side is, what am I going to do again, after six years? What’s my options? ...If you are in the middle of thirty then you won’t be a great football player.” (IR3)

There is the potential for enhancing public credibility and for considerable cost savings, particularly by introducing reforms to the arrangements for applications for subsidiary protection:

“I am conscious of some of the commentary recently in relation to people staying in Direct Provision for very long periods of time...I certainly think there’s room for improvements that could be made. That’s not to be... critical of the ORAC, it’s not to be critical of the RAT. It’s not necessarily to be critical of the Department but... for what is now a relatively small number of people... we have a relatively disparate immigration determination process.” (IS2)

The current arrangement means that, effectively, people who qualify for subsidiary protection, are denied the opportunity to have their application considered in a timely fashion after they have first been refused asylum<sup>72</sup>. The subsidiary protection claim may also be compromised because of the credibility findings of the refugee determination<sup>73</sup>. Early legal advice, combined with the possibility of applications for subsidiary protection being considered much earlier in a single protection process, could limit inappropriate asylum claims. Furthermore, as one stakeholder pointed out, the cost of early legal advice needs to be calculated

with awareness of the fact that at the appeal stage it takes lawyers time to get to know a case. There is a hidden saving, not only in the presumption that some cases would no longer go to appeal, but also in that lawyers would have a good knowledge of many cases that did go on to appeal and less preparation would be needed at the appeal stage, reducing delays and costs.

While there was general agreement that more resources should be put into earlier stages of the process and that it would be beneficial to cut appeals rates, there was some scepticism about whether early legal advice would, on its own, have this result. The problem is that early legal advice, though facilitating a more thorough and efficient determination, would not necessarily result in a higher success rate, and those who are refused have every incentive to appeal – “If there is a negative decision, the applicant would generally seek to appeal it” (IS1). This was supported by IR2 who made a successful claim first time round, and was clear that he would have appealed had he not succeeded. In this case, however, early legal advice might still have represented a cost saving as he felt that the foundation for the appeal was already apparent.

“Let’s say I was getting a negative outcome, that presentation, that laying down all the information, that advice I got would lay a solid foundation if I was going to the second stage, if I had to take my case to the next stage.” (IR2)

However it might in this regard be helpful to distinguish between different stages i.e. between RAT and judicial review. One stakeholder estimated that the most basic of judicial reviews was at a cost to the state of £20-40K “Think how much early legal advice you can provide with that kind of money” (IS4).

## 5. National Report: Estonia

### 5.1 Background

The Republic of Estonia is a Baltic State bordering Latvia and the Russian Federation. It also has a sea border that links to Sweden and Finland. The population of Estonia is estimated to be 1.3 million people. According to the Estonian government's Population and Statistics Department, of these just under 70% are 'ethnic' Estonians, and some 25% are 'ethnic' Russians<sup>74</sup>. Not all of the latter have Estonian citizenship, even if they were born in the state. As of 1 July 2012, 84.3% of Estonia's population held Estonian citizenship, 8.9% were citizens of other countries and 6.8% were of undetermined citizenship<sup>75</sup>. 'Russians' form the majority of the people living in Estonia who are stateless or who have indeterminate citizenship and issues arising from the post-independence citizenship of people associated with the former imperial power, with which Estonia shares a border, have dominated and shaped debates around immigration and citizenship. Relations with the former Soviet Union have therefore been important in shaping the nature of Estonian non-citizen communities, while Estonia's 2004 accession to the European Union (EU) has proved critical in its development of immigration and asylum.

The word "refugee" was first used in the public legislature only in 1997 when Estonia acceded to the UN Refugee Convention and adopted a national refugee law (the Refugees Act). Estonia ratified the 1951 Convention and 1967 Protocol in February 1997. At the same time the Parliament adopted the Refugees Act, which defined the legal status and grounds for residing on the territory of Estonia for persons applying for asylum. In 2006 a new law called Act on Granting International Protection to Aliens was adopted that incorporated all relevant EU Directives (2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2003/9/EC laying down minimum standards for the reception of asylum seekers, 2003/86/EC on the right to family reunification and 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted)<sup>76</sup>.

Between 1997 and 2012 approximately 360 asylum claims were made in Estonia. As of 1st October 2012, 39 of these claimants had been recognised as refugees and 24 persons had been given subsidiary protection. Most asylum applicants are from Georgia, Afghanistan, Russia and African countries including Somalia, Nigeria, Congo, Cameroon and Algeria. There are relatively few single women, though there are some families seeking asylum. The majority of applicants are single men and they usually enter overland from the Russian border.

The numbers of asylum seekers are significantly lower in Estonia than they are in the other countries in our study (UK and Ireland). It is notable that the number of asylum seekers in Estonia did not significantly increase after it joined the EU and became part of the Schengen zone. There are various reasons that might account for this, most particularly (for non-Russian speakers) language but also the likelihood that Estonia is regarded as a transit rather than a destination

country, to be passed through on the way to Sweden and other EU states which have larger migrant communities and labour markets. This means that often asylum seekers returned to Estonia under the Dublin II Regulation, opt to return to their country of origin rather than stay in Estonia and have their asylum application determined.

The number of discoveries of irregular residents has increased since 2004, when the then Citizenship and Migration Board established "migration inspectors," charged with examining the legal basis for stay and work in Estonia. Whereas in 2002, a total of 864 persons were found to be staying in the country illegally, in 2007 the figure was 1,464. Most of those discovered as illegal residents were from Russia.

### 5.2 Asylum Procedure

According to the UN Refugee Agency<sup>77</sup> most asylum claims are made at the overland Russian border, but some are made on arrival by air at the capital, Tallinn. For other in-country applications very often asylum seekers must travel to Tallinn depending on the entry point, in order to lodge an application. There is no information available on how they manage to obtain the resources to make this journey. There are anecdotal reports of border guards ignoring asylum claims. The European Commission against Racism and Intolerance (ECRI) reported in March 2010 that it has been "informed that high levels of xenophobic attitudes were noted among border guards during training and that overall, they lack training, experience and appropriate education" (ECRI 2010, p.39). Observers in the UN Human Rights Council (HRC) have criticized the conduct of border guards and their tendency to assume discretionary powers on asylum applications (ECRI 2006, p. 21; HRC 2008, p.17). The extent of this problem is unknown, though the recorded annual number of non-nationals turned back at the border is around 3,000. It seems that in such situations border guards can either refuse entry to asylum applicants (mainly Russians or persons with Russian visas), or detain them for trying to enter the country illegally<sup>78</sup>. In the latter case, if the asylum seeker is able to insist on lodging their application they usually remain in detention for 2 months and then if the Police and Border Guard Board applies for the extension of detention the Administrative Court decides whether to release the person to accommodation centre or extend the detention for another 2 months. The main legal instruments regulating this area in Estonia are the 1951 Refugee Convention and its 1967 Protocol, the Act on Granting International Protection to Aliens (AGIPA) and EU legislation. AGIPA § 361 lists the basis for detention<sup>4</sup> and says if these basis cease to exist the head of the detention centre shall immediately release the asylum seeker from the detention centre.

Asylum applications are made in person to the Estonian Police and Border Guard Board (PBGB). Asylum seekers have to complete a form that includes questions about the reasons for their claim, route taken, family background, background in country of origin etc. This is available in various languages including Arabic, English, French and Russian. Information gathered from the form is used for conducting interviews, case investigation and for preparing other documents including the case file. Whether the application is made at the border or in Tallinn, asylum

applications are determined by the Police and Border Guard Board's Proceeding Bureau Aliens Division which also conducts follow up interviews within two months of the application, with interpreters usually available if necessary. In the Estonian context ELA means advice given during the asylum process before the PBGB makes its decision.

It takes approximately six months to reach the first decision which is explained very thoroughly in a decision which is often 20 pages in length. Refugee status is given for a maximum of three years and subsidiary protection is given for one year, but both can be extended.

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### “The main reason for negative decisions is credibility and lack of evidence”

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The applicant has only ten days to appeal. They appeal to an Administrative Court – there are no special courts or tribunals in Estonia for dealing with asylum issues specifically and judges have no requirement to have expertise in refugee law. The appeals are open court sessions unless declared otherwise by the judge. The applicant is usually represented by a lawyer provided by the Estonian Human Rights Centre or appointed by the Administrative Court if the person has applied for free state legal aid and the court has accepted the application. The Administrative Court decides whether the PBGB has followed all the procedural rules. If the court finds that the PBGB has not followed all the procedural rules or ignored some evidence the application to be processed again. A further refusal would trigger another right of appeal. If the Administrative Court decides in favour of the PBGB, the applicant can appeal to the District Court. The highest court is the State Court which does not hear all cases but when it does the decision can take years.

An order to leave the territory accompanies the negative protection decision. As a general rule an appeal against a negative decision does not have an automatic suspensive effect and it is important to apply to the court to suspend the execution of the order to leave the country.

#### 5.2.1 Detention of asylum seekers

When someone makes an asylum application at the border, they can be detained for a maximum of 48 hours for initial administrative procedures (AGIPA 2006, §15). As a rule, asylum seekers are not detained in Estonia. There is only one detention centre in Estonia for detaining persons under immigration law, the pre-removal Harku Expulsion Centre. People with no legal grounds to stay in the Schengen area are placed there until their deportation. It is a closed prison like facility under the PBGB. It is possible for persons to submit an application for asylum while they are in the Harku Expulsion centre. The fact that a person's expulsion has been suspended does not release him/her from detention automatically but if the grounds for detention as listed in AGIPA § 361 cease to exist the applicant shall immediately be released from detention.

Those asylum applicants who do not lodge their claim in detention are not detained, but they stay in an open reception/accommodation centre in Vao, Väike Maarja Parish that is about 120 km from Tallinn the capital of

Estonia. This is a remote area, and there are no psychological or medical facilities available on site. The EHRC visits the centre approximately every two months. UNHCR has expressed concern at its isolation: “The isolated location ... has a negative impact on the integration of asylum seekers and refugees into the Estonian culture as the Centre is located in the territory mostly inhabited by the Russian speaking minority population”<sup>79</sup>. Those whose claims are successful are supposed to leave the reception centre, but in practice they often remain there for months because of the difficulty in finding suitable support and accommodation.

In both border and in country claims, detention is for a maximum of 48 hours, but it can be, and is, extended if there is difficulty in gathering initial information or the applicant does not demonstrate the required level of cooperation (AGIPA 2006, §15, 32) including co-operating with fingerprinting and providing identity documents. The extension of detention is ordered by the Administrative Court upon PBGB's request. Detention is now limited to a maximum of 18 months. Observers had previously drawn attention occasions of excessively long detention. In its 2010 ruling in the Mikolenko case, the ECHR found that Estonia had violated Article 5 (the right to liberty and security) of the European Convention on Human Rights in detaining the appellant for almost four years in an expulsion centre (Mikolenko v. Estonia 2010). In December 2004, the Estonian Office of the Legal Chancellor reported that some persons had been held in an expulsion centre for a year and a half (ECRI 2006, p.22).

#### 5.3 Legal Advice

Legal advice is given by an NGO, the Estonian Human Rights Centre (EHRC), an independent non-governmental public interest foundation based in Tallinn. Neither the EHRC or any other legal representative has the legal right to refer a person into the asylum process. The concept of submitting an application in person also means that one must have a personal belief that s/he needs protection. According to some, it is not a process where you need a lawyer to determine whether or not to apply for asylum and as the application must be submitted immediately after entering the country so the possibility of obtaining advice at this stage is remote. The Proceeding Bureau Aliens Division or the reception centre informs the Centre about new asylum seekers who have lodged their application, but the Centre is also proactive and regularly contacts the reception centre to find out about people that need assistance. There are also printed leaflets with EHRC contact details and office hours in the reception centre, at the border points, in the detention centre etc. This information is available in six languages.

There are no separate tribunals or barristers for asylum cases which fall under the domain of administrative courts. The Estonian Human Rights Centre (EHRC), is the principal provider of advice to asylum applicants in Estonia. It is important to note that it receives 25% of its income from the Ministry of Interior but 75% comes directly from the European Commission through the European Refugee Fund which is accessed by way of an annual application. The EHRC works closely with the UNHCR in Stockholm, which provides training and reviews cases upon request.

The Centre is heavily reliant on law students from partner universities working as interns for the EHRC Legal Clinic under the supervision of two legal experts. At any one time there are four to six students who spend unlimited hours on cases. Students cannot act as representatives in court but play an important role as legal advisers and representatives at first instance interviews and processes. They explain the asylum process to the applicant, provide up to date information about the proceedings, gather information about the country of origin, prepare and represent the applicants for their oral asylum interviews, explain the asylum decision and explain appeal procedures. They also make clear to asylum seekers what their rights are and the importance of not absconding. In the case of an appeal to the Administrative Court the student assists the lawyer who represents the applicant in the court and is a main communication link between the applicant and lawyer. EHRC sometimes helps asylum seekers to apply for free state legal aid. This is available for appeals but it is not automatic and is decided by the Administrative Court on the basis of an application form that is available only in Estonian.

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“One advantage of this system is that it is helping to build a cohort of newly trained specialist lawyers with experience in handling asylum matters”

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This is extremely important because the lawyers appointed via the state legal aid system very often lack experience, training and knowledge in refugee law. Good practices in Estonia include the detailed explanation of first instance decisions made by the PBGB to the applicant and the capacity building of law students. However in recent times there has been a lot of dependence on this non-state funded Legal Clinic, which has become the main source for advising and representing asylum seekers. But this model of provision is not secure and assumes relatively low numbers of applicants. At the moment EHRC can help all the applicants who have turned to them for legal advice and they do not have to select cases. However, as the number of applicants is rising each year, time limits will soon need to be set and criteria must be developed. At the moment there is no other organization giving legal assistance to applicants and very few applicants have the finances to hire an advocate to give them ELA. At this initial stage, free state legal aid is also not available.

#### 5.4 Interviews

There seemed to be some agreement between decision makers and other stakeholders interviewed that the asylum system in Estonia has not been severely tested, as numbers are small. Asylum is not a priority for government and is not subject to the kind of high intensity debate that it is in other countries. This leads to an approach that is concerned not to rock the boat, as the current arrangements are only sustainable because of the low numbers of applicants and because of the assistance provided by the European Refugee Fund. One case worker interviewed suggested that this was good, not simply because it saved money but because ‘the state cannot control the expenses and

activities so much’ (ECO2) though they acknowledged that this also posed a continuous risk to stability making it difficult to sustain. Several pointed out that this also made it logistically difficult to expand services: “We have eight border points in Estonia and only one NGO that provides legal assistance and has competence to do it. Have you got the capability? You need to react immediately and if there are many applicants in different border points...” (ES01). This comment reflected a more general resistance to the provision of ELA at the pre-application stage. Case owners were clear that lawyers should not advise applicants to seek asylum, it was felt to be important that this was their personal decision. There was felt to be no need for asylum seekers to have advice at the border ‘only preliminary procedures are done at the border point (finger printing, EURODAC) and the person fills in an asylum application’ (ECO3). It was striking that it was felt that filling in what was, until April 2014, a 16 page application was not something that a legal adviser could, or should, help with.

“It is very technical at this stage and the lawyer does not have a practical role. It would probably disturb the work of border guards if there would be a third person at the border” (ECO4).

In contrast, asylum seeker responses suggested that advice should be available as early as possible – ‘The authorities are waiting for you to make a mistake at the interview... I am a human and every human can make mistakes and not remember every date precisely’ (EAS3). When asked what an asylum seeker should do if she has no legal advice all advised that the first response should be ‘Get a lawyer and ask the lawyer’ (EAS1), ‘It is difficult on your own when you do not know the procedure and people and how to behave’ (EAS4).

There were three reasons decision makers gave in favour of early legal advice – understood as advice post-asylum application completion. Firstly they felt that the legal representative facilitated communication between asylum seekers and the authorities and helped with the explanation of the procedure to the applicant. This legal support encouraged asylum seekers to be more ‘cooperative’ and trusting of the system, (though both the stakeholder and the case owners felt that there was a serious problem with absconding and that this was not something that ELA would help with). Asylum seekers all thought that to have a trusted lawyer was critical to confidence in the asylum procedures. The presence of a legal representative for some meant that they also felt more confident in interviews as well as in the procedure more generally, with their presence making the experience less stressful – ‘Feeling more comfortable if my legal adviser in at the interview with me; I know my rights and what I should and should not do’ (EAS3). That asylum seekers had a level of confidence in the procedure is evident in the emphasis placed on telling the truth, cooperation and behaving in accordance with legal obligations<sup>80</sup>. It should be noted however that there seem to be considerable complaints about the asylum system more generally, with interviewees complaining about detention (‘I am detained and treated like a criminal ... why? Asylum seekers should not be handcuffed. I do not understand why I am here’ EAS1), poor reception conditions, not being able to work, isolation and so on. The level of complaints

suggests that without the legal support, confidence in the system would be negligible and is testament to the work of the legal clinic in this regard. For example, one applicant who had complained to the UNHCR and to the Estonian Ombudsman about the detention centre, attitudes of staff and so on, was nevertheless able to say ‘Yes, the lawyers know the laws and the system. My lawyer comes here very often to explain to me different things about my asylum procedure, court hearings and what’s going to happen. It gives me more confidence when my lawyer is with me during the asylum interview and in the court’ (EAS1).

Secondly it was felt that access to early legal advice, which was what the present system was understood as facilitating, was a necessary part of the current system because of the limited time available to lodge appeals. An appeal has to be submitted ten days after a refusal, and case owners felt that unless applicants had had the opportunity to have discussions with legal representatives beforehand, this was not enough time to prepare a case. This time pressure was exacerbated because of a lack of expertise in asylum amongst trained lawyers – ‘qualified lawyers who provide fee state legal aid have no interest or experience in this field’ (ECO2). While appeal cases might be handed to them, they need to be well briefed by legal advisers with a good knowledge of the asylum system. The stakeholder interviewed, who differed with case owners in that they felt that pre-application advice was ideal, but limited by practicality rather than unnecessary, went so far as to say that ELA would also limit appeals against negative decisions because people would be more likely to feel the decision was fair.

Thirdly, early legal advice was felt to facilitate the work of case owners because of the provision of country information. It was clear from responses that legal advisers play an important role in the obtaining of COI. Interestingly

it seems as if this is another way in which the ERF helps to sustain the Estonian asylum system, as caseowners did not have the time to source up to date country of origin information as there is no separate department to deal with that ‘It is good that legal advisers help the asylum seekers to gather country information that is presented to the case owners as well but we have to do our research and each time we have to start all over again... it takes time and it isn’t efficient’. Two of the three case owners mentioned this point. The role of legal representatives in obtaining evidence, including information about countries of origin, was also mentioned by asylum seekers. Interestingly they also mentioned that having access to a representative with language skills was important, and again case owners too complained about difficulties in obtaining and paying for interpreters. Access to professional interpreters was very difficult if not impossible.

Asylum seekers commented on the time that legal representatives made available to them (‘I trust my lawyer she has time to talk to me and I can tell her everything’ EAS3), and this should be borne in mind when considering implementation of early legal advice, as it is clearly important. Will ELA mean that advisers have more time available because the procedure starts earlier, or less time because it has to be stretched over a longer period?

Early legal advice is of importance in Estonia at the pre-screening stage because of the potential problem of refoulement arising from the discretionary power of border guards, and because of the difficulty in obtaining legal support once in detention. It is vital for a legal adviser to be present at the time of the completion of the application form.

## 6. Conclusions

### Early Legal Advice

Early legal advice can be a vital part of a high quality system of international protection and it should include, where possible, advice for people before they make an application. It should not be seen in isolation but as part of a fair and humane decision making process and therefore as an element of an integrated system. When in place, it increases the confidence of all parties in the decision making process and improves the quality of decisions. It is therefore beneficial for the decision maker as well as the asylum seeker. It can also assist in making the process less adversarial in that it enables all participants to see that they are collaborating in a process that leads to the determination of the need for protection. It does this by placing an emphasis upon the submission of evidence in advance of the first decision, including a detailed statement of claim, which enables the focus of the interview, and therefore the decision, to be upon the core and not peripheral issues. For the decision maker, the provision of a detailed and, where possible, a corroborated account, can reduce the possibility of doubt when deciding if the person is at risk of persecution or serious harm if returned to their country. It can also change what has been identified by many participants in this study as a 'culture of disbelief' into a culture of mutual respect.

However, early legal advice can be undermined by other elements of the asylum system. For example, the practice of dispersal - whereby an asylum seeker is moved away from the location of the legal advisor before the first decision - can make it difficult if not impossible to provide the support that is needed at this crucial stage. This was a particular problem if the provision of legal advice was connected to legal aid which may not continue and the loss of which may act as a disincentive for the legal advisor to engage with the case in the first place. In addition, detention and the use of a 'fast track' system for determining asylum claims undermined the effect of early legal advice as the time needed to properly engage in a case was not available or the restrictions imposed on access to those in detention militated against the quality of legal advice that could be given.

One of the factors which affected the suitability of early legal advice was the time allocated to the submission of a statement and supporting evidence and, in some cases, the delay in being able to obtain some evidence, such as medico-legal reports. It was found that the greater the flexibility in the process, the more likelihood there was of being able to ensure that all the necessary information was available before the decision maker at the initial, rather than simply at the appeal stage.

### The legal advisor and the asylum seeker

Trust and confidence between the legal advisor and the asylum seeker were seen an essential component of the process. The advice and support given by the legal advisor reduced the fear of unknown for the asylum seeker and ensured that they were an active participant in the process. For some, there was difficulty in disclosing crucial information and therefore to be able to have a relationship with a legal advisor over a period of time can assist in enabling a fuller account at an earlier stage.

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“The confidence of an asylum seeker in their legal advisor can also lead to greater confidence between the asylum seeker and the decision maker”

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But a factor which interfered with the development of a relationship between the legal advisor and the asylum seeker was dispersal as the process of starting again with a new advisor can lead to a negative view of the whole asylum process and make it more difficult to engage. Similarly, where an advisor was changed for other reasons, this also undermined the confidence of the asylum seeker and the benefit of early legal advice.

The involvement of a legal advisor throughout a case can also assist in the development of expertise of the advisor with such cases. It also makes them more efficient in their preparation of a case which can assist the efficiency of the process as a whole. In addition, if the case proceeded to appeal, the conclusion was that the legal advisor would have a greater knowledge of the case by that stage and this would reduce the amount of work to be done to present the appeal.

### Legal advice and legal information

It was stressed that legal advice per se was not the same as quality legal advice and the latter was more important than the availability of legal advice itself. In fact the view was expressed by some that bad legal advice was worse than no legal advice. Therefore unless the legal advisor was fully conversant with what needed to be determined in an asylum claim, then they did not assist the process. In addition, it was also found that there was a need to distinguish between legal advice and legal information. Information about the process, no matter how detailed and well intentioned, was not the same as a legal advisor using their particular expertise and knowledge to enable the asylum seeker to tell their story in their own words and advise and assist in supporting the application, including at critical stages such as the interview.

### Legal advice and legal aid

In the countries examined, early legal advice was not always supported by the availability of legal aid. Where it was, such as in the UK, the criteria and restrictions surrounding legal aid meant that it was not always possible to provide the type of early legal advice which was considered to be the most appropriate. The main factor which impacted upon the availability of legal aid was the cost. One of the issues raised in this report was whether or not the calculation of cost can be limited to the amount spent on legal aid. It was considered by some that the cost of detention and dispersal and the longer term costs associated with challenging a poorly presented and determined decision were also relevant in deciding if the system was fair and efficient.

### The benefit of early legal advice to the appeals process

This study has focused on early legal advice and therefore the determination of a claim for international protection at the first stage. It has not therefore directly sought to address the issue of early legal advice in the context of a challenge to an initial negative decision. However, comments were made which indicate the benefit that early legal advice may have even if the case proceeds on appeal. Some of these have been touched upon already. They include the availability of crucial evidence, including a statement of claim, and the focus upon the essential elements of a claim. In addition, there is also the benefit which arises from the greater knowledge of the case by the legal advisor and the confidence and ability of the asylum seeker to articulate their case on appeal because they have been encouraged to be a part of the process at an early stage.

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“Therefore, even if early legal advice does not reduce the number of appeals against a first stage refusal, it enables the appeals body to focus on what is central to the case and not to engage too much in speculation or be distracted by peripheral issues”

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The overall conclusion was that early legal advice had a positive impact on the outcome of a claim for international protection and that the benefit was for all those who had an interest in the proper determination of applications for refugee status and subsidiary protection.

## 7. Recommendations

### 7.1 State funding for early legal advice

#### Recommendation 1

**The provision of independent legal advice should be seen as part of a fair and efficient asylum process and therefore state resources need to be made available to ensure that qualified lawyers, experienced in the law and practice of international protection, are available to those seeking asylum at the earliest opportunity.**

Many EU member states are facing such pressure on public funds that legal advice, not just for foreign nationals, is under threat and in some cases has been withdrawn. The biggest barrier therefore to the introduction or development of early legal advice is the availability of funds. But, as many have also experienced, the more individuals are left to fend for themselves in complex legal systems, exacerbated by language and cultural problems in the case of asylum seekers, the longer the process becomes and that itself often ties up valuable state resources.

We started this report by looking at the context for the research and, in particular, addressed the issue of procedural justice and how those subjected to legal procedures can be encouraged or enabled to engage with the system. Part of that is ensuring that they have proper support from the outset which gives them the knowledge, confidence and trust to fully participate in the process and assist the decision maker to reach a decision that focuses on the main issues and is sustainable.

State funding does not necessarily need to be directly from state funds but it does need to be channelled through the state in order to ensure that it is seen as a priority and properly evaluated. There is an issue of quality about which the state also ought to be involved.

### 7.2 Ensuring the quality of early legal advice

#### Recommendation 2

**Adapt the evaluation mechanisms available in states for the control of public funds to independent lawyers and organisations to ensure that state funding for early legal advice for asylum seekers is going to and properly administered by qualified lawyers with an expertise in the field.**

Lawyers, by virtue of their independence, do not readily accept that the quality of their work should be open to scrutiny except, and this is sometimes lacking as well, by those for whom they act and, in line with their ethical professional standards, to their professional bodies. What has been seen in this research is that quality and consistency vary considerably and that impacts upon the asylum seeker and their ability to engage with the system but also upon the decision making process itself. In addition, whilst information about the process is invaluable, that cannot be substituted for legal advice given by a lawyer who has an interest and expertise in this particular area of law.

The systems available in states for ensuring the quality therefore need to be reviewed, including those set up for Continuing Professional Development, to increase the expertise of those who wish to receive public funds and provide advice, assistance and representation to asylum seekers.

Most states have systems in place for the evaluation of projects supported by public funds. The adaptation of those, to enable the provision of legal services to asylum seekers to be evaluated over a period of time, would assist in ensuring that those providing the advice are using public funds in a way that assists the asylum seeker to engage with the process and thereby assist the decision maker.

### 7.3 Encouraging partnership

#### Recommendation 3

**The establishment of a protocol between the asylum agencies, government departments, UNHCR and relevant bodies including NGOs which have operated in or have a direct interest in early legal advice to establish a best practice model for the operation of early legal advice and its application and evaluation.**

Some of the states which were examined in this research have experience of some form of early legal advice and therefore knowledge and expertise which should be drawn upon to set up and evaluate systems for the process of providing early legal advice for asylum seekers.

This research and report has concentrated upon the earlier stages of the decision making process and the role of legal advice and how asylum seekers are enabled to participate more fully in the process or see it as a barrier. In addition, there are others who have a direct interest in the quality of the initial decisions, including those who have responsibility for the determination of appeals or applications to the courts and those tasked with the responsibility of administering public funds. Professional bodies which oversee lawyers will also have an expertise and direct interest in the quality of the delivery of legal services which could inform this process.

The research for this report deliberately chose to obtain the views of those most directly affected by asylum decisions at the earliest stages including asylum seekers. The continued representation of their views is important and needs to be captured as part of the commitment to both partnership and quality.

### 7.4 Streamlining the procedure

#### Recommendation 4

**Ensure that asylum determination is seen as part of an integrated system and that detention and dispersal does not detract either from the need for asylum seekers to engage confidently with the process or undermine the need for fair and efficient determinations.**

It has been noted that the movement of asylum seekers within a country, for example, as part of a policy of dispersal or due to the use of detention, impacts severely upon their ability to engage with the process. It also affects the ability and indeed the willingness of lawyers to take on a case when they may not be able to offer a full service or fail to be paid for work done. Decisions therefore about whether to detain and when to disperse must be part of a streamlined service which recognises the need to protect the integrity of the decision making process. This is particularly pertinent in the UK, given the use of detention in any one of four countries, and dispersal far from original place of residence.

There is also a particular problem in Ireland due to Ireland being the only EU member state which has a split system in which asylum claims are considered and fully determined before the opportunity to apply for subsidiary protection is given. It now has in place a system for the provision of legal advice before interview and decision but that clearly comes after a full examination of the refugee claim and, as this report has shown, the damage is often done at that stage. For early legal advice to be effective, the decision making process needs to be able to address all applications for international protection at the earliest opportunity. That can only be done if they are in tandem with one another and not, as in the Irish case, several years apart.

## Appendices

### Appendix One

#### Asylum and legal advice in the EU - Emma Dunlop

##### 1. ECHR Cases

###### **Suso Musa v Malta**

(Application No. 42337/12), Judgment, 23 July 2013

The applicant, an alleged Sierra Leone national, entered Malta irregularly by boat in 2011. Upon arrival, the applicant was arrested and given a document containing both a Return Decision and a Removal Order<sup>81</sup>. The Return Decision stated that the applicant may apply for a period of voluntary departure, while, the lower half of the same document contained a Removal Order based on the rejection of the applicant's request for voluntary departure<sup>82</sup>. However, the applicant at no point made a request for a voluntary departure period. As the Court noted in the background to the case:

the rejection was [...] automatically presented to him with the information regarding the possibility of making such a request. The applicant was never informed of the considerations leading to this decision or given any opportunity to present information, documentation and/or other evidence in support of a possible request for a voluntary departure period<sup>83</sup>.

On the basis of the Return Decision and Removal Order, and in accordance with the Immigration Act, the applicant was detained. In December 2011, the applicant's asylum application was rejected by the Office of the Refugee Commissioner. In April 2012, the applicant's appeal against that decision was rejected by the Refugee Appeals Board.

The applicant alleged that his detention was in violation of Article 5§1 of the Convention, and that he had not had an effective means of challenging its lawfulness as provided for in Article 5§4<sup>84</sup>.

After determining that a violation of Article 5§4 had occurred, the Court drew attention to "the apparent lack of a proper system enabling immigration detainees to have access to effective legal aid":

"Indeed, the fact that the Government were able to supply only one example of a detainee under the Immigration Act making use of legal aid – despite the thousands of immigrants who have reached Maltese shores and have subsequently been detained in the past decade and who, as submitted by the Government, have no means of subsistence – appears merely to highlight this deficiency. The Court notes that, although the authorities are not obliged to provide free legal aid in the context of detention proceedings (see *Lebedev v. Russia*, no. 4493/04, § 84, 25 October 2007), the lack thereof, particularly where legal representation is required in the domestic context for the purposes of Article 5 § 4, may raise an issue as to the accessibility of such a remedy (see *Abdolkhani and Karimnia v. Turkey*, no. 30471/08, § 141, 22 September 2009, and *Amuur v. France*, 25 June 1996, § 53 in fine, Reports of Judgments and Decisions 1996-III).<sup>85</sup>"

###### **Aden Ahmed v Malta**

(Application No. 55352/12), Judgment, 23 July 2013

The applicant, a Somali national, entered Malta irregularly by boat in February 2009 and was subsequently detained. Her application for refugee status was rejected in May 2009 by the Office of the Refugee Commissioner. Shortly thereafter, the applicant escaped from detention and travelled irregularly to the Netherlands. On her arrival she sought asylum. On 11 February 2011, the applicant was returned to Malta under the Dublin II regulation and again placed in detention.

The applicant complained of a violation of Article 3 of the Convention in respect of her detention in Malta. The applicant further alleged that her detention was not in accordance with Article 5§1, and that she had not had an effective remedy as provided for in Article 5§4 to challenge the lawfulness of her detention<sup>86</sup>.

In the course of its consideration of the alleged violation of Article 3, the Court noted, in terms similar to those applied in *Suso Musa v Malta*:

The Court is struck by the apparent lack of a proper structured system enabling immigration detainees to have concrete access to effective legal aid. Indeed, the fact that the Government were able to supply only one example of an immigration detainee making use of legal aid (moreover, in different and more favourable conditions than those of boat people) despite the hundreds of immigrants who reach the Maltese shores each year and are subsequently detained, and who often have no means of subsistence, only highlights this deficiency<sup>87</sup>.

The Court found, *inter alia*, violations of Article 3 of the Convention in respect of the Applicant's detention, Article 5§1, and Article 5§4.

###### **Hirsi Jamaa and Others v Italy**

(Application No. 27765/09), Judgment, Grand Chamber, 23 February 2012

This case concerned the Italian authorities' transfer of eleven Somali nationals and thirteen Eritrean nationals to Libya after their interception 35 nautical miles south of Lampedusa. The applicants alleged that their transfer to Libya was in violation of Article 3 of the Convention and Article 4 of Protocol No. 4, and that they were denied a remedy consistent with Article 13 of the Convention. The Grand Chamber determined that there had been a violation of Article 3 of the Convention on account of the fact that the applicants were exposed to the risk of being subjected to ill-treatment in Libya. The Grand Chamber also found violations of Article 4 of Protocol No. 4, and Article 13 taken together with Article 3 of the Convention and Article 4 of Protocol No. 4.

In his Concurring Opinion, Judge Pinto de Albuquerque remarked:

"For the refugee status determination procedure to be individual, fair and effective, it must necessarily have at least the following features: (1) a reasonable time-limit in which to submit the asylum application, (2) a personal interview with the asylum applicant before the decision

on the application is taken, (3) the opportunity to submit evidence in support of the application and dispute evidence submitted against the application, (4) a fully reasoned written decision by an independent first-instance body, based on the asylum seeker's individual situation and not solely on a general evaluation of his or her country of origin, the asylum seeker having the right to rebut the presumption of safety of any country in his or her regard, (5) a reasonable time-limit in which to appeal against the decision and automatic suspensive effect of an appeal against the first-instance decision, (6) full and speedy judicial review of both the factual and legal grounds of the first-instance decision, and (7) free legal advice and representation and, if necessary, free linguistic assistance at both first and second instance, and unrestricted access to the UNCHR or any other organisation working on behalf of the UNHCR.

These procedural guarantees apply to all asylum seekers regardless of their legal and factual status, as has been recognized in international refugee law, universal human rights law and regional human rights law.” (footnotes omitted)<sup>88</sup>

### **M.S.S v Belgium and Greece**

(Application No. 30696/09) Judgment, Grand Chamber, 21 January 2011

M.S.S, an Afghan national, entered the European Union through Greece in 2008. The applicant was detained for one week in Greece and then issued with an order to leave the country. He at no point applied for asylum in Greece. The applicant subsequently transited through France and arrived in Belgium, where he applied for asylum. Upon confirming that the applicant had been registered in Greece, the Belgian Aliens Office submitted a request to the Greek authorities to take carriage of his asylum application. In April 2009, UNHCR sent a letter to the Belgian Minister for Migration and Asylum Policy criticising the deficiencies of the asylum procedure and conditions of reception of asylum seekers in Greece, and recommending the suspension of transfers to Greece. In May 2009 the Aliens Office decided not to allow the applicant to stay in Belgium, and issued an order directing him to leave the country on the grounds that Greece, not Belgium, was responsible for examining his asylum application<sup>89</sup>. The applicant was transferred to Greece in June 2009. The applicant alleged that his expulsion to Greece by Belgian authorities was in violation of Articles 2 and 3 of the Convention. He further submitted that he had been subjected to treatment in Greece that was in violation of Article 3, and complained of a lack of remedy under Article 13 which would enable him to have his complaints examined.

In the course of its judgment, the Grand Chamber noted that problems accessing legal aid were one of the hindrances facing asylum seekers attempting to navigate the asylum procedure in Greece. In particular, the Grand Chamber found that the first interview with asylum seekers in Greece “is often held in a language the asylum seeker does not understand”, and that “in the absence of any legal aid [applicants for asylum] cannot afford a legal adviser and are very seldom accompanied by a lawyer<sup>90</sup>.” The Grand Chamber further noted that:

“[a]s to access to the [European Court of Human Rights], although any asylum seeker can, in theory, lodge an application with the Court [...] it appears that the shortcomings mentioned above are so considerable that access to the Court for asylum seekers is almost impossible. This would explain the small number of applications the Court receives from asylum seekers and the small number of requests it receives for interim measures against Greece<sup>91</sup>.”

The Grand Chamber referred to reports to the effect that the legal aid system for lodging an appeal with the Supreme Administrative Court in Greece was deficient<sup>92</sup>, and noted as a shortcoming in access to the asylum procedure that “lack of legal aid effectively depriving the asylum seekers of legal counsel<sup>93</sup>”.

Discussing “whether, as the Government have alleged, an application to the Supreme Administrative Court for judicial review... may be considered as a safety net protecting him against arbitrary refoulement<sup>94</sup>”, the Grand Chamber noted:

“although the applicant clearly lacks the wherewithal to pay a lawyer, he has received no information concerning access to organisations which offer legal advice and guidance. Added to that is the shortage of lawyers on the list drawn up for the legal aid system ... which renders the system ineffective in practice. Contrary to the Government’s submissions, the Court considers that this situation may also be an obstacle hindering access to the remedy and falls within the scope of Article 13, particularly where asylum seekers are concerned<sup>95</sup>.”

The Grand Chamber found, inter alia, a violation by Greece of Article 13 in conjunction with Article 3 of the Convention because of the deficiencies in the asylum procedure followed in the applicant’s case, and the risk of his expulsion to Afghanistan without any serious examination of the merits of his asylum application and without any access to an effective remedy.

### **Abdolkhani and Karimnia v Turkey**

(Application No. 30471/08), Judgment, 22 September 2009

This case, brought by two Iranian refugees, addressed inter alia legal protections under Article 5§4 of the Convention. Discussing the arrest of the two applicants upon re-entering Turkish territory after a previous deportation, the Court noted:

“the applicants were not given access to legal assistance when they were arrested and charged, despite the fact that they explicitly requested a lawyer. Their inability to have access to a lawyer continued following their placement in the police headquarters in Hasköy<sup>96</sup>.”

In assessing the applicants’ claim that they were not able to challenge the lawfulness of their detention, the Court noted that the applicants did not have access to a remedy through which they could obtain judicial review, as they were not informed of the reason for the deprivation of their liberty and were denied access to legal assistance during their detention<sup>97</sup>. Determining that the Turkish legal system did not provide the applicants with a remedy whereby they could obtain judicial review of the lawfulness of their detention, the Court found a violation of Article 5§4<sup>98</sup>.

## 2. CJEU Cases

An overview of *C-279/09 DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH* (22 December 2010) is not provided here, given Elspeth Guild's extensive discussion in her paper.

We are not aware of any cases to date that directly address the legal representation guarantees in Article 15 of Council Directive 2005/85/EC.

## 3. Council Directive 2005/85/EC and Directive 2013/32/EU (Recast Directive)

### A. Council Directive 2005/85/EC

Council Directive 2005/85/EC of 1 December 2005 addresses minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>99</sup>. This Directive has been repealed with effect from 21 July 2015 by Directive 2013/32/EU of 26 June 2013<sup>100</sup>.

The key provisions of Council Directive 2005/85 as regards legal assistance are outlined below.

#### Preamble, Paragraph 13

[T]he procedure in which an application for asylum is examined should normally provide an applicant at least with: [...] the opportunity to consult a legal adviser or other counsellor, and the right to be informed of his/her legal position at decisive moments in the course of the procedure, in a language he/she can reasonably be supposed to understand.

#### Article 15

Right to legal assistance and representation

1. Member States shall allow applicants for asylum the opportunity, at their own cost, to consult in an effective manner a legal adviser or other counsellor, admitted or permitted as such under national law, on matters relating to their asylum applications.

2. In the event of a negative decision by a determining authority, Member States shall ensure that free legal assistance and/or representation be granted on request, subject to the provisions of paragraph 3.

3. Member States may provide in their national legislation that free legal assistance and/or representation is granted:

(a) only for procedures before a court or tribunal in accordance with Chapter V and not for any onward appeals or reviews provided for under national law, including a rehearing of an appeal following an onward appeal or review; and/or

(b) only to those who lack sufficient resources; and/or

(c) only to legal advisers or other counsellors specifically designated by national law to assist and/or represent applicants for asylum; and/or

(d) only if the appeal or review is likely to succeed.

Member States shall ensure that legal assistance and/or representation granted under point (d) is not arbitrarily restricted.

4. Rules concerning the modalities for filing and processing requests for legal assistance and/or representation may be provided by Member States.

5. Member States may also:

(a) impose monetary and/or time-limits on the provision of free legal assistance and/or representation, provided that such limits do not arbitrarily restrict access to legal assistance and/or representation;

(b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

6. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

### B. Directive 2013/32/EU (Recast Directive)

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing of international protection ("Recast Directive") repeals Directive 2005/85/EC with effect from 21 July 2015<sup>101</sup>. Member States are required to bring into force the laws, regulations and administrative provisions necessary to comply with the Recast Directive on a two-tiered track<sup>102</sup>.

Article 52 of the Recast Directive provides that applications lodged before 20 July 2015 and procedures for the withdrawal of refugee status started before that date shall be governed by the laws, regulations and administrative provisions adopted pursuant to Directive 2005/85/EC. Member States are to apply the laws, regulations and administrative provisions referred to in Article 51(1) of the Recast Directive to applications for international protection lodged and procedures for the withdrawal of international protection started after 20 July 2015 or an earlier date. The laws, regulations and administrative procedures referred to in Article 51(2) of the Recast Directive shall be applied to applications for international protection lodged after 20 July 2018 or an earlier date.

The key provisions of the Recast Directive as regards legal assistance are outlined below.

#### Preamble, Paragraph 25

[T]he procedure in which an application for international protection is examined should normally provide an applicant at least with: [...] the opportunity to consult a legal adviser or other counsellor, the right to be informed of his or her legal position at decisive moments in the course of the procedure, in a language which he or she understands or its reasonably supposed to understand; and, in the case of a negative decision, the right to an effective remedy before a court or a tribunal.

#### Article 12

Guarantees for Applicants

1. With respect to the procedures provided for in Chapter III, Member States shall ensure that all applicants enjoy the following guarantees:

(c) they shall not be denied the opportunity to communicate with UNHCR or with any other organisation providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned;

#### Article 19

Provision of legal and procedural information free of charge in procedures at first instance

1. In the procedures at first instance provided for in Chapter III, Member States shall ensure that, on request, applicants are provided with legal and procedural information free of charge, including, at least, information on the procedure in the light of the applicant's particular circumstances. In the event of a negative decision on an application at first instance, Member States shall also, on request, provide applicants with information – in addition to that given in accordance with Article 11(2) and Article 12(1)(f) – in order to clarify the reasons for such decision and explain how it can be challenged.
2. The provision of legal and procedural information free of charge shall be subject to the conditions laid down in Article 21.

#### Article 20

Free legal assistance and representation in appeals procedures

1. Member States shall ensure that free legal assistance and representation is granted on request in the appeals procedures provided for in Chapter V. It shall include, at least, the preparation of the required procedural documents and participation in the hearing before a court or tribunal of first instance on behalf of the applicant.
2. Member States may also provide free legal assistance and/or representation in the procedures at first instance provided for in Chapter III. In such cases, Article 19 shall not apply.
3. Member States may provide that free legal assistance and representation not be granted where the applicant's appeal is considered by a court or tribunal or other competent authority to have no tangible prospect of success.

Where a decision not to grant free legal assistance and representation pursuant to this paragraph is taken by an authority which is not a court or tribunal, Member States shall ensure that the applicant has the right to an effective remedy before a court or tribunal against that decision.

In the application of this paragraph, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.

4. Free legal assistance and representation shall be subject to the conditions laid down in Article 21.

#### Article 21

Conditions for the provision of legal and procedural information free of charge and free legal assistance and representation

1. Member States may provide that the legal and procedural information free of charge referred to in Article 19 is provided by non-governmental organisations, or by professionals from government authorities or from specialised services of the State.

The free legal assistance and representation referred to in Article 20 shall be provided by such persons as admitted or permitted under national law.

2. Member States may provide that legal and procedural information free of charge referred to in Article 19 and free legal assistance and representation referred to in Article 20 are granted:

- (a) only to those who lack sufficient resources; and/or
- (b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants.

Member States may provide that the free legal assistance and representation referred to in Article 20 is granted only for appeals procedures in accordance with Chapter V before a court or tribunal of first instance and not for any further appeals or reviews provide for under national law, including rehearings or reviews of appeals.

Member States may also provide that the free legal assistance and representation referred to in

Article 20 is not granted to applicants who are no longer present on their territory in application of Article 41(2)(c).

3. Member States may lay down rules concerning the modalities for filing and processing requests for legal and procedural information free of charge under Article 19 and for free legal assistance and representation under Article 20.

4. Member States may also:

- (a) impose monetary and/or time limits on the provision of legal and procedural information free of charge referred to in Article 19 and on the provision of free legal assistance and representation referred to in Article 20, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation;
- (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favourable than the treatment generally accorded to their nationals in matters pertaining to legal assistance.

5. Member States may demand to be reimbursed wholly or partially for any costs granted if and when the applicant's financial situation has improved considerably or if the decision to grant such costs was taken on the basis of false information supplied by the applicant.

#### Article 22

Right to legal assistance and representation at all stages of the procedure

1. Applicants shall be given the opportunity to consult, at their own cost, in an effective manner a legal adviser or other counsellor, admitted or permitted as such

under national law, on matters relating to their applications for international protection, at all stages of the procedure, including following a negative decision.

2. Member States may allow non-governmental organisations to provide legal assistance and/or representation to applicants in the procedures provided for in Chamber III and Chapter V in accordance with national law.

### Article 23

Scope of legal assistance and representation

1. Member States shall ensure that a legal adviser or other counsellor admitted or permitted as such under national law, who assists or represents an applicant under the terms of national law, shall enjoy access to the information in the applicant's file upon the basis of which a decision is or will be made.

Member States may make an exception where disclosure of information or sources would jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications for international protection by the competent authorities of the Member States or the international relations of the Member States would be compromised. In such cases, Member States shall:

- make access to such information or sources available to the authorities referred to in Chapter V; and
- establish in national law procedures guaranteeing that the applicant's rights of defence are respected.

In respect of point (b), Member States may, in particular, grant access to such information or sources to a legal adviser or other counsellor who has undergone a security check, insofar as the information is relevant for examining the application or for taking a decision to withdraw international protection.

2. Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant, in accordance with Article 10(4) and Article 18(2)(b) and (c) of Directive 2013/33/EU.

3. Member States shall allow an applicant to bring to the personal interview a legal adviser or other counsellor admitted or permitted as such under national law.

Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

4. Without prejudice to this Article or to Article 25(1)(b), Member States may provide rules covering the presence of legal advisers or other counsellors at all interviews in the procedure.

Member States may require the presence of the applicant at the personal interview, even if he or she is represented under the terms of national law by a legal adviser or counsellor, and may require the applicant to respond in person to the questions asked.

Without prejudice to Article 25(1)(b), the absence of a legal adviser or other counsellor shall not prevent the competent authority from conducting a personal interview with the applicant.

## 4. UNHCR Refugee Status Determination Standards

### A. UNHCR Procedural Standards

UNHCR's *Procedural Standards for Refugee Status Determination under UNHCR's Mandate* ("Procedural Standards") establish transparent guidelines for UNHCR officers who conduct mandate RSD<sup>103</sup>. The Procedural Standards are non-binding<sup>104</sup>. UNHCR has been criticized for not acting in accordance with the Procedural Standards<sup>105</sup>.

The Procedural Standards note that "applicants may be accompanied by a legal representative during the RSD interview" (4.3.3), and lay out minimum standards for legal representatives (4.3.3).

### B. UNHCR Handbook

UNHCR has also published the *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* ("Handbook")<sup>106</sup>. The Handbook is intended to guide government officials, judges, practitioners, as well as UNHCR staff in applying the refugee definition and conducting status determinations. The Handbook refers specifically to the importance of legal representation for women and children. It notes in particular that "in order to ensure that gender-related claims, of women in particular, are properly considered" in the RSD process, it "should be borne in mind" that "[i]t is essential that women are given information about the status determination process, access to it, as well as legal advice, in a manner and language that she understands"<sup>107</sup>. The Handbook notes that children who are the principal applicants in an asylum procedure are also entitled to a legal representative<sup>108</sup>.

## 5. Standards relating to Unaccompanied Minors

A number of instruments address the question of legal advice in the case of unaccompanied minors.

### A. ExCom Conclusion on Children at Risk No. 107

The ExCom *Conclusion on Children at Risk* No 107 (LVIII), dated 5 October 2007, recommends that States, UNHCR and other relevant agencies take steps to ensure protection, including the development of "child and gender-sensitive national asylum procedures, where feasible, and UNHCR status determination procedures with adapted procedures including relevant evidentiary requirements, prioritized processing of unaccompanied and separated child asylum-seekers, [and] qualified free legal or other representation for unaccompanied and separated children..."<sup>109</sup>.

### B. UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum

The UNHCR *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*<sup>110</sup> address procedures relating to unaccompanied children at various stages of the asylum process. The Guidelines note

that upon arrival, “a child should be provided with a legal representative”, and that “[t]he claims of unaccompanied children should be examined in a manner which is both fair and age-appropriate”<sup>111</sup>. The Guidelines also note that an asylum seeking child should be represented by an adult who is familiar with the child’s background, and that access should also be given to a qualified legal representative<sup>112</sup>. This latter principle “should apply to all children, including those between sixteen and eighteen, even where application for refugee status is processed under the normal procedures for adults”<sup>113</sup>.

### C. UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers

The UNHCR *Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers*<sup>114</sup> specifically address the issue of unaccompanied minors. Guideline 6, which addresses the detention of persons under the age of 18 years, notes that a legal guardian or adviser should be appointed for unaccompanied minors, and that children who are detained benefit from the same minimum procedural guarantees as adults, as outlined in Guideline 5. Guideline 5 clarifies that the minimum procedural guarantees afforded to asylum-seekers in detention include the being informed of the right to legal counsel, and that “where possible”, asylum-seekers “should receive free legal assistance”.

### D. UNHCR Handbook

The UNHCR *Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*<sup>115</sup> provides that children who are the principal applicants in an asylum procedure are entitled to a legal representative<sup>116</sup>.

### E. ICRC Inter-agency Guiding Principles on Unaccompanied and Separated Children

The ICRC Inter-agency Guiding Principles on Unaccompanied and Separated Children provide, under the heading “Refugee Status Determination”, that when assessing an individual child’s claim for refugee status, aspects that should be taken into account include: “the appointment of a legal representative as well as a guardian to promote a decision that will be in the child’s best interests”<sup>117</sup>.

### F. Committee on the Rights of the Child, General Comment No 6

The Committee on the Rights of the Child General Comment No. 6, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin”, notes that “in cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation<sup>118</sup>.” The unaccompanied or separated child should also, “in all cases, be given access, free of charge, to a qualified legal representative, including where the application for refugee status is processed under the normal procedures for adults<sup>119</sup>.”

### G. EC Directive 2005/85/EC

Article 17 of EC Directive 2005/85/EC of 1 December 2005 outlines guarantees for unaccompanied minors. Member States shall “as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application (Article 17(1)(a)). Member States shall also “ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview” (Art 17(1)(b)). Member States may refrain from appointing a representative, *inter alia*, if the minor “can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law” (17(2)(b)).

### H. Recast Directive

Article 25 of Directive 2013/32/EU of 26 June 2013 addresses the issue of unaccompanied minors. As regards an unaccompanied minor’s personal interview, Article 25(1)(b) notes that “Member States shall ensure that a representative and/or legal adviser or other counsellor admitted or permitted as such under national law” is present at the personal interview, and has an opportunity “to ask questions or make comments, within the framework set by the person who conducts the interview”. Article 25(4) provides that unaccompanied minors and their representatives shall be provided, free of charge, “with legal and procedural information as referred to in Article 19 and also in the procedures for the withdrawal of international protection provided for in Chapter IV”.

## Appendix Two

### Findings from UK ELAP - Patrick Jones

#### Analysis included:

83 Case-reviews following substantive interview made up of 51 applicants in ELAP cases and 32 applicants in non ELAP cases. This also covered interviews with 49 legal reps and 51 case-owners in ELAP cases.

#### Also:

- 1-1 interviews with 10 asylum applicants
- 1-1 interviews with 5 IJs and 1 informal focus group with 9 IJs
- 1-1 interviews with other stakeholders including LSC and NGOs

#### Experience of applicants

A higher proportion of ELAP applicants felt they were able to explain the reasons for their claim compared to non-ELAP applicants. This was linked to the availability of free early legal advice and the preparation of a witness statement in ELAP cases, suggesting that applicants felt better prepared as a result. The ELAP process also enabled more comprehensive involvement between applicants and their legal representatives earlier in the process. Improved relationships between case owners and applicants occurred when the applicant reported feeling better prepared for their substantive interview as a result of earlier legal advice. Overall, applicants welcomed the involvement of legal representatives within the substantive interview because they gained confidence and familiarity. There was a higher percentage of ELAP applicants that found having the legal rep present was helpful compared to non ELAP applicants who thought it might be helpful. Legal representatives also welcomed being involved.

The evaluation of ELAP did identify a significant increase in the rate of granting Discretionary Leave as well as a reduction in the refusal rate. Although no statistically significant relationship was found between the number of initial case refusals and number of appeals, fewer ELAP applicants (compared to non ELAP applicants) appealed following a refusal to grant asylum. The rate of refusal decisions associated with ELAP has led to a lower rate of appeals against intake, and therefore a lower overall volume of appeals. This could indicate that early legal advice can contribute to a reduction in the appeal rate against refusals. The lower volume of overall appeals linked to the reduced refusal rate was also associated with a lower volume of funded appeals. Reasons include the applicant feeling that they had had a fairer hearing and/or as a result of advice from their Legal Representative. However the evaluation did not find that ELAP led

to fewer applicants appealing refusals of initial decisions, although there was a slight reduction in allowed appeals.

The evaluation found confidence in initial asylum decisions appeared higher in ELAP cases. Applicants, case-owners and legal reps all suggested that the ELAP process increased confidence levels in initial decisions and enabled better quality decisions to be made (particularly for more complex cases). Specifically, 57% of case owners believed that ELAP had improved their confidence in making a decision and enabled more sustainable decisions to be made, particularly for more complex cases. The UKBA's quality audit process also found that a greater proportion of ELAP cases included or appropriately considered evidence submitted in support of the claim. The EAP evaluation (the precursor to ELAP) also noted that case owners and legal representatives identified applicants as being able to put forward their case more fully as a result of being involved throughout the whole process.

#### Experience of legal representatives and case owners

ELAP increased confidence in the system for legal representatives. Legal representatives reported greater levels of confidence in decision making through ELAP and overall, felt that ELAP increased openness and transparency of decision making. Legal representatives (and case owners) reported that the main reasons for this increased confidence were as a result of their ongoing involvement in the case, the opportunity to communicate with case owners, and the ability to undertake further work if the case owner indicated they were initially minded to refuse. Legal Representatives particularly welcomed the opportunity to collaborate with case owners and referred to cultural change based on greater joint working and familiarity. This provided greater opportunities for collaborative working and the ELAP process certainly seemed to improve working relationships between legal representatives and case owners (with an increase from 21% in the baseline survey to 78% in the February 2012 survey of legal representatives reporting positive relationships with case owners).

The post interview meeting was well-received by the majority of case owners and legal representatives. The post interview stage of ELAP provided an opportunity for case owners and legal representatives to discuss the case and the initial decision and facilitated greater collaborative working. 78 per cent (38) of case owners believed that they had been/would be helpful for discussing the case. This rose to 98 per cent (47) for legal representatives, who placed most value in the post-interview meetings. While the ELAP evaluation did also highlight this as a particular concern raised

by case owners, in that the potential benefits of the pre-interview stage of ELAP had not been maximised, it should also be seen as a positive and necessary element of the ELAP process because it enables the legal representative to respond to the initial thoughts of the case owner following the substantive interview and to iron out any remaining issues pre decision. In this respect, the use of the post interview meeting to clarify issues and obtain documentation prior to decision was seen as positive by both legal representatives and case owners. Legal representatives also commented they were more likely to understand decisions, assisting them in deciding whether to grant funding for appeals or not.

Legal representatives and case owners also suggest that earlier legal advice, better communication and opportunities for contact also improved working relationships with applicants.

Legal representatives and case owners believed that funded appeals should reduce as a result of early legal advice. This is because they are involved throughout the whole case and therefore are more able to produce all evidence and arguments prior to the decision. However both also suggested that there was a need for more evidence to be front loaded, particularly at the pre-substantive interview stage which the evaluation found to be one of the weakest elements of the ELAP process. The evaluation suggested the need for clearer communication between legal representatives and applicants prior to the substantive interview, indicating that case owners were somewhat negative regarding the lack of evidence and discussion pre-interview, stating that it reduced the potential for shorter more focused interviews and increased decision making time after the substantive interview. Legal representatives (68%, 31 respondents) found the pre interview stage more useful than case owners (46%, 21 respondents), but still found the post interview stage more useful as it provided an opportunity to respond to initial thoughts of the case owner, including producing additional evidence to counter any identified reasons case owners might be looking to use to refuse applicants. The evaluation suggested the need for clearer communication between legal representatives and applicants pre interview and suggested encouraging witness statements to be completed within the ELAP timescale (at least 72 hours before the substantive asylum interview) to maximise the potential for more preparatory benefits to be realised. The LSC's file reviews found that where legal representatives did not front load evidence they often resorted to granting funding for an appeal to argue issues that could have been explored more fully earlier in the case, providing further evidence of the benefits of front-loading evidence and the need for the LSC

to encourage a funding regime that front-loads evidence. The evaluation also acknowledged that the pre interview stage might realise greater benefits in more complex cases, (where straightforward cases were identified as those where grants would be the norm based on clear country specific guidance), and therefore the need to build some flexibility into the system.

### The importance of witness statements

Applicants, their legal representatives, case owners and wider stakeholders identified the benefits of witness statements as a key success of the process. The results of an online survey conducted as part of the evaluation process found that in 96% of cases (160 cases) that were granted public funding, case owners indicated that witness statements assisted their preparation for the substantive asylum interview, while non ELAP case owners also referred to the potential benefits that a witness statement would have provided. On a scale of 1–5, with 1 being the most beneficial, 66 per cent (105) of legal representatives and 65 per cent (89) of case owners ranked witness statements number 1 in terms of their benefits. The UKBA's own internal quality audit review of ELAP cases also referred to witness statements as the most beneficial aspect of the process. Witness statements added credibility to the asylum system, ensuring a minimum level of information/evidence was available at the earliest opportunity for all cases. The evaluation of the precursor pilot (EAP) to ELAP also reported that witness statements helped case owners to make well-reasoned decisions.

Most case owners and legal representatives interviewed through 1-1 interviews and focus groups commented that a good quality witness statement contributed to:

- a more focused substantive interview;
- the availability of more evidence; and
- a shorter decision time.

### The substantive interview

Feedback obtained through the evaluation process indicated that credibility was improved by having the legal representative present at the substantive interview.

In the online survey, case owners reported that for 79 per cent (81 cases) they found legal representative's questions to be helpful.

## Endnotes

<sup>1</sup> Article 1A of the UN Convention on Refugees defines a refugee. <http://www.unhcr.org/3b66c2aa10.html>

<sup>2</sup> COUNCIL DIRECTIVE 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. “Serious harm” is defined in Regulation 15 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:en:HTML>

<sup>3</sup> In the UK Early Legal Advice Project, advisers were required to have accreditation at Level 2 (Senior Adviser) of the Immigration and Asylum Accreditation Scheme administered by Central Law Training on behalf of the Law Society

<sup>4</sup> Interviews were concluded in May 2013 and therefore reflect opinions and experience at that time.

<sup>5</sup> Braithwaite V. (2010) “Compliance with Migration Law” a Report for the Department of Immigration and Citizenship of Australia, July 2010. Available from [http://www.immi.gov.au/media/publications/research/\\_pdf/compliance-migration-law.pdf](http://www.immi.gov.au/media/publications/research/_pdf/compliance-migration-law.pdf)

<sup>6</sup> Curtis, Tyler, Murphy (2009) Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?

<sup>7</sup> Murphy, Tyler, Curtis (2009) Nurturing regulatory compliance: Is procedural justice effective when people question the legitimacy of the law?

<sup>8</sup> Morris, H. and Salomons, N. (2013) Difficult Decisions: a review of UNHCR’s engagement with Assisted Voluntary Return Programmes available from <http://www.unhcr.org/51f924209.html>

<sup>9</sup> See [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm)

<sup>10</sup> Regulation (EU) No 604/2013 Of The European Parliament And Of The Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

<sup>11</sup> Dublin II Regulation, Lives on Hold, A Comparative Report

<sup>12</sup> Meaning that the transfer cannot take place until the appeal has been determined and only if the decision to transfer still stands after the appeal has been concluded

<sup>13</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0465:FIN:EN:PDF>

<sup>14</sup> However, as will be seen from section 4 on Ireland, in practice legal advice is not given until the appeal stage in Ireland

<sup>15</sup> Ireland failed to transpose the directive into Irish law within the required two years and was therefore referred by the European Commission to the European Court of Justice leading to Ireland finally introducing regulations transposing the directive in 2011.

<sup>16</sup> The Early Legal Advice Pilot and the subsequent Project are examples of a country at least experimenting with measures which were more favourable than those under CEAS.

<sup>17</sup> Guild E (2011) The Asylum Seeker’s Right to Free Legal Assistance and/or Representation in EU Law paper for the 9th International Association of Refugee Law Judges (IARLJ) World Conference, Bled, Slovenia 9-11th September

<sup>18</sup> <http://fra.europa.eu/en/project/2012/asylum-seeker-perspective-access-information-and-effective-remedies>

<sup>19</sup> FRA was established by Council Regulation (EC) No 168/2007 of 15 February 2007 as the successor to the European Monitoring Centre on Racism and Xenophobia (EUMC).

<sup>20</sup> FRA report

<sup>21</sup> ECRE/ELENA Report on ‘Survey on Legal Aid for Asylum Seekers in Europe,’ 2010.

<sup>22</sup> Edwards, A (2011) Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants

<sup>23</sup> May 2014: Court of Justice of the EU has opined, according to Advocate General Bot, a Member State may not, except in exceptional circumstances, rely on the lack of specialised centres in part of its territory in order to detain in prison a third-country national awaiting his removal, even with the consent of that third-country national – Joined Cases C-473/13 and C-514/13 and in Case C-474/13

<sup>24</sup> Immigration Removal Centres were previously known as Immigration Detention Centres. The name was changed to emphasise that detention is used as a means to removal although the length of detention can vary and removal may not be the final outcome.

<sup>25</sup> Collectively the network of Immigration Removal and holding centres (which are used to accommodate people for no more than seven days) are known as the ‘Detention Estate’.

<sup>26</sup> <http://www.biduk.org/162/bid-research-reports/bid-research-reports.html>

<sup>27</sup> Back to Basics: The Right to Liberty and Security of Person and ‘Alternatives to Detention’ of Refugees, Asylum-Seekers, Stateless Persons and Other Migrants

<sup>28</sup> Institute for Race Relations <http://www.irr.org.uk/research/statistics/asylum/>

<sup>29</sup> Source for this section: ECRE Report – Survey on Legal Aid across Europe, October 2010. Updates may be required for changes taken place since that date.

<sup>30</sup> If the person is deemed not to be a refugee but is considered to be at risk of serious harm, they are granted humanitarian protection.

<sup>31</sup> Formerly the UK Border Agency (UKBA)

<sup>32</sup> UKBA used the term ‘case owner’ to define UKBA decision makers under the New Asylum Model whereby they would retain ownership of the case from initial application through to removal in an end-to-end process. UKVI have now abolished the NAM end-to-end determination system. There is no longer anyone within UKVI who retains ownership of cases and as a result ‘case owner’ terminology has been replaced with ‘case worker.’ For the purposes of this section, when documenting ELAP the term ‘case owner’ continues to be used as this was what was in place at the time. When discussing non ELAP processes the term ‘decision maker’ is used for UKVI staff responsible for making first instance decisions.

<sup>33</sup> <http://detentionforum.wordpress.com/2013/03/19/uks-scale-of-immigration-detention-2010-2012/>

<sup>34</sup> The relation between the Home Office and the implementation of immigration has been troubled. In 2008 the UK Border Agency (UKBA) was established as an executive agency of the Home Office as a single border control organisation with responsibility for visas, settlement and enforcement. Unlike many other executive

agencies as well as being responsible for delivering services it retained policy-making power and continued to be responsible for proposing legislation and guiding it through Parliament. From March 2012 enforcement was designated the responsibility of UK Border Force which was split from UKBA and answerable directly to ministers, but UKBA continued to have responsibility for in-country enforcement and have oversight of detention. In 2013 UKBA was abolished and its executive agency status removed and its work was returned to the Home Office and divided into two units: UK Visas and Immigration, and Immigration Enforcement.

<sup>35</sup> [http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum\\_A-thematic-inspection-of-Detained-Fast-Track.pdf](http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track.pdf)

<sup>36</sup> [http://www.asylumaid.org.uk/pages/the\\_asylum\\_process\\_made\\_simple.html#Appeal](http://www.asylumaid.org.uk/pages/the_asylum_process_made_simple.html#Appeal)

<sup>37</sup> Under LASPO legal aid is no longer available for representing separated children in their further leave to remain applications following a grant of discretionary leave if the application only engages A8 issues

<sup>38</sup> Exceptions include certain domestic violence applications, proceedings before the Special Immigration Appeals Commission and certain immigration applications for leave to enter or remain in the UK by victims of human trafficking

<sup>39</sup> Legal Aid Agency (LAA) has introduced some discretion to make payment in cases where permission is refused but the additional bureaucracy, restrictions and added risk will not alleviate the impact of this measure which is designed to act as a disincentive for undertaking judicial review work.

<sup>40</sup> <http://www.justice.gov.uk/about/laa>

<sup>41</sup> For example, the cost of an interpreter

<sup>42</sup> From April 2014, the Legal Aid Agency have also rolled out nationally a Voluntary Appointment System that can be used by UKVI screening staff and Migrant Help employees at initial accommodation to book legal appointments with legal aid providers that have registered with the scheme as a means to facilitate access to early legal advice.

<sup>43</sup> This section and the section on ELAP based on a presentation by Asylum Aid

<sup>44</sup> Solihull is a Borough close to Birmingham in the West Midlands

<sup>45</sup> NAM was first introduced as a pilot in May 2005 and rolled out across the UK in March 2007. It has subsequently been replaced.

<sup>46</sup> Only named advisers, accredited at Level 2 of the IAAS scheme, could participate.

<sup>47</sup> The LSC has since been replaced by the Legal Aid Agency

<sup>48</sup> ELAP evaluation page 44

<sup>49</sup> ELAP evaluation final report page 47.

<sup>50</sup> 'Fresh claims' are second or subsequent applications for asylum which can occur most often because the first claim was not properly considered or evidence not available. They are most likely to be the result of very severe time constraints which are unrealistic if evidence needs to be gathered from countries asylum seekers have had to leave quickly due to the specific danger they were, general turmoil or where contact with family members has broken down. Fresh claims are also the result of poor quality legal representation and decision making, sur place activities, changes in countries of origin and as a result of late disclosure e.g. a victim of torture being unable to engage with the process shortly after arrival in the UK.

<sup>51</sup> ELAP evaluators found that offering early legal advice to applicants at an early stage could be difficult because 'the applicant can be confused and subject to 'information overload' (for example, having seen to their immediate priorities of obtaining information relating to accommodation and finance as well as explaining the specifics of their claim' (ELAP evaluation p. 37)

<sup>52</sup> As the title suggests, discretionary leave is given at the discretion of the UKVI but under guidelines in order to try to ensure consistency in decision making.

<sup>53</sup> <http://www.migrationinformation.org/Feature/display.cfm?ID=740>

<sup>54</sup> ORAC in fact makes 'recommendations' to the Minister for Justice rather than 'decisions'. It is for the Minister to decide whether to follow the recommendation and issue the decision to refuse or grant refugee status. The Minister has not been known to have refused to follow a recommendation. We have used the terminology of 'decision' for the purpose of stylistic consistency.

<sup>55</sup> There has been draft legislation known as the Immigration, Residence and Protection (IRP) Bill, which has been before the Oireachtas (parliament) in different formats for more than ten years which contained the framework for a 'single protection procedure' whereby asylum and subsidiary protection claims will be considered together at the outset of the procedure. Whilst this report was being prepared, the Court of Justice of the EU (CJEU) issued a decision, following a referral from the Supreme Court of Ireland, regarding the 'split procedure' in Ireland. The judgment of the CJEU in Case C-604/12 H.N. will lead to a single procedure, probably by way of separate legislation before the end of 2014.

<sup>56</sup> Section 12 of the Refugee Act 1996 gives the Minister the because, on the face of it, the application is "manifestly unfounded". Prioritisation means that an application and any subsequent appeal is subject to shorter time constraints and the appeal will be decided without an oral hearing but there is an appeal on the papers.

<sup>57</sup> AIDA, the Asylum Information Database, run by the European Council on Refugees and Exiles (ECRE), contains up to date information about the asylum systems across the EU. Information about the general procedure and time limits for Ireland in 2013 can be found here <http://www.asylumineurope.org/reports/country/republic-ireland/regular-procedure#General>

<sup>58</sup> Or currently 3 months if it is in relation to a decision on subsidiary protection

<sup>59</sup> Leave applications for Judicial Review in all other areas of law are 'ex parte' meaning that they proceed with only the applicant being represented whose task is to persuade the judge that there is an arguable case that should be allowed to proceed to a full hearing.

<sup>60</sup> See the AIDA database <http://www.asylumineurope.org/reports/country/republic-ireland/regular-procedure#General>

<sup>61</sup> [http://www.unhcr.ie/images/uploads/news/Beyond%20Proof\\_Credibility%20Assessment%20in%20EU%20Asylum%20Systems\\_FULL.pdf](http://www.unhcr.ie/images/uploads/news/Beyond%20Proof_Credibility%20Assessment%20in%20EU%20Asylum%20Systems_FULL.pdf)

<sup>62</sup> There are exceptions, for example, separated children.

<sup>63</sup> Civil Legal Aid Act (section 28(4)(a)).

<sup>64</sup> A service for the provision of advice in advance of a subsidiary protection interview was introduced through the RLS private practitioner scheme at the end of 2013. It has not yet been assessed. However, this does not fall into ELA as understood by this report.

<sup>65</sup> ECRE/ELENA Report on 'Survey on Legal Aid for Asylum Seekers in Europe,' 2010.

<sup>66</sup> The CJEU in Case C-604/12 H.N. expressed the view that applications for asylum and subsidiary protection must be capable of submission at the same time but that refugee status must be determined first. This is in line with the Qualification Directive which only allows for the grant of subsidiary protection if the person does not qualify as a refugee.

<sup>67</sup> IR3

<sup>68</sup> The IRC published a report, *Difficult to Believe*, in October 2012 based on an examination of decisions making by ORAC and the RAT in 86 asylum claims, which illustrates some of the historical problems with refugee status determination in Ireland, many of which are still awaiting a final determination of the need for protection. <http://www.irishrefugeecouncil.ie/wp-content/uploads/2011/08/Difficult-to-Believe-The-assessment-of-asylum-claims-in-Ireland.pdf> ORAC and the RAT have adopted the principles of the 2013 CREDO report and s.11B style provisions have been omitted from the 2013 Subsidiary Protection regulations.

<sup>69</sup> Court of Justice of the European Union, *M.M. v Minister for Justice, Equality and Law Reform, Ireland, Attorney General, C-277/11*, 22 November 2012. The case concerned the subsidiary protection process in Ireland, not the application for refugee status.

<sup>70</sup> One interviewee also complained of rudeness from a particular judge, to the extent that he requested he not hear his case.

<sup>71</sup> This is a system where a person who is not a qualified lawyer works on the case and is often the main point of contact with the asylum seeker.

<sup>72</sup> A preliminary analysis of IRC ELA files has been undertaken. The final results have not yet been published.

<sup>73</sup> The delay between an asylum claim and an application for subsidiary protection was considered by the CJEU in Case C-604/12 H.N. The case has now been referred back to the Supreme Court of Ireland which will determine what the delay should be between a refugee claim and consideration of an application for subsidiary protection.

<sup>74</sup> Although the Subsidiary Protection process in place since 14 November 2013 requires a fresh determination of the protection claim and not automatic reliance on the reasons for refusing refugee status, that does not mean that the original doubts cast against the asylum claim are ignored.

<sup>75</sup> [http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=PO0222&ti=POPULATION+BY+SEX%2C+ETHNIC+NATIONALITY+AND+COUNTY%2C+1+JANUARY&path=../\\_Databas/Population/01Population\\_indicators\\_and\\_composition/04Population\\_figure\\_and\\_composition/&lang=1](http://pub.stat.ee/px-web.2001/Dialog/varval.asp?ma=PO0222&ti=POPULATION+BY+SEX%2C+ETHNIC+NATIONALITY+AND+COUNTY%2C+1+JANUARY&path=../_Databas/Population/01Population_indicators_and_composition/04Population_figure_and_composition/&lang=1)

<sup>76</sup> <http://estonia.eu/about-estonia/society/citizenship.html>

<sup>77</sup> Act on Granting International Protection to Aliens, entered into force 01.07.2006, Art.88

<sup>78</sup> [http://www.facebook.com/groups/240310752688901/437620436291264/?notif\\_t=group\\_activity](http://www.facebook.com/groups/240310752688901/437620436291264/?notif_t=group_activity)

<sup>79</sup> <http://www.globaldetentionproject.org/countries/europe/estonia/introduction.html>

<sup>80</sup> Submission by the UNHCR for the Universal Periodic Review Estonia, July 2010

<sup>81</sup> However, it should be noted that of the four asylum seekers interviewed, one had been given asylum and the other 3 were in process, i.e. there were no failed asylum seekers. As one person put it 'My application is still in the process and if I received a negative decision I would feel that it is unfair' (EAS3).

<sup>82</sup> *Suso Musa v Malta*, App. No. 42337/12, Judgment, 23 July 2013, para. 7.

<sup>83</sup> *ibid.*

<sup>84</sup> *ibid.*, para. 8.

<sup>85</sup> *ibid.*, para. 3.

<sup>86</sup> *ibid.*, para. 61.

<sup>87</sup> *Aden Ahmed v Malta*, App. No. 55352/12, Judgment, 23 July 2013, para. 3.

<sup>88</sup> *ibid.*, para. 66.

<sup>89</sup> *Hirsi Jamaa and Others v Italy*, App. No. 27765/09, Judgment (Grand Chamber), 23 February 2012, p. 75.

<sup>90</sup> The Aliens Appeals Board in two judgments rejected applications by the applicant for the order to be set aside in September 2009. See *M.S.S v. Belgium and Greece*, App. No. 30696/09, Judgment (Grand Chamber), 21 July 2011, para. 29.

<sup>91</sup> *ibid.*, para. 181.

<sup>92</sup> *ibid.*, para. 182.

<sup>93</sup> *ibid.*, para. 191.

<sup>94</sup> *ibid.*, para. 301.

<sup>95</sup> *ibid.*, para. 316.

<sup>96</sup> *ibid.*, para. 319.

<sup>97</sup> *Abdolkhani and Karimnia v Turkey*, App. No. 30471/08, Judgment, 22 September 2009, para. 114.

<sup>98</sup> *ibid.*, para. 141.

<sup>99</sup> *ibid.*, para. 142.

<sup>100</sup> Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, Official Journal of the European Union L 326/13. See <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF>>, accessed 21 October 2013.

<sup>101</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Official Journal of the European Union L180/60, Article 53.

<sup>102</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), Official Journal of the European Union L180/60, Article 53.

<sup>103</sup> Article 51(1) of the Recast Directive provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 30, Article 31(1), (2) and (6) to (9), Articles 32 to 46, Articles 49 and 50 and Annex I by 20 July 2015 at the latest. Article 51(2) provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 31(3), (4) and (5) of the Recast Directive by 20 July 2018. Member States are required to forthwith communicate the text of all such measures to the Commission.

<sup>104</sup> UNHCR, 'Procedural Standards for Refugee Status Determination under UNHCR's Mandate' (2003) <<http://www.unhcr.org/refworld/pdfid/42d66dd84.pdf>> accessed 18 October 2013.

<sup>105</sup> UNHCR notes that the Procedural Standards “should be implemented in all operations where UNHCR has responsibility to conduct RSD pursuant to its mandate” (emphasis added); *ibid*, Unit 1-4.

<sup>106</sup> See eg M. Smrkolj, “International Institutions and Individualized Decision-Making: An Example of UNHCR’s Refugee Status Determination” 9 *German Law Journal* 1779 (2008); “Document Re: Fairness in UNHCR RSD Procedures: Open Letter”, 19 *International Journal of Refugee Law* 161 (2007); Michael Kagan, “UNHCR’s Bangkok Office Defies the Right to Counsel” (RSD Watch, 19 February 2013), <<http://rsdwatch.wordpress.com/2013/02/19/unhcrs-bangkok-office-defies-the-right-to-counsel/>> , accessed 18 October 2013.

<sup>107</sup> UNHCR, ‘Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees’ Geneva, 1979, reissued December 2011), <<http://www.unhcr.org/refworld/pdfid/4f33c8d92.pdf>> accessed 18 October 2013.

<sup>108</sup> *ibid*, p. 87.

<sup>109</sup> *ibid*, p. 168.

<sup>110</sup> ExCom, Conclusion on Children at Risk No 107 (LVIII) (5 October 2007), (g), viii.

<sup>111</sup> UNHCR, Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum (Geneva, 1997) <<http://www.unhcr.org/refworld/pdfid/3ae6b3360.pdf>> accessed 18 October 2013.

<sup>112</sup> *ibid*, 4.2.

<sup>113</sup> *ibid*, 8.3.

<sup>114</sup> *ibid*.

<sup>115</sup> UNHCR, “UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum Seekers, February 1999. Accessed via < <http://www.unhcr.org.au/pdfs/detention-guidelines.pdf>>, 21 October 2013.

<sup>116</sup> UNHCR, ‘Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees’ Geneva, 1979, reissued December 2011), <<http://www.unhcr.org/refworld/pdfid/4f33c8d92.pdf>> accessed 18 October 2013.

<sup>117</sup> *Ibid*, p 168.

<sup>118</sup> ICRC, Inter-agency Guiding Principles on Unaccompanied and Separated Children, January 2004, p. 60. Accessed via <[http://www.icrc.org/eng/assets/files/other/icrc\\_002\\_1011.pdf](http://www.icrc.org/eng/assets/files/other/icrc_002_1011.pdf)>, 21 October 2013.

<sup>119</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of Unaccompanied and Separated Children outside their Country of Origin, Section V(b), Appointment of a guardian or adviser and legal representative (arts. 18 2(2) and 20(1)), para. 36.

<sup>120</sup> *Ibid*, Section VI (c), Procedural Safeguards and support measures (art 3(3)), para. 69.



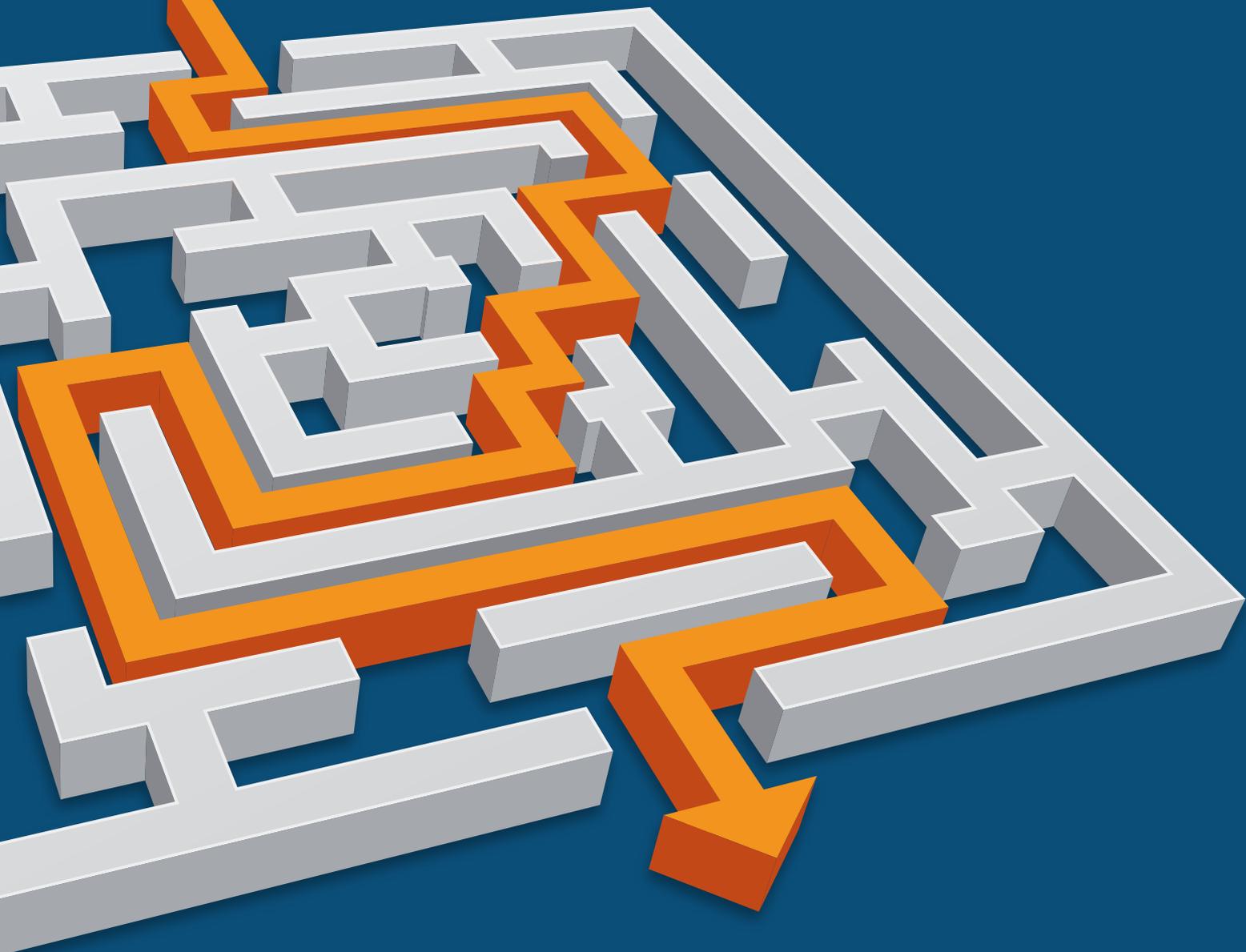


The first part of the document discusses the importance of maintaining accurate records in a business setting. It highlights how proper record-keeping can help in decision-making, legal compliance, and financial management. The text emphasizes that records should be organized, up-to-date, and easily accessible.

Next, the document addresses the challenges of data management in the digital age. It notes that while digital storage offers convenience, it also introduces risks such as data loss, security breaches, and information overload. Solutions like cloud storage, encryption, and regular backups are suggested to mitigate these risks.

The third section focuses on the role of technology in streamlining business processes. It describes how automation and software solutions can reduce manual errors, save time, and improve overall efficiency. Examples include using accounting software for invoicing and project management tools for task delegation.

Finally, the document concludes by stressing the importance of employee training and awareness. It suggests that regular training sessions can help employees understand the correct use of technology and the importance of data security. A culture of continuous learning and improvement is encouraged to keep the organization competitive in a rapidly changing market.



# A Manual on Providing Early Legal Advice to Persons Seeking Protection





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This manual would not have been possible without the willingness of the many asylum seekers and refugees with whom we have been privileged to work with in the preparation of their cases, and who have allowed us to learn from and with them.

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The manual is the result of a collaborative effort of committed staff who have worked at the IRC Law Centre including Jacqueline Kelly, Rosemary Kingston O'Connell, Shauna Gillan, Evelyn Doherty, Maria Hennessy and Stephen Collins.

We also wish to thank other staff and interns at the

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Finally, we would also like to thank the European Programme for Integration and Migration (EPIM) who have funded the publication of the manual, and without whose invaluable support the manual would not have come to fruition.

Any errors or omissions in the manual are ours alone.

*Brian Collins, Senior Solicitor*

*Irish Refugee Council Independent Law Centre*



# Forewords

This comprehensive manual will be helpful both to lawyers and to all who work with persons seeking asylum and other forms of international protection. The manual certainly lives up to the promise of its title. It provides step by step instructions on the provision of early legal advice. I have seldom read a document which offers so much clarity and so much good sense, and that is in an area of law that is notoriously complex and full of traps for the unwary.

The manual reflects the experience of the Irish Refugee Council Independent Law Centre, which since 2001 has developed a model of free early legal advice for those who seek asylum or other protection. Experience here in Ireland and in other jurisdictions shows that early legal advice to applicants for protection enables them to understand the 'asylum' process and to assemble the necessary information for the first stages of that process. The end result is a reduction in the time spent by individuals awaiting a decision and a consequent reduction of cost to the state. This manual must be seen as of particular relevance in the present tragic European and international migration context. It is also so in the Irish context, where over a period of years, three or four High Court judges have been required to deal with the ever-lengthening list of judicial reviews arising from applications for asylum. Both that context, and the fact that numbers of applicants have remained in the unsatisfactory direct provision system for far too long, show that there are basic faults in our law and procedure in meeting our obligations to those who seek protection under international law.

It is clear from many of the judicial review cases, and from the judgments given by the judges engaged in hearing these cases, that legal advice at an early stage would have reduced both the time involved in reaching an eventual conclusion and the complexity of the decisions to be reached at the various different stages. This cannot but be in the interest

both of the asylum applicants and of the state. I hope that the availability of this excellent manual will encourage increased legal advice at an early stage. Equally important is the need to extend the present system of legal aid, which currently applies only to the appeal stage, to the primary stages of the process.

The manual also includes a detailed chapter on the recast Dublin Regulation. While this Regulation can give enhanced protection in certain cases it is complex both in form and in application. Here, early legal advice is even more essential, and the careful stage by stage explanation included in this chapter, together with full references to current case law, will bring clarity both to lawyers and to others involved in the asylum process.

Recently much attention has been drawn to the position of children in the asylum system, and in particular of the children who have been forced to reside in direct provision for long periods of time. This manual includes valuable advice about the procedures concerning children both when accompanied by their families and also when unaccompanied. Stress is placed on the need to put the best interests of the child to the forefront, especially in cases involving the Dublin Regulation.

I wholeheartedly welcome the publication of this truly clear and practical manual, and I am confident that it will be an essential tool for all lawyers and others who are aiding and advising applicants for international protection.

*Catherine McGuinness*  
*November 2015*

# Forewords

Quality legal assistance and representation throughout the asylum procedure, and in particular at first instance, is an essential safeguard to ensure fairness and efficiency. Due to the growing complexity of asylum procedures, professional and independent legal advice and assistance during the procedure has become indispensable for asylum seekers to assert their rights under the EU asylum acquis.

In order to ensure a quality asylum determination procedure, it is imperative that early legal advice is provided. This enables the applicant to put forward a comprehensive application and it also ensures that more accurate and more properly considered decisions can be achieved. Ensuring quality first instance decision-making also reduces unnecessary appeals, and thereby saves time and resources. If first instance decisions are coherently reasoned, and clearly identify the issues at stake, then appeal bodies are enabled to hear appeals more quickly and therefore cost-effectively.

This practical manual is a valuable resource which provides practical guidance for practitioners on how early legal advice can be applied in the asylum procedure as well as in the application of the Dublin Regulation and to vulnerable groups. A proper understanding and application of early legal advice is essential for the effectiveness of the right to asylum as well as ensuring the proper implementation of the EU asylum acquis. This manual contributes towards ensuring these objectives and ultimately safeguarding that the rights of those seeking international protection are respected.

*Michael Diedring*

*Secretary General, European Council  
on Refugees and Exiles*

*November 2015*



# Introduction

This manual aims to give practical guidance to lawyers, legal advisors and legal representatives, caseworkers and NGOs who give legal advice and assistance to their clients during the first instance protection procedure. It is hoped the manual will be used across the EU and elsewhere, with this international audience in mind, it will be translated in to other languages. It references the various recast directives despite them not yet being transposed in to Irish law.

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.

The function of the lawyer in the ELA process is to assist the individual in need of international protection to be identified and recognised at the earliest opportunity. This work has three elements. Firstly, enabling the applicant to voice the full extent of her application (including overcoming fear of disclosure and concerns regarding confidentiality); a key feature of this process is assisting the client in preparing a personal statement ahead of her personal interview with the decision-maker. Secondly, assisting the applicant to consider what evidence it might be appropriate, safe and possible to obtain in support of the application. Thirdly, assisting the decision-maker by providing legal submissions which outline the protection needs of the client in the context of the state’s international legal obligations.

Chapter 1 sets out in detail the ‘key stages’ of ELA provision. Chapters 2-4 focus on vulnerable persons, the recast Dublin Regulation and children in the protection process.

ELA is an essential pillar of a meaningful asylum system. Given the complexities of this area and the inherent vulnerability of people seeking protection, early intervention is as valuable and important as it is in other areas of law. Article 4 (1) of the recast Qualification Directive also places a considerable, and arguably unequal, burden on persons seeking protection to substantiate their application as soon as possible, cooperate with the decision-maker and meet a particular standard and burden of proof. ELA can assist an applicant in discharging this significant burden.

Since 2011 the Irish Refugee Council Independent Law Centre (IRC Law Centre) has developed an innovative model of free ELA for those in need of international protection in Ireland. The Centre has found that ELA has been particularly important for vulnerable adults who may have difficulty articulating their application, particularly in an unfamiliar environment.

ELA has also been valuable for those who have not yet applied for protection and who wish to make an informed decision about making an application for protection. In providing services at the earliest possible stage, ELA protects the integrity of the process by preventing unnecessary applications for international protection as well as offering comprehensive individualised advice and representation to those in the process.

# Introduction

The benefits of ELA in a protection process have been highlighted by studies involving countries across the EU.<sup>1</sup> ELA has been linked to improved efficiency and fairness, improved communication and encouraging a genuine non-adversarial approach. UNHCR suggests that frontloading of legal advice in an asylum system should not only reduce costs for the state involved, but also result in 'fairer and more efficient' decisions for the applicant.<sup>2</sup>

The manual is aimed at both experienced lawyers and those new to this area of law. It is also hoped that, through illustrating the considerable practical steps involved in ELA, it will encourage policy makers at national and EU level to ensure that sufficient resources are made available to lawyers practicing in this area of law.

The generic term 'lawyer' is used to refer to the person representing the individual who is claiming protection, who is interchangeably referred to as client or applicant and is given the female gender.

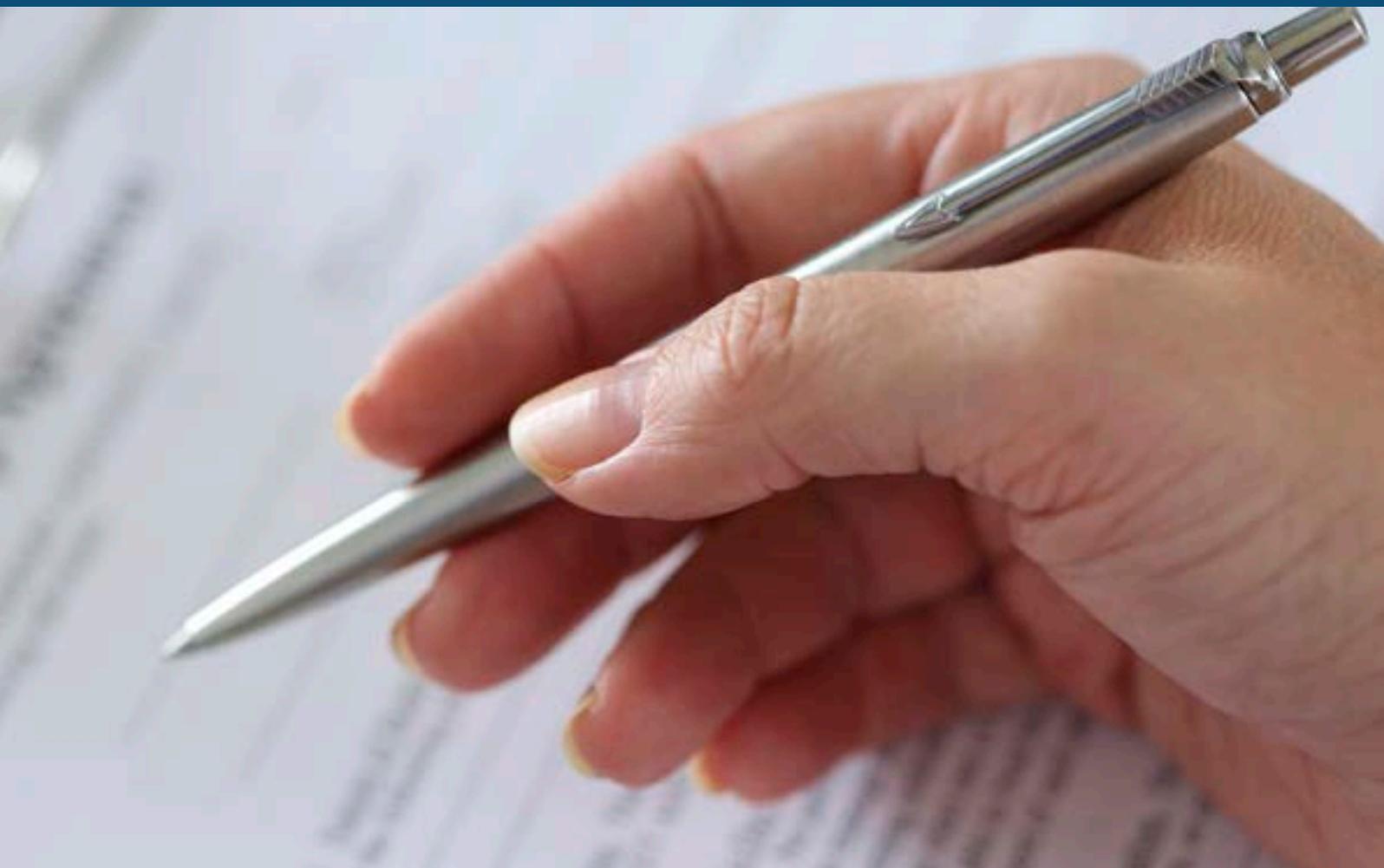
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<sup>1</sup> ECRE/ELENA, 'Survey on Legal Aid for Asylum Seekers in Europe', October 2010; Bridget Anderson & Sue Conlan, 'Providing Protection Access to early legal advice for asylum seekers, 2014; Home Office, Evaluation of the Early Legal Advice Project, Final Report Research Report 70, May 2013

<sup>2</sup> UNHCR, 'Moving Further Toward A Common European Asylum System, UNHCR's statement on the EU asylum legislative package', June 2013

# Chapter 1:

## The Key Stages of Early Legal Advice



# Chapter 1: The Key Stages of Early Legal Advice

The manual gives guidance on the following key stages of ELA, set out in chronological order:

1. Appointment preparation;
2. Meeting and taking instructions from a client;
3. Case planning;
4. Application and admissibility forms;
5. The personal statement;
6. The read back of the personal statement;
7. Accompaniment to the personal interview;
8. Post-personal interview submissions and evidence;
9. Post-decision consultation and planning.

The information contained in this manual is not exhaustive. This information, and the sample documents provided in the annex, are intended to be a guide only. Lawyers may adapt or tailor their model of service to suit their resources and capacity and, in particular, domestic law and procedures.

While it is preferable for potential clients to approach you before they apply for protection, in practice, they may present to you at various different stages of the first instance process, therefore all stages will not be applicable to every case.

## Key Stage 1: Appointment preparation

The first key stage is to prepare for the appointment between the lawyer and the individual who is seeking advice on applying for protection or who has recently applied for protection.

The purpose of the advice appointment is to provide both general legal information on the protection

procedure and tailored legal advice particular to the facts of the individual's case. Following this appointment, a client should have an understanding of the strengths and weaknesses of her application; know the key evidence needed to substantiate her application; understand the protection process in the country she is in and be aware of the key supports she can avail of. Be aware that it will often take more than one appointment to obtain full instructions from your client and you may not therefore be able to give her definitive advice at the outset.

In circumstances where a client has not yet applied for protection and the lawyer has determined, on the facts of the case, that the protection process is not appropriate for her, the client should be advised accordingly. The final decision on whether a protection application is made lies with the client herself.

It is important for the lawyer to be fully prepared in advance of an appointment. Thorough preparation will assist the lawyer to elicit relevant instructions, properly assess the strengths and weaknesses of the case (although, as noted above, this may not be possible after only one appointment) and to advise the client accordingly. A lawyer who is prepared will also be in a better position to gain the trust and confidence of their client, which is necessary for the purpose of taking instructions.

In order to properly prepare for an appointment, there are a number of matters to be dealt with and taken into account, which are detailed below.

### First steps

A client may approach your organisation or be referred to you by a third party or another lawyer. A referral may contain information about the client or you may only have their name and contact details. As a first step, you should make contact with the client, introduce yourself and try to ascertain

whether she requires an interpreter and, if so, whether she would prefer a male or female.<sup>3</sup>

Even if your client has a good knowledge of the language you wish to communicate in, as you will be discussing complex legal issues with her, she may still require an interpreter. It is your responsibility to judge whether or not an interpreter is required for your client to be able to convey her account to you in detail and to understand your advice. Your client may also have a preference in relation to where the interpreter is from in her country or the interpreter's ethnicity. While these requests should be handled sensitively, it may be possible to put your client at ease by emphasising that the interpreter is bound by confidentiality, will act objectively and has a role to only interpret what the client and the lawyer say. It is suggested interpreters are given a 'Code of Conduct' outlining what is expected of them,<sup>4</sup> preferably as soon as possible after the booking has been made so that it can be read in advance of the appointment.

Tell the client of the proposed appointment date and time, if known, and ask that she brings all of her documents with her to the appointment. It can be useful to post or email a map showing the location of your office and details of how your client can get there. If your client has to travel far in order to make her appointment, you should take this into account and arrange a suitable appointment time. Also ensure your client has or can access the funds to travel. If there is no available public transport after your appointment or it would be too much travelling for your client to undertake in one day, you should try to make arrangements for her to be accommodated overnight in a nearby accommodation centre if possible and if the client is happy with this arrangement.

If an interpreter is required, try to book her as soon as possible. It can sometimes be challenging, especially within a short space of time, to find interpreters for less common languages.

Check with the client as to whether there is a lawyer already representing her. If so, you will need to ask her whether she wishes to change her lawyer and, if so, the appropriate notification should be given to the acting lawyer and a copy of the client's file requested. It may be necessary to check with the client why she wishes to change her lawyer.

Ascertain whether the client has any special needs. She may have a disability/medical condition which needs to be taken in to account.

### **Preliminary research**

If you have any documentation relating to the client, perhaps received from a referring organisation, read it carefully. If known, make a note of any critical dates, for example if the application for protection has to be submitted by a particular date.

Where possible, do some preliminary research into the topics relating to the client's case and the prevailing conditions in the client's country of origin. This should include:

- Research of the general human rights and security situation in the client's country of origin;<sup>5</sup>
- If known, it may be necessary to research the relevant law on the reason under the Refugee Convention why the client fears persecution particularly if it is a reason rarely raised such as membership of a particular social group;
- Any relevant UNHCR Guidelines or position notes;

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<sup>3</sup> See Key Stage 2 for full details on working with an interpreter.

<sup>4</sup> A sample Interpreter's Code of Conduct is provided in the Annex.

<sup>5</sup> See Key Stage 8 for a discussion on the use of COI evidence.

# Chapter 1: The Key Stages of Early Legal Advice

- Relevant case law including any 'country guidance' cases;
- Domestic policy guidelines and legislation.

Consider whether there are any issues which will need to be dealt with as a priority. For example, your client may require release from detention or it may be apparent that the recast Dublin Regulation is likely to be imminently applied.<sup>6</sup>

## Preparing the interview space

In order to maintain confidentiality, try to make sure your consultation room is private and soundproof. The room should have a window and be bright, safe and welcoming. Remember, your consultation may well be the first time your client speaks about traumatic events. A client's willingness to discuss these sensitive topics will vary and, as her lawyer, you should endeavour to provide consultation conditions which are conducive to such disclosures, including a calm, quiet consultation space, and a lawyer and interpreter in the gender preference of your client. It is important for your client to feel welcome, comfortable and safe.

Prior to the appointment, the client and the interpreter should sit apart. Where this is not possible, you should ensure that the interpreter and client do not speak about the client's application.

Persons other than the lawyer, interpreter and client should not normally be present during a consultation. Family members or friends can inhibit a client's ability to give full instructions. However, particularly traumatised clients may require the presence of a support worker or social worker to enable them to fully put forward her account. Children should always be accompanied by an appropriate adult. In circumstances where the client is an adult parent with accompanying children, it

may be appropriate to seek child care facilities in order to avoid a situation where the child is witness to the parent giving instructions on sensitive elements of the application for protection. See Chapter 4 for more information on children and the protection process.

Family members should always be interviewed separately, even where one family member's application for protection appears to be entirely derivative of the other family member's application. For example, there may be situations where (i) a spouse has not disclosed an incident of sexual violence or torture to the other spouse; (ii) a family member may be under duress from another family member; or (iii) a conflict of interest may arise between family members.

## Key Stage 2: Meeting and taking instructions from your client

### Meeting your Client

There are generally three parts to an appointment:

- Firstly, introductions are made and explanations are given as to the purpose of the consultation and what will occur;
- Secondly, substantive instructions are taken; and
- Finally, the consultation is concluded.

### Opening an appointment

When opening an appointment, there are a number of preliminary matters to consider and address.

Ensure the seating arrangements are correct: that you are directly facing your client and the interpreter is to one side. Avoid the interpreter sitting opposite the client as there is a risk that the client will address the interpreter directly when speaking.

<sup>6</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council, of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible or examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)

Introduce yourself and the interpreter to your client and explain your respective roles. Ensure that the client and the interpreter fully understand each other; you can do this by asking the client different types of questions, for example about where she has traveled from, how she traveled to your office and how she will return. Verify with the interpreter the language being used.

Emphasise to the client that the interpreter is bound by confidentiality and is there to interpret only what she and the lawyer say. It may be helpful to the interpreter to tell the client that she should speak in short phrases so that the interpreter is able to interpret each phrase and that nothing is omitted.

Explain to the client who you are and make her fully aware that you are independent, that you do not work for the government, nor do you have a role in making the decision on her protection application. Confirm that your role is to assist the client in making the application by giving thorough and professional legal advice and representation.

Explain the purpose of the consultation and how you intend to proceed. It is important to manage a client's expectations at the outset. If you are unable to represent the client for more than a one-off advice appointment, for example for reasons of not having capacity to properly assist the client, make this clear to the client at the very outset. A client may still benefit from a single, one-off, appointment, particularly if they have not yet applied for protection and are looking for advice on the process.

Indicate how long the consultation may take and reassure your client that she should inform you if a break is needed at any time. You should take a short break each hour if possible. If a consultation is likely to last longer than 3 to 4 hours, a further consultation should be arranged. As each client is different, with a different set of needs, you will need to determine what is appropriate in terms of the conduct and length of your consultation on a case-by-case basis. Also be aware of the interpreter's needs.

## Client care

If you will offer the client a full ELA service, you should advise the client accordingly and explain the exact service you are offering. In particular, you should explain the purpose and function of taking detailed instructions and the personal statement. It may be appropriate to state that the personal statement is not a formal requirement of the protection process in your country but is a developed model which can assist applicants and decision-makers.

It can be helpful to give your client a letter at the beginning of your first consultation which details the following:

- Your role and responsibilities;
- The client's role and responsibilities;
- The terms of the service you are offering;
- The purpose of the representation you are offering including client confidentiality and conflicts of interest;
- The benefits of drafting and submitting a personal statement;
- The benefits of making submissions on the client's behalf;
- Details of appropriate support services;
- The law that will be applied to your client's case by the decision-maker.

A sample initial client care letter is provided in the annex to the manual. This letter can act as an aide memoire for you and also assist the client as she can refer back to it and use it for future reference. The contents of the letter should be read back to the client. If the client is satisfied with the terms of service, you may wish to ask her to sign a declaration, at the bottom of this letter, to confirm this.

# Chapter 1: The Key Stages of Early Legal Advice

Client care letters update clients of the progress of their case. They contain clear, simple language. Client care letters are only a secondary support tool to the information provided during consultation meetings. They should be sent to clients after consultation meetings as their case is progressed throughout the asylum procedure as a way of recalling points agreed and future actions with the client.

The client care letter should be concise and provide key information only; use plain English language and avoid complex terms. Use headings to break up sections, for example: a) brief summary of information the client provided during consultation; b) what points were agreed as further action going forward in the case; c) what steps the lawyer will take in this regard and any further updated information. A section should also remind the client to contact you should they have further information, change their address or there has been a change of circumstances in their case. It should also contain your contact details.

You should also take the client's written form of authority to act for her and send it to the decision-maker to formally come on record as the client's lawyer. In this letter you should also request a copy of the client's full file from the decision-maker. It can be helpful to ensure that the authority signed makes reference to wording of any applicable freedom of information legislation to ensure quick release of records. The form of authority should be sent to the decision maker without delay so that you have ample time to review your client's full file in advance of submitting any application form or personal statement. It is important that you do not submit anything on behalf of your client without first having sight of her entire file from the decision maker.

If the client has not yet made an application for protection, when possible, especially in circumstances where there is a particular vulnerability or you are aware of delays or other problems in registering an application, accompany the client to the decision-making authority to make the application. This may require notifying the decision-maker that you will be attending their office and that an interpreter may be required in a particular language.

If you consider that you need an adjournment of the personal interview in order to allow you sufficient time to complete and submit her personal statement, you should take your client's instructions in this regard and make the request to the decision-maker. This can be done when you write and state that you are your client's legal representative, or at the earliest opportunity thereafter.<sup>7</sup>

## Checking your client's mental and physical health

It is important to ascertain, as far as is possible, the state of your client's mental and physical health at the outset of all appointments with your client. Always ensure your client is sufficiently fit and well to proceed with the consultation and give instructions. Avoid long appointments which may make the client more tired or stressed and make it more likely that errors are made when giving you instructions.

Ascertain whether your client has any particular vulnerabilities and whether she has accessed medical/psychological care services. Record in your file all relevant details in this regard. Mental and physical problems can have a serious impact on a client's ability to give instructions but clients will often be reluctant to 'bother' you with these

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<sup>7</sup> There can be numerous reasons why you may require further time, for example (i) the client presents to you for representation just before her application form is due or her personal interview is scheduled; (ii) the client speaks a less common language and interpreter availability for appointments is limited; or (iii) the client does not reside close by and needs to travel a lengthy distance for his appointments with you; (iv) the client is particularly vulnerable and more time is needed to establish trust for full disclosure of her protection needs.

sorts of issues. Depending on your client's specific vulnerability, you may need to tailor the duration of the consultation or the frequency of breaks to meet her needs. Be aware of the needs of individuals who are survivors of torture and other trauma and be mindful not to risk re-traumatising her in conducting your consultation.<sup>8</sup>

It is important to put your client at ease and to gain her confidence as soon as possible. Trust and rapport with a client must be established quickly as often a lawyer will only have a short window of time within which to take instructions. Your client may come from a culture which perceives lawyers as figures of authority and this may inhibit disclosure. An approachable, open manner will help to counteract this, although a certain professional detachment must always be maintained.

At the outset of the consultation, explain to your client that you understand it may be difficult for her to recount her history and confirm that she is free to leave at any time and does not have to answer any question she does not wish to answer. It is also helpful to state from the outset that, as this can be a difficult process for the client, she should feel free to ask for a break at any point during the consultation.<sup>9</sup>

It may be appropriate to tell the client that you will be asking her questions that may be similar to those that the decision-maker will ask at her personal interview and that this can assist her in preparation for that interview. Be careful not to convey the impression that you know what the decision-maker will ask and ensure your independent role is clearly established.

Reassure the client that her instructions will be treated in confidence and that no information will be shared outside the organisation without her express consent. The client may also be informed that European Union law (Article 48 of the recast Asylum Procedures Directive<sup>10</sup>) requires that decision-makers are bound by confidentiality in relation to any information they obtain in the course of their work.

Remember to use professional and natural body language to gain the confidence of your client. Maintain eye contact with your client when you are speaking to her. Do not direct your questions at the interpreter. Be attentive when your client is speaking even though you may have to wait for the interpreter to translate what she says.

You should explain to the client, in simple terms, the definitions of refugee status and its component parts, subsidiary protection and any other relevant human rights grounds, such as Articles 3 and 8 of the European Convention on Human Rights (ECHR). The client will be better placed to provide instructions if she understands at the outset the eligibility requirements that the decision-maker will test her case against. You should also explain the recast Dublin Regulation and how it operates.<sup>11</sup>

Explain to your client the importance of providing full and accurate instructions to advance her protection application and for the purpose of obtaining meaningful, accurate, legal advice. You should emphasise that she should disclose everything to you even if she believes it may be harmful to her application as, otherwise, you will not be able to properly advise her and failure to disclose all facts could be detrimental to her application.

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<sup>8</sup> For more information on clients with special procedural needs see Chapter 2.

<sup>9</sup> Taking breaks can be beneficial for the client when she is finding it difficult to recount particular events, it can also be beneficial for you, especially when you are taking instructions in relation to serious violence or torture.

<sup>10</sup> Directive 2013/32/ of The European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)

<sup>11</sup> See Chapter 3 for more information on ELA and the recast Dublin Regulation

# Chapter 1: The Key Stages of Early Legal Advice

## Using an interpreter

Selecting the correct interpreter before meeting the client is important. Ideally the interpreter should have sufficient availability so as to be able to attend several appointments so that there is consistency for your client and she does not have to disclose information to different interpreters.

It is your responsibility to judge whether an interpreter is required, even if your client considers that she speaks adequate English. You will be discussing complex legal issues and your client may not be the best person to judge whether she will be able to communicate her account in detail, or understand advice given to her in relation to her application. Friends or relatives of the client should not be used as interpreters. As mentioned above you should establish as early as possible which language and dialect she requires for the consultation. Use sensitivity in your choice of interpreter; consider the appropriateness of the gender of the interpreter or whether there may be any other barriers to communication.

Ideally, the interpreter should speak the client's native language/dialect to a native level of fluency and should be familiar with slang and other idioms. Ideally your interpreter should have received training on interpreting in the refugee context.

Your client may be reluctant to discuss sensitive and personal information with someone from her home area due to tribal, ethnic or political differences. The client may also have concerns in relation to interpreter confidentiality, with particular worries that her private information and circumstances might be communicated to other members of her community. There are no absolute rules here. As the lawyer you should be alive to the various issues that may arise. If you think that there is an issue you should discuss the matter with the client in private, where possible. Where the client's wishes regarding the choice of interpreter are reasonable, you should respect her wishes and arrange a more suitable interpreter.

If you do use an interpreter, remember that the lawyer is responsible for the overall conduct of the consultation. The interpreter is only there to facilitate communication between you and the client. Do not delegate tasks to the interpreter. For example, never ask the interpreter to summarise something you have said or take instructions from the client. Do not let the interpreter give her own information or answer for the client. Over-enthusiastic interpreters may answer a question straightaway from her own knowledge without translating the question.

Both the lawyer and client should break questions and answers into parts short enough to allow the interpreter to effectively translate them. Otherwise, there may be too much information for the interpreter to be able to remember and accurately translate. During the consultation, when necessary, keep reminding your client to give answers in short sections to allow for translation.

It can be helpful, at this point, to remind the interpreter of the limits of her role by explaining to your client, through the interpreter, what the interpreter's obligations and duties are, namely:

- (i) The interpreter must **remain neutral** at all times;
- (ii) When translating, the interpreter should **speak in the first person** at all times and **translate, as accurately as possible, exactly what the lawyer and client say**, without adding to, omitting, rephrasing, embellishing or summarising what has been said. Where the client asks for clarification, the interpreter must translate this;
- (iii) The interpreter **should not become involved in discussion** with either the lawyer or client during the consultation. If the interpreter needs to clarify a certain point, she should inform the lawyer and, only after receiving express permission from the lawyer, should she proceed with seeking clarification;
- (iv) If the interpreter becomes aware that the client

may not have understood a question, she should nevertheless **translate the client's answer fully**. It is for the lawyer to clarify the matter, not the interpreter;

- (v) It is the responsibility of the lawyer alone to rephrase questions or ask follow up questions to clarify matters where needed.

Continue to monitor the performance of the interpreter throughout the interview. You must intervene each time the interpreter does not act according to her role. Problems can occur if the quality of the interpreter's language is insufficient. If it becomes clear that the interpreter's language is not of a high enough standard to conduct the consultation effectively, you should terminate the consultation and seek an alternative interpreter. It is important to feed back to the interpreter or the company for whom they work if there are any problems with the conduct or quality of an interpreter. It may help to keep a database of suitable interpreters, with the permission of the interpreters themselves.

### Confirming your client's essential details

After introducing yourself and the interpreter you can confirm the basic details you already have on file and then take instructions on any details you do not have. In particular, you should ensure you obtain the following basic information from your client:<sup>12</sup>

- Full name including other names/aliases;
- Gender (this can be observed by you as well as stated);
- Nationality or if stateless, country of former habitual residence;
- Date of birth;
- Address (living and correspondence if different);
- Any reference number attached to her protection application;
- Contact number(s);
- Current immigration status and immigration history;
- Whether they speak the language of the country they are in;
- Basic instructions on her education;
- Date of departure from country of origin and brief details regarding the journey;
- Date of arrival in the country she is in;
- Family and other dependents and where they are located;
- Health needs, if any.

After taking these instructions, you should request your client provide you with any documentation, including any identity and supporting documentation, and official documents/correspondence relating to her application. Often, clients will not be immediately aware if a document is relevant to her application so it is best that you peruse all documents in your client's possession. Take a copy of all documents for your file or retain originals where appropriate and with your client's permission. The relevance of certain documents in your client's possession may not be immediately apparent at interview so it is best to review again all documents at the conclusion of your consultation, and again in the future and, where necessary, obtain further instructions from your client. A schedule of documents, which has a description of the document, any date, its origins and whether it is original or a copy can assist in keeping track of your client's documents. A sample of this document is contained in the annex.

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<sup>12</sup> You may already have this information from documents completed when the client claimed protection but it is best to go through all of the details again with your client. See page 18 for information on addressing inconsistencies and discrepancies.

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Once you have ascertained the above basic details, you should record all critical dates in your file including any deadline for submission of any application form or statement and any personal interview date.

Following this, you should briefly ascertain whether the recast Dublin Regulation may apply to your client's case. Take your client's instructions on the following:

- Details of journey to the country she is in, including all countries transited and mode of entry;
- Details of any previous protection application in any other country;
- Details of whether fingerprinted in any other country;
- Details of previous visas and/or residence permits, if any, for Dublin regulation countries;
- Details of family members, if any, in the country they are in or another EU country.

If you determine that your client is likely to be made subject to the recast Dublin Regulation, you should deal with this as a matter of priority. See Chapter 3 for information on dealing with cases subject to the Regulation.

## Taking instructions from your client

Once you have obtained the above information, you are ready to proceed to take your client's detailed instructions on her reasons for leaving her country of origin and for wishing to make an application for protection.

Explain to your client that you are going to ask her questions to allow her to tell you about all her reasons for applying for protection. Explain that you may interrupt with questions while she is giving you instructions in order to clarify relevant matters. Opening questions can vary but they should have the objective of seeking to establish your client's main reasons for applying for protection. Try to work from your client's first problem in her country of origin, through to why and how she left her country, her journey and then what happened when she arrived in the country of application and what she fears if she were returned to her country. As you take instructions, record in a separate document, in a chronology, the key events referred to in your client's account. A sample chronology is provided in the annex.

Aim for a thorough consultation, but consider whether certain lines of questioning are pertinent to the core application. Keeping in mind the legal tests that will be applied to your client's case, you should focus on taking your client's instructions on the core elements of her application, in particular:

- Ascertain why your client is afraid of returning to her country of origin; what harm she fears she would experience and from whom. Always be mindful of the risk of re-traumatising a client when questioning her in relation to events she finds difficult to speak about.
- Ascertain whether there is a connection between what the client fears and one of the five grounds in the Refugee Convention and the law relating to subsidiary protection.
- Determine the nature of any serious harm or persecution already experienced and whether it is relevant to her present fear.<sup>13</sup>

<sup>13</sup> Bear in mind that the law on relevant past persecution – return may be persecutory per se. Reference could be made to Article 4 (4) of the recast Qualification Directive that past persecution is a serious indication of the applicant's well-founded fear of persecution. Recital 36 of the same Directive states that family members, merely due to their relation to the refugee, will normally be vulnerable to acts of persecution in such a manner that could be the basis for refugee status. Article 11 (3) of the recast Qualification Directive also states that, the cessation clauses in Article 11 will not apply if the refugee is able to invoke compelling reasons arising out of previous persecution.

- Establish whether your client sought protection from the state authorities and, if not, why not.
- Ascertain whether there was anywhere within the country of origin your client could have safely relocated to. Ascertain whether she has lived elsewhere in her country at any stage.
- Establish whether there is any part of her country of origin in which she thinks she is not at risk of serious harm, or whether she would have access to protection from persecution and whether she can safely and legally travel to, and gain admittance to, that part of the country and can reasonably be expected to settle there.
- Ascertain whether she has any relevant evidence, to support her account, in her possession or is able to reasonably and safely obtain evidence.

### Questioning Techniques

There are various different questioning techniques, which you may use to elicit the above information from your client.

#### Open Questions

Open questions give no indication of what is expected in the answer. Use open questions when you are interested in getting your client to tell or expand upon her story; open questions will encourage your client to talk more freely.

It is usually most effective to use a mixture of open and closed questions. Also, putting questions in context, for example stating that you are now going to ask questions about the journey to the country in which they are in, can reassure a nervous client.

#### Closed Questions

Closed questions specify the type of information required (e.g. date, time, place, numbers, or names). Use closed questions if you want to focus in on the details of a particular incident or issue. Closed questions are also a good means of controlling the

interview if your client has become confused or is talking at length about irrelevant facts.

#### Recall Questions

Recall questions focus your client on statements that she has already made. Sometimes your client may have said something that struck you as important, but you did not want to interrupt her by asking a follow up question at that point. You may also want to use recall questions to focus your client on statements that they have already made and ensure that you have correctly recorded what they stated.

#### Leading Questions

Leading questions suggest a particular answer, assume facts that have not yet been established and require 'yes' or 'no' answers. You should avoid using leading questions at any stage during an interview. The danger in asking leading questions is that your client may simply agree with the statement that you have made, whether accurate or not, and this may have serious implications for your client.

#### Other questions to avoid

Try to avoid long questions or questions with double negatives. These can cause problems for your interpreter and your client may not understand your questions clearly. Also, avoid the temptation to ask more than one question at once.

#### Difficulties in remembering numbers or dates

To help your client remember numbers or dates, try asking the question in a different style, such as: 'Approximately how many years ago...?' or 'Was it before your child was born or after?' or 'Approximately how many people...?'

Be very careful not to press your client into guessing a number or date if she is not sure, as she may end up guessing figures that are wrong and that can be easily forgotten at the personal interview. You may explain to the client that you understand if they cannot recall but you need to check.

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Take instructions as to why your client is having any difficulties in remembering dates. It may be related to not being used to attaching dates to events or trauma.

## Addressing inconsistencies and discrepancies

It is your role to address particular parts of your client's account that appear unclear or contradictory as any inconsistencies or discrepancies may damage her overall credibility and she needs to be advised accordingly.

If your client has presented to you for advice after she has applied for protection and after documents have already been submitted, you should go through those documents in order to ascertain whether their contents are accurate and consistent with her instructions to you. If not, you should seek your client's instructions as to why and make a note of clarifications or corrections to be brought to the decision-maker's attention. Similarly, if your client presents to you following submission of an application form, you should seek explanations for any inconsistencies between the information contained in her questionnaire and instructions given to you.

Your client may contradict herself during her consultation with you or her instructions may be inconsistent with her supporting documents or with available country of origin information (COI). Again, you should address any such contradictions with her as and when they arise, explaining why you need to do so.

You should ensure that, in clarifying any apparent discrepancies/inconsistencies in her account, your follow up questions are put in a neutral way. Remember, discrepancies in your client's account could be due to a number of different factors. For example, they could be an indication of a communication problem with the interpreter. Your client may not be familiar with using specific dates or able to remember dates. If your client is suffering

from trauma, this may affect her ability to give a clear narrative. Also, a discrepancy may simply be due to a misunderstanding. There may simply not be any COI on circumstances similar to your client, or your client may be able to explain any contradictory COI. As such, it is imperative that you seek your client's explanations on all discrepancies or inconsistencies that arise and that you are fully aware of any issues impacting on her capacity to give detailed, coherent, consistent instructions.

## Subsequent applications for protection

ELA can be particularly beneficial to applicants who are making a subsequent application for protection, sometimes referred to as a 'fresh claim'. Sometimes an applicant will have received no legal representation during the original application, they may have new evidence that requires consideration, there may be a change in conditions in their country. The ELA approach, including using a chronology and a schedule of documents if there is a large amount of documentation and a complex history, can assist in showing why and how a person may be at risk of persecution now, despite not being found to be at risk in the past.

## Concluding the consultation and advising your client

Once you have obtained your client's full instructions you should consider the application in light of what has been explained to you and advise your client on the following:

- The protection process, including the various stages and the functions of the decision-maker and any appeal body;
- The strengths and weaknesses of the case, including any aspects which you consider the decision-maker may focus upon;
- Key evidence in your client's possession which supports the application, including, for example, evidence which substantiates:

- Identity and nationality;
- Past persecution, if any;
- Risk of future persecution;
- Any other element of the account given;
- Witnesses, if any;
- Any other evidence which corroborates any aspect of your client's account and adds weight to your client's overall credibility.
- Key evidence not in her possession but which should be obtained, if safe and possible to do so;
- Possible expert medical evidence to support the application that may be available;
- COI that corroborates the application and comments on the viability of state protection and internal relocation in light of her particular circumstances;
- COI on other risks, if any;
- Credibility and how it is assessed; whether credibility issues arise with regard to aspects of her account and what aspects, if any, you recommend that she immediately clarifies;
- The possibility of any dependent children making their own separate protection application and the importance of giving a full account of the child's experiences at interview – see Chapter 4;
- The implication for the case if the client is from a designated safe country of origin;
- The duty of cooperation on the client and the importance of deadlines and obligations to the authorities;
- Possible outcomes and the consequences of being successful/unsuccessful in her application;
- Key supports available.

It can assist both you and your client to confirm the above in writing. Obviously it is unlikely that you will be able to come to a definitive conclusion about all of the above after one, or even several, consultations so emphasise that you may need to revise your opinion in the future after further consultations.

If it is not intended to offer the client representation, you should advise the client accordingly and, if they wish, assist her in seeking alternative representation and advise on the next steps she should take.

Obviously any limitations on capacity should be explained to the client as early as possible so that she can seek such alternative representation. As it can be difficult for a client to repeatedly recount her experiences, you should offer to provide her with a copy of your typed attendance notes, which she can provide to a new lawyer. In the alternative, you may wish to seek consent to make a written referral on her behalf and enclose your notes and her instructions to you. You should also provide her with the contact details of relevant support organisations and, with the client's consent, assist in availing of their services.

If there are any inaccuracies in initial documentation submitted to the decision-maker these should also be addressed in any letter to the decision-maker and an explanation provided. It may be helpful to include the client's explanation of these inaccuracies in the personal statement, as it will be in her own words.

You should make the next appointment with your client and advise her as to what actions you require from her. Advise your client to inform you immediately if she changes address.

You should connect your client with any support services you consider would be of benefit to her. If, at this time, you have determined that medical evidence<sup>14</sup> would be beneficial to your client's case, discuss the matter fully with your client and obtain her written authority to complete and send

<sup>14</sup> See Key Stage 8 for further information on medical evidence.

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the appropriate referrals in this regard. Also, obtain her written authority for you to access medical information and discuss her treatment with relevant practitioners.

## Key Stage 3: Case planning

Following the initial consultation, type up your attendance note and draft a case plan to include the following:

- Critical dates (e.g. dates relevant to the recast Dublin Regulation, any language analysis test date, application form submission deadline or personal interview date) and ensure they are correctly recorded on your file and in any electronic calendar;
- Set out an agreed schedule of appointments to meet with the client to prepare the personal statement;
- Set a deadline for completing and submitting the personal statement in advance of the client's personal interview and diarise the deadline;
- Ensure any client vulnerabilities are recorded on file and set out particular matters relating to the client and the management of her case. This is particularly important if the client will have contact with other members of staff;<sup>15</sup>
- Note any referrals to support organisations or medical practitioners which you have determined need to be made;
- Consider any COI research to be undertaken;
- Identify relevant supporting evidence, including evidence which (i) has already been submitted to the decision-maker by the client; (ii) is in the possession of client but has not yet been

submitted and (iii) the client can reasonably and safely obtain. It may be helpful to draft a schedule of documents, noting whether particular evidence is an original or a copy and whether it has been submitted to the decision-maker or not.<sup>16</sup> A sample schedule is provided in the annex to the manual.

A concise chronology of key events should also be prepared. The chronology serves as a useful quick reference tool on the file and can be amended as necessary during the course of the case. It can serve to highlight gaps or inconsistencies in your client's instructions. It can also assist you in understanding a complex case history that involves many incidents over a long period of time. A sample has also been provided in the annex.

## Key Stage 4: Application and admissibility forms

Some countries require that an application or admissibility form be completed by the applicant regardless of whether a personal statement is submitted. Failure to submit these forms, on time or at all, can be considered a failure to cooperate with the decision-maker.

It is important that the client is reminded of the significance of any application form and the need to provide full and accurate instructions in completing the document as it can be damaging to her credibility if her account is incorrect or amended/added to at a later stage.

It may be that the form has to be completed by a particular date and that the personal statement is submitted later, or alternatively, if time allows, that the documents are submitted simultaneously.

<sup>15</sup> For example it may be necessary to record that your client has very specific interpreter requirements or that your client has particular vulnerabilities which need to be taken into account in how meetings with her are to be conducted.

<sup>16</sup> It is advisable not to keep the client's original documents on file; any relevant documents should be submitted to the decision-maker at the earliest opportunity. The schedule of documents can be amended as appropriate during the course of the case and is a useful way of keeping a record of all evidence relevant to the case.

Regardless, it is important to ensure information in each document is consistent with the other.

The application form can, for various reasons, contain less information than the personal statement. This can be due to the limited questions asked by the form itself, space restrictions in the form or time pressure that you are under. It may be appropriate to note in the letter sent to the decision-maker that encloses the application form that a personal statement will be submitted which will elaborate on the issues raised in the application.

Like the personal statement, when the application form is completed, it should be read back to the client, line by line, in a language she understands. See Key Stage 6 for guidance on reading back material to your client. In the cover letter to the decision-maker that encloses the application form, any clarifications, inconsistencies or omissions between the application form and documentation submitted at the beginning of the application should be highlighted and where possible addressed. It is important that these matters are brought to the attention of the decision-maker at the earliest opportunity to ensure that the client's application is not in any way prejudiced. If you have relevant evidence and COI to hand at this point, this can also be enclosed and referred to in your letter to the decision maker.

### **Key stage 5: The personal statement**

A personal statement is a detailed written account of the client's personal history relevant to her application for protection. It is drafted by the lawyer, based on the client's instructions and in the client's own words, and provided to the first-instance decision-maker, prior to the decision on the application for protection. A personal statement is a useful tool that can help a decision maker, as it sets

out the salient points of the application in detail, in chronological order allowing the decision-maker to focus on the most relevant issues at the personal interview.

Decision-makers in the Early Legal Advice Project in the UK commented, in a review of the project, that a good quality personal statement resulted in a more focused personal interviews; the availability of more evidence and a shorter decision time.<sup>17</sup>

The act of taking your client's instructions for the statement can also indirectly serves to prepare your client for the personal interview as she becomes accustomed to being asked questions and gains an understanding of which parts of her application may be under scrutiny.

### **Content of the personal statement**

The core of any statement is a detailed description of why the applicant has a fear of persecution – including the reasons or incident(s) on which the fear is based and an explanation of why there is a future risk of harm. The statement should cover all elements of the Refugee Convention and subsidiary protection, plus any other provisions laid down in domestic legislation. The decision-maker should not be left wondering, for example, if state protection is available in the country of origin. Be aware however that your client may simply not be able to give instructions on certain issues including internal protection and your submissions (see Key Stage 8) should cover any gap that exists in the personal statement.

Unless the client uses the relevant legal terminology, you should not refer to such terms in the statement. For example a sentence like *'There was nowhere I could go to be safe'* should be used instead of *'I could not internally relocate.'*

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<sup>17</sup> Home Office, Evaluation of the Early Legal Advice Project, Final Report, Research Report 70, May 2013

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Below is a list of general topics that are useful to cover in the personal statement:

- (i) A brief **personal background:** including education level and immediate family members – all immediate family members should be mentioned, including foster children or de facto adopted children, as a family reunification application may follow at a later date. Note that any mistakes in name spellings or dates of birth, etc., may cause problems later, so particular care should be taken to ensure this information is accurate. Caution should be taken if names are phonetically translated.
- (ii) The **type of persecution** feared and any previous occurrences, if any (e.g. torture, ill-treatment or threat thereof, sexual abuse, threats to family members, etc.): This should be covered with a sufficient level of detail to bring the incident(s) to life in the statement. However care must be taken not to re-traumatise the applicant.<sup>18</sup>
- (iii) The **link between past and future persecution:** Where there has been past persecution (which is not a requirement for establishing eligibility for refugee status), you should cover any link between it and any risk of future persecution (if one exists). Article 4 (4) of the recast Qualification Directive<sup>19</sup> states that the fact that an applicant has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, is a serious indication of the applicant's well-founded fear of persecution. Past persecution of other family members may also be relevant to your client's protection application.
- (iv) The **decision to flee** and any events leading up to this: Some refugees suffer persecution over a long period of time before ultimately making the decision to flee. The circumstances surrounding this decision, and immediate events which were the catalyst to this decision, should be covered in detail in the statement, as should the applicant's state of mind regarding their flight.
- (v) Any **escape from detention:** of the millions of persons detained worldwide, a tiny minority manage to escape and reach Europe. A decision-maker may be sceptical of the plausibility of an escape so this part of the applicant's personal history should be covered in detail in the statement.
- (vi) The **absence of state protection:** if the agent(s) of persecution are non-state actors you will either have to show that there is no state protection available, or that the agents of persecution are operating with tacit state approval.
- (vii) **The possibility of internal relocation:** you should explain why it is not feasible in this case. Remember that you do not have to prove that the persecution would extend to all parts of the country of origin, just that it would occur in one area, and that the client cannot safely and legally travel to and gain admittance to another part of the country and cannot be reasonably expected to settle there.
- (viii) Any incident(s) of **prior internal relocation**, or attempts at such, should be covered in the statement together with an explanation as to why the relocation did not reduce the risk of persecution or why any attempts at future relocation would not be feasible.
- (ix) Any **delay in leaving the country of origin:** if the applicant did not leave her country of origin immediately after experiencing or fearing

<sup>18</sup> If an applicant is too badly traumatised to be able to discuss the details of abuse she suffered, an explanation instead may suffice. For example: "in prison I was treated very badly, I have been diagnosed with PTSD as a result, I do not wish to recall the details of the abuse as I am afraid to think about it in case it brings on more flashbacks". See Chapter 2 for advice on working with vulnerable clients.

<sup>19</sup> Directive 2011/95/EU of The European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast)

persecution, an explanation for the delay must be given, as delay may be held to be damaging to her credibility.

- (x) **The assistance of strangers:** Only a tiny minority of persecuted persons in the world manage to make it to a safe country and of these, some will have been assisted by a person seeking no gain for themselves, i.e. a Good Samaritan or a family member. A decision-maker may be sceptical of such assistance and it should therefore be clearly described and explained in the personal statement.
- (xi) **The journey/flight:** Again, this topic should be covered in some detail at the end of the statement. You may wish to take detailed instructions on this for your own reference, and include one or two paragraphs in the statement, as appropriate. Include details such as whether travel documents were used, the precise route taken (if known), any problems encountered en route, the cost of travel and how it was paid for and who assisted and why. Though these issues will not usually be core elements of the application for protection, they may be of interest to the decision-maker, and could lead to negative credibility findings if not adequately addressed.
- (xii) **Travel through other countries:** There is no requirement in the Refugee Convention that a person seeks protection close to her home: a refugee is entitled to go to the country of her choosing to seek protection. However, Article 38 of the recast Asylum Procedures Directive does state that Member States may apply the safe third country principle. If, for example, your client was under the control of an agent during the journey this should be specified.
- (xiii) **Family members:** it may be pertinent to explain the situation of any family members left behind in the country of origin, and whether they are at risk (and if not, why not).
- (xiv) **Delay in applying for protection:** any delay

in applying for protection should be dealt with in the statement, as this may be deemed damaging to your client's credibility.

- (xv) **Exclusion clauses, if applicable:** If your client was a police or army officer, or a member of a rebel group, you should explore the possibility of whether she has taken part in any activities which would potentially exclude her from the protection of the Refugee Convention. You may need to ask specific questions during your interview to elicit such information.

A personal statement is distinct from COI and lengthy descriptions of general conditions in the country of origin should be avoided. This topic is best covered by objective, impartial evidence, rather than the client's own testimony.

### Drafting the personal statement

The style and tone of each statement should be different and tailored to the individual client. Obviously, spelling and grammar mistakes can be corrected to ensure coherence, but a statement should reflect, as closely as possible the client's own manner of speech. For example, the statement of a traumatised, elderly, uneducated person should have a much different tone to that of an articulate, university-educated young person. Be wary of amending the vocabulary in the statement and keep it as close as possible to the words used by the client (via the interpreter, as the case may be). It is permissible to break the occasional grammatical rule in order to give some sense of the applicant's manner of speaking.

A personal statement is not to be confused with a lawyer's submissions (see Key Stage 8). A clear distinction should be drawn between the applicant's account and any legal points you wish to make, which should be made in separate correspondence drafted by you, as the lawyer.

To avoid the personal statement being a sterile account of facts, the client's personal history should be brought to life by using descriptive phrases used

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by your client. The information contained in the statement should be vivid enough to highlight its plausibility. Asking your client how they felt when an event occurred is important, so that the factual events described are properly situated within the client's individual frame of reference.

Once you have a draft statement, it should be reviewed for internal consistency, and for consistency with other documents, particularly documents already submitted to the decision-maker. Your chronology can assist in cross checking dates and events.

The statement is an opportunity to correct any mistakes or inconsistencies that exist in any 'border' procedure interview or pre-application screening interview. Any inconsistencies which arise should be tackled as soon as possible by asking the client about them directly.

## Inconsistencies and discrepancies

Inconsistencies can arise for various reasons, including:

- (i) A misunderstanding on your part;
- (ii) An interpretation problem;
- (iii) A problem with the client's recollection (which may indicate a more serious problem, such as learning difficulties or a mental health issue).

Some applicants are so badly traumatised that they are simply incapable of giving a coherent account, and will mix up dates or the chronology of instances of persecution, etc. The best way to frame a statement in such cases is to explain this to the decision-maker at the outset, making the difficulty clear, for example: *"I am not used to using a calendar and frequently mix up dates and events. I also struggle to estimate distances."*

If the client is confused about a particular date or timeframe, this matter should be left open in the statement – it can be narrowed to a range that

the client is comfortable with, but no more. If the client is unable to recall the year that specific events occurred, it is sufficient to use phrases like *"sometime later"* or *"some years after"*. At all times, the statement should accurately reflect your client's ability to remember her own personal history in chronological order.

During the process of taking the statement you may wish to do simultaneous COI research, this may give rise to inconsistencies with the client's account. Where these occur you should firstly take your client's instructions and then put the apparent inconsistency to your client.

## The personal statement for persons who have experienced trauma

As part of the case plan, you will have made a decision about how much of your client's experiences, including trauma, should be recalled in the personal statement. While it is important to remind the client why such testimony is relevant to on behalf of her protection application, if your client is distressed in recalling her experiences or there is a risk of re-traumatisation, it should be avoided. It may be necessary to seek a medical opinion as to whether it is appropriate to proceed and any limitations on your client's capacity.

The lawyer should try to obtain the following information for inclusion in the personal statement depending on its relevance to the application for protection:

- (i) **Circumstances leading up to the trauma**, including details of arrest, abduction and detention, if appropriate; sometimes it may be more appropriate to focus on the peripheral information surrounding such events rather than gathering a lot of information on the torture event itself. The approach will have to be tailored depending on the individual circumstances of the client.

(ii) **Approximate times and dates of trauma, if known;** this may be difficult to obtain. Persons who have experienced particularly traumatic events, may provide inconsistent statements due to their experiences. This has been well-documented by way of clinical research.<sup>20</sup> The benefit of gathering this testimony means that such discrepancies and inconsistencies are highlighted early in the process as well as any trauma-related issues concerning the client and addressed prior to the interview stage of the procedure.

(iii) **A description of the perpetrators** involved in the arrest/detention and torture, where possible.

(iv) The **usual routine of the place of detention and the pattern of treatment.**

(v) **A description of the torture,** including the methods of torture used, where possible. Instructions on this will most likely require more than one consultation. It may be more appropriate to gather information surrounding the event itself, depending on the materiality of the past event for the application and to obtain other supporting evidence, for example a medico-legal report.

(vi) **Be aware that applicants often conflate rape with other forms of sexual assault** and may not be aware that acts involving a violation of her intimacy, such as groping, verbal assaults, forced disrobing and blows to the genitals constitute forms of sexual assault. It is common for victims of sexual assault to say nothing or deny any assault so it may not be until a second or third consultation that they disclose such information to you and speak of their experience.

You will have to be patient and sensitive to your client's individual circumstances and it may be appropriate to take information from the client on elements surrounding the event rather than the event itself to avoid re-traumatisation.

(vii) **Physical injuries sustained during the course of the trauma,** especially where such injuries have resulted in scarring; this will be helpful in establishing whether a referral to a medical professional for a medico-legal report would be appropriate to establish how such physical injuries occurred.

(viii) **A description of weapons or other physical objects used.**<sup>21</sup>

### **Persecution on account of sexual orientation or gender identity**

LGBT applicants may face particular impediments to accessing a meaningful and effective protection process. Your client may not initially present as a person seeking protection and may have entered the country on a tourist or student visa. She may have been refused leave to land or enter at an airport or border point and apply for protection without any legal advice at all. Because she has not yet entered the protection process, she may not find it easy to obtain legal aid. She may have left her country before she came out or fully realised her own gender identity or sexual orientation. She may never have spoken about her gender identity before and need significant reassurance about the confidentiality of her application (e.g. that there will be no contact with her country of origin about the application). She may be at risk for reasons of religion or imputed political opinion as well as her gender identity or sexual orientation.

<sup>20</sup> See generally, Jane Herlihy, Peter Scragg and Stuart Turner, 'Discrepancies in Autobiographical Memories – Implications for the Assessment of Protection Seekers: Repeated Interview Study', *British Medical Journal* 2002; Juliet Cohen, 'Errors of Recall and Credibility: Can Omissions and Discrepancies in Successive Statements Reasonably be said to Undermine Credibility of Testimony?', *Medico-Legal Journal* 2001. See generally, publications from the Centre for the Study of Emotion and Law ([www.csel.org.uk](http://www.csel.org.uk)).

<sup>21</sup> See OHCHR, 'Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', 1999.

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If the client does not have the opportunity to set out her testimony fully, that essential proof in her case is not fully advanced and there is a risk that a person in need will not be recognised as needing protection. In these circumstances, the personal statement may be of particular importance.

For cases involving applications based on sexual orientation and/or gender identity, the personal statement can include instructions on your client's upbringing, her first awareness of her sexual and/or gender identity, her feelings as she has grown older, her interaction with her family and the society in which they lived. Details of discrimination, harassment and persecution should be included, as well as comment on the availability of protection and proposed internal relocation alternatives, depending on the individual circumstances of the case.

The 'Difference, Stigma, Shame and Harm'<sup>22</sup> model can be useful as it enables a client to address her individual narrative in a personal statement by asking specific questions.<sup>23</sup> Not all clients with protection applications related to sexual orientation and gender identity will have all of these factors arising in their applications. However a significant proportion will, so it can be a useful starting point in the personal statement once a relationship of trust has been established.

The preparation of a personal statement for an LGBT client can be an empowering experience in and of itself. The client can gain a degree of comfort in talking about her life. She can express, perhaps for the first time, her hopes and fears for the future. She can gain self-confidence in articulating her own experiences.

## Key Stage 6: The read-back of the personal statement

At the end of the process of taking instructions, the entire personal statement should be read back, line by line, to the client, in the presence of an interpreter if needed, enabling any corrections and clarifications to be made. The read-back is of vital importance. The client should be advised that errors in the statement will be very difficult to overcome later in her application and may undermine her credibility and ultimately damage her application. Care should be taken to ensure that your client's instructions have been correctly recorded, that there are no chronological errors and most importantly that your client believes that the personal statement represents a full and accurate representation of her experiences.

Often the read back will result in the need for further instructions to be taken, particularly if the personal statement covers a long period of time and involves many incidents. Do not rush the read back, particularly in circumstances where further instructions need to be taken. If necessary run it over several appointments. The read back will also assist in identifying any errors which the lawyer may have made during the drafting of the personal statement.

If your client is proficient in the language that you are using, it is appropriate to give her a copy of her statement to take away and read herself. This should always be followed up with a full, oral read-back by the lawyer.

The importance of the read-back needs to be emphasised to the client and that they can amend their statement prior to it being finally signed by

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<sup>22</sup> S. Chelvan, Difference, Stigma, Shame and Harm, April 2014. The model involves the following elements: **Difference** which can include recognition that oneself is not like other 'boys/girls' with respect to personal sex gender role development and not living a heterosexual narrative; **Stigma** which commonly involves recognition that 'the majority' does not accept or disapproves of the identity of the LGBTI individual and **Shame** commonly arises as an impact of stigma and includes feelings associated with isolation. **Harm** as part of the model can include both fear of persecution from state authorities as well as non-state agents such as communities and families.

<sup>23</sup> See also, S. Chelvan, From ABC to DSSH: How to Prove You Are a Gay Refugee, July 2014

them. Clients may also be overly respectful of the lawyer (or overly grateful towards a person providing her a service free of charge), and may be reluctant to point out mistakes, preferring to say that the draft document is correct in its entirety.

### **Method of read back**

Consider reading from a paper version of the statement rather than from the computer monitor as mistakes will be easier to spot. Pause at the end of each sentence to ensure that the client is in agreement with the content.

The statement should contain a signed declaration from the client confirming that its contents are true and accurate and have been read back to her in full, in a language she understands. The interpreter should also sign a declaration to confirm that she has accurately interpreted its contents and that the client has confirmed she understands it.

Provide your client with a copy of the statement, translated in to her own language if possible.

### **Submitting the personal statement**

The personal statement should be submitted prior to any personal interview, as early as possible, to the decision-maker, enabling her to have full regard to the material contained therein. A sample of this letter is provided in the annex to the manual. This letter can be a good opportunity to flag any particular vulnerability and submit any relevant COI or evidence (see below). A personal statement that is received by the decision-maker shortly before the personal interview is unlikely to be read in advance of the interview itself.

As a statement contains highly sensitive personal information, it should always be sent by registered post, or hand-delivered to the decision-maker.

If your client has documentary evidence that supports her application it may be appropriate to submit that evidence with the personal statement,

particularly if that evidence is referred to in the statement and is best seen by the decision-maker prior to the interview. Remember that it is your client's decision as to whether evidence should be submitted or not, the lawyer's role is to advise her of the consequences of submitting such evidence. See Key Stage 8 for information on submitting evidence.

## **Key Stage 7: Accompaniment to the personal interview**

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After the application form and personal statement have been submitted the applicant will, generally, have a personal interview with the decision-maker. Article 14 of the recast Asylum Procedures Directive states that an applicant shall be given the opportunity of a personal interview with a person competent under national law to conduct such an interview. The personal interview is an opportunity for the decision-maker to clarify the information presented in the personal statement. It is also an opportunity for the applicant to 'bring to life' her personal history and present her application.

Be aware that Article 14 (2) of the recast Asylum Procedures Directive states that a personal interview may be omitted where the decision-maker is able to take a positive decision with regard to refugee status on the basis of evidence available; or where the decision-maker is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond his or her control; when in doubt, a decision-maker shall consult a medical professional. If your client's case fits either scenario it may be appropriate to draw the decision-maker's attention to this Article.

Article 23 (3) of the recast Asylum Procedures Directive allows for a legal adviser admitted or permitted as such under national law, to attend the personal interview.

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If you have not attended a personal interview in the past. It may be suitable to contact the decision-maker and state that you will be attending the interview with your client.

## Preparation for the personal interview

Prior to the personal interview, explain to your client what will happen. Reassure her as much as possible that this is an opportunity for her to tell her story. This information is best given to the client in a separate appointment, after the personal statement and evidence has been submitted, rather than at the end of the read back when your client may be tired.

The client may have questions about the role of each party attending including you, the lawyer. It is also important to reiterate the particular role of the interpreter and that if at any stage, the client does not understand the interpreter, she must indicate this. The client may not want to be seen as 'complaining', for fear it may damage her application but she should be reassured that this is not the case.

If possible it may be beneficial to contact the decision-maker, before the interview but after they have received the personal statement, with a view to narrowing down the issues that the decision-maker wishes to ask questions about. If precedent is required for this practice, the example of the UK's Early Legal Advice Project could be used. This project required the decision maker and lawyer to discuss the material issues in the application before the personal interview and to come to an agreement in relation to relevant issues such as the key material factual claims, the key legal or country issues engaged by the case and any areas of concern or specifically in dispute (and why).<sup>24</sup>

When you feel a client, who has undergone traumatic experiences, will be negatively affected about recalling her experiences, you may need to put the decision-maker on written notice of the

likelihood of any serious problems. For example, a client who is prone to dissociative flashbacks, or an epileptic client for whom stress may trigger a seizure. The decision-maker may need to shorten the duration of questioning, provide additional breaks, or reduce the normal pace of questioning.

On the morning of the personal interview you should check that your client is fit and well to conduct the interview that day, including whether she has any special needs, for example requiring a break to take medication at a certain point during the day. You may wish to alert the interviewing officer to this at the outset of proceedings (if they have not already been informed in writing).

You should bring to the interview a photo identification for yourself and a copy of the client's file, including extra copies of the client's personal statement and any other documents that you are relying on.

It may be helpful to go through the client's file and flag, for your own reference, important documents or correspondence so that these can be easily identified and checked by you during the interview.

## Scope of the lawyer's role at the personal interview

While the interviewing officer will usually have full responsibility for the conduct of the interview and the lawyer will be an observer, not an active participant, your presence at the personal interview serves several purposes. You are there to:

- Provide moral support to the applicant, who may feel nervous, intimidated and apprehensive about the interview;
- Observe the process to ensure that best practice is adhered to;
- Observe the quality of interpretation;

<sup>24</sup> UK Home Office, 'Early Legal Advice Project Guidance', 2010

- Ensure the interviewer has all the relevant documentation and assist her if necessary;
- Make formal comments at the end of the interview if any issues have arisen which merit the interviewer's attention.

Be cautious in speaking to your client during breaks in the interview, evidential rules generally state that a lawyer should not advise her client while they are giving evidence.

### During the personal interview

During the interview you should take a full and comprehensive handwritten record. If the interviewer is conducting proceedings at a speed which inhibits the taking of a full note, which can occur when your client speaks the language in which the interview is being conducted, you should politely request that they slow down so that you can take a full record.

Your handwritten record should include the following:

- A record of all questions asked and answers given, including where the decision-maker addresses you or the interpreter;
- A note of any interventions/requested breaks;
- Any stage where your client's account deviates from her previous instructions to you (contained in the personal statement or elsewhere) – you will need to take instructions on any such deviations at a later stage.

Be aware that Article 17 of the recast Asylum Procedures Directive states that Member States shall ensure that, either a thorough and factual report containing all substantive elements, or a transcript, is made of every personal interview. Member States

should also request that the applicant confirm that the content of the report or the transcript correctly reflects the interview. It may be necessary to remind the decision-maker of this obligation prior to the interview commencing. Article 17 (5) of the Directive states that the lawyer shall have access to this report before a decision is made on the application. It will be necessary to carefully read this report, when received, and make sure it is consistent with your record.

Comments or issues can be raised at an appropriate point during the interview or at the end. The recast Asylum Procedures Directive also states that decision-makers shall ensure that the applicant has the opportunity to make comments and clarify, orally or in writing with any mistranslations or misconceptions appearing in the report or in the transcript. Be aware that Article 23 (3) of the recast Asylum Procedures Directive states that Member States may stipulate that the legal adviser or other counsellor may only intervene at the end of the personal interview.

Note however that UNHCR state that a lawyer should intervene in the interview when appropriate. UNHCR's Building in Quality manual states: "Where national law permits, he or she [the lawyer] should participate in the interview, including potentially asking questions important to the applicant's application which have been missed, or objecting where there is a reason to object."<sup>25</sup>

Any comments made to the interviewing officer should be interpreted by the interpreter for the benefit of the applicant (the interpreter may need prompting to do so). If you urgently need to speak to your client, and bearing in mind the evidential rules noted above, you may need to request a break to do so. You should take a full note of any such requests.

<sup>25</sup> UNHCR, Building In Quality, 'A Manual on Building a High Quality Asylum System, Further Developing Asylum Quality in the European Union', September 2011

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You will need to use your judgment to determine if a matter requires the immediate attention of the interviewing officer. Examples of such instances include:

- If there is a serious problem with interpretation you may wish to seek a pause in proceedings to confer with your client (with another interpreter on the telephone, if necessary and/or possible);
- In rare cases there may be an issue with the conduct of the decision-maker;
- Your client may become distressed while answering sensitive questions. You should ask for a break to consult with your client as to whether they are fit to continue with the interview.

Make a note of any disturbances or interruptions that may affect the conduct of the interview.

Time may be allocated at the end of the interview in order for you to raise any points that you may have. These points can either be raised orally, or alternatively (if the points are lengthy) you may wish to hand the interviewing officer a written note of your comments. You may ask for time to compose written comments at the end of proceedings if you wish. You should note that any points you make will be added to the official record of proceedings so they must be neutral and professional in tone, and as concise as possible.

## After the personal interview

You should always have a post-interview consultation with your client regarding the interview. This allows you to take instructions on how they felt the interview went, and ask if there were any issues of concern. Of particular importance will be any points in which answers to questions deviated from previous instructions to you and/or the personal statement, as these are likely to require written submissions to be made to the decision-maker.

You should also remind your client that you will be making submissions to the decision-maker and outline the content of these submissions.

## Key Stage 8: Post-personal interview submissions and evidence

The aim of post-personal interview submissions is to advocate, to the decision-maker, why your client is in need of protection. It will be a rare case where it is not necessary to make submissions on any issue. The types of issues which should be covered in submissions include, but are not limited to, the following:

- Brief summary of the material facts of the application;
- Why your client's account is credible;
- Applicable Refugee Convention and subsidiary protection grounds;
- Persecution; including a reference to past acts of persecution if applicable;
- Sufficiency of state protection in the country of origin;
- Response to issues/matters raised during the personal interview, for example if the decision-maker has stated that internal protection is an option for your client this should be responded to;
- Reference to COI and expert evidence and why and how it advances your client's case;
- Humanitarian grounds (for example any reference to her rights under the ECHR).

Post-interview representations can also be used to address the following issues:

- Problems with the interviewer's conduct of the interview, in particular any breach of fair procedures;
- Problems with the interpretation at interview;
- Instances where the interviewer put particular challenges or points to your client which you believe should be addressed in representations, for example, if they posit that your client could internally relocate when this is not relevant in the particular case;
- The interviewer made a comment that was wrong in law, or demonstrated that she has a fundamental misunderstanding of the facts of the case;
- You have identified further and relevant COI, which would corroborate specific or general aspects of the applicant's case. There may also be COI which addresses a specific point raised by the interviewing officer at interview.
- It may be relevant to flag to the decision maker if there is further evidence to be submitted. For example, you may be awaiting a medico-legal report, and it may be appropriate to submit a request that a decision not be made or issued on an application until same is submitted.

### **The right of the applicant to have submissions considered by the decision-maker**

It is assumed that the applicant has the right to make submissions in relation to her case and for those submissions to be considered prior to a decision being made. If your submissions are ignored or no time is given to submit them, reference could be made to Article 41 of the

Charter of Fundamental Rights of the European Union (CFEU), which provides for a 'Right to Good Administration' and includes the right of every person to be heard, before any individual measure which would adversely affect her is taken. Also of relevance is Article 4 of the recast Qualification Directive which requires the Member State to assess the relevant elements of the application including the applicant's statements.

### **Drafting submissions**

Begin by reading the interview notes you have made to identify any particular issues that may require further clarification or elaboration. Be as concise as possible, lengthy submissions are unlikely to be read by busy decision-makers. If you do not have the interview notes and did not attend the interview you may need to ask your client what issues arose or even contact the decision-maker. A basic template of submissions is provided in the annex.

### **Submissions on COI**

If there is a lot of COI available and/or if it is a particularly complex application it may be helpful to submit an annex of selected extracts of COI, rather than voluminous COI reports. It may also be appropriate to submit a copy of your chronology and schedule of documents. Obviously make sure that both documents are accurate and, in the case of the schedule, it references the documents that your client has submitted.

### **Submissions on the law**

Submissions on relevant points of law can assist the decision-maker and be persuasive in showing that the client is in need of protection. Submissions should contain all salient points without being overly technical or legalistic and show how the client's application fits within the refugee and subsidiary protection definitions or raises human rights grounds.

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The lawyer should also reflect on matters raised during the personal interview and how to respond to them within the remit of the legal submission.

Submissions should also cite relevant authorities to be relied upon including applicable case law on particular aspects of the application and relevant domestic, European and international law where appropriate. It is not necessary, or helpful to the decision maker, to cite general, well established legal principles. It is also advisable to avoid lengthy submissions on general points of protection law. Nevertheless, if an unusual or particularly complex point of law is raised it should be addressed in full in the legal submission. Sometimes further instructions may need to be taken from the client in relation to matters raised during the personal interview.

## Assembling and submitting supporting evidence

Submissions should also be used to refer to evidence and its relevance to the application. You may have already submitted evidence prior to the personal interview or be submitting it for the first time.

Evidence can include everything from documents which show a person's education or employment history to reports from country experts to medical evidence. Remember that any evidence you submit should be carefully checked to ensure that it is consistent with your client's instructions, and is relevant to the application.

It is your client's decision whether to submit particular evidence in support of her application. However, you should always remind your client that it is advisable not to submit evidence in circumstances where she is unsure of its authenticity. Clients should also be advised to submit evidence to the decision maker at the earliest possible

opportunity, as mentioned previously. It may be appropriate to submit evidence when submitting the application form or personal statement so that the decision-maker can consider it before the personal interview.

Remember that evidence may not be able to substantiate a future risk of persecution but may contribute to the general credibility of your client's application.<sup>26</sup>

Remember to give your client a copy of the final draft of your submissions.

## Key Stage 9: Post-decision planning and consultation

When you receive the client's decision you should contact the client to arrange a consultation. How you proceed, thereafter, will depend on whether she received a positive or negative decision.

### Delay in decision

Be aware that there may be a delay in the decision-maker issuing their decision. How you respond to any delay will depend on the facts of the case. If you believe that your client has a *prima facie* case for refugee status or the delay is causing her significant stress, it may be appropriate to make further oral or written submissions to the decision-maker and urge them to make their decision.

Article 12 (e) of the recast Asylum Procedures Directive states that an application "shall be given notice in reasonable time of the decision by the determining authority on their application." While no definition of "reasonable time" is given, it could be argued that, given the applicant has put forward a personal statement, submissions and possibly

<sup>26</sup> CREDO, 'Credibility Assessment In Asylum Procedures– A Multidisciplinary Training Manual', 2001

supporting evidence, she has more than met any burden on her and the decision-maker should be able to make a prompt decision.

It may also be appropriate to invoke Article 31 (7) of the recast Asylum Procedures Directive which states that Member States may prioritise an examination of an application for international protection in particular where the application is likely to be well-founded or where the applicant is vulnerable.

### Where a negative decision is received

In circumstances where your client receives a negative recommendation, you should immediately determine both the time period within which to appeal and if necessary, assess any grounds to pursue judicial review it (if that option exists), and assess whether there is merit in undertaking either of these courses of action. You should arrange a meeting with your client as soon as possible and well in advance of the applicable deadlines to appeal.

Be aware that your client may be upset and traumatised on account of having received a negative decision. Time should be taken at your meeting to console but reassure your client. See Chapter 2 on assisting vulnerable persons including guidance on when a vulnerable client receives a negative decision. In addition it is recommended that the following steps are undertaken.

- Read the decision in detail to the client, with the assistance of an interpreter if required;
- Explain the reasons given for the negative recommendation, ensuring, as far as is possible, that the client fully understands it;
- Advise the client on the courses of action available to her. In particular, advise on whether there are grounds for appeal and/or judicial review, explaining the procedures involved

and the practical implications and potential cost implications and risks of pursuing a particular course of action;

- Where it is not your intention to continue to represent your client, you should advise her as to how she can obtain alternative legal representation and facilitate her in this regard. Advise the client on the relevant statutory deadlines for an appeal and/or judicial review and the importance of obtaining alternative representation as soon as possible. You should also ensure safe transfer of the file to the new lawyer if and when one is instructed.

The above should be confirmed in writing in a letter and given to the client.

### Where a positive decision is received

In circumstances where your client receives a positive decision, you should arrange a final meeting with her to inform her of the positive outcome and to advise her of the following relevant matters:

- How she can obtain identity documents including a residence card;
- The rights and obligations of refugees, including, in particular, advice on the circumstances under which refugee status may be revoked;
- The possibility of applying for family reunification;
- Information on applying for travel documents;
- Advice on if and how she can apply for citizenship;
- Provide contact details of support organisations that can assist with the transition from a reception centre and integration into the

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community. This transition can be particularly difficult and may involve moving to another part of the country she is in. Depending on the client's instructions, it may be advisable to request, with her consent, that she be accommodated in the town or area where she currently resides;

- Whether original documents submitted to the decision-maker will be returned and, if so, how these can be obtained
- Provide information regarding how long you, as the client's lawyer, are obliged to keep your file for, how the client can obtain a copy of the file if needed and by what date the file would be expected to be destroyed.

The above should be confirmed in writing in a letter and given to the client.

## Chapter 2:

# Early Legal Advice for Clients who are Vulnerable or have Special Procedural Needs



# Chapter 2: Early Legal Advice for Clients who are Vulnerable or have Special Procedural Needs

## Introduction

It is widely recognised that all persons seeking protection are vulnerable. The European Court of Human Rights (ECtHR), in the case *MSS v. Belgium and Greece*, stated that asylum seekers are a particularly underprivileged and vulnerable population group in need of special protection.<sup>27</sup> Some clients may be particularly vulnerable for a variety of reasons including, but not limited to, factors relating to their individual personal circumstances, past persecution and related trauma and experiences on their journey to Europe or even within the protection procedure itself.

There is no exhaustive definition of vulnerable persons seeking international protection and a client may have numerous vulnerabilities with overlapping causes.

This chapter relates to ELA for vulnerable persons and is not a holistic assessment of rehabilitation and therapeutic requirements for the person concerned. It is important to recognise your role in the overall support network that should be available to your client. Lawyers should work with relevant support services to ensure that the special needs of persons seeking protection are met both within and beyond the protection procedure itself.

## Law and guidance on treatment of vulnerable persons in a protection procedure

Both the recast Asylum Procedures Directive and the recast Reception Conditions Directive have introduced specific provisions for vulnerable persons.

Recital 29 in the Preamble of the recast Asylum Procedures Directive sets out, as a non-exhaustive example, a number of categories of persons that Member States should endeavour to identify as in

need of special procedural guarantees before a first instance decision is taken. The recital states that these applicants should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection. Recital 30 of the same Directive states that where adequate support cannot be given to an applicant who is in need of special procedural guarantees, but who is in an accelerated procedure, they should be withdrawn from that procedure.

Article 2 (d) of the recast Asylum Procedures Directive defines an applicant in need of special procedural guarantees as an applicant whose ability to benefit from the rights, and comply with the obligations, provided for in the Directive as limited due to individual circumstances. This definition is relatively wide and could be invoked by lawyers when making submissions that their client cannot obtain the rights, nor fulfil the obligations, in the Directive due to their vulnerability and should therefore be treated accordingly.

Article 21 of the recast Reception Conditions Directive also sets out a wide range of vulnerable persons, including minors, disabled people and victims of human trafficking whose specific situation Member States should take in to account when implementing the Directive.

Member States are required to adapt the protection process for vulnerable clients in order to respect their international human rights obligations. The ECtHR has held that the “right not to be discriminated against in the enjoyment of the rights guaranteed under the [ECHR] is also violated when States...fail to treat differently persons whose situations are significantly different.”<sup>28</sup>

<sup>27</sup> European Court of Human Rights, *MSS v Belgium*, 2011, paragraph 251

<sup>28</sup> European Court of Human Rights, *Thlimmenos v. Greece*, 2000; See also Fundamental Rights Agency and European Court of Human Rights, ‘Handbook on European Non-Discrimination Law’, 2010

The CFEU is binding during the protection procedure as the Member State is implementing EU law. Article 1 (that human dignity is inviolable and must be respected) and Article 18 (the right to asylum) and Article 41 (the right to good administration) are all relevant to the protection procedure.

Various other bodies have commented on how a protection procedure should be designed to accommodate and serve the needs of vulnerable persons. For example, the Council of Europe Convention on preventing and combating violence against women and domestic violence states: "Parties shall take the necessary legislative or other measures to develop gender-sensitive reception procedures and support services for asylum-seekers as well as gender guidelines and gender-sensitive protection procedures, including refugee status determination and application for international protection."<sup>29</sup>

The International Association of Refugee Law Judges has noted, "in the assessment of the credibility of the evidence from a vulnerable or sensitive claimant, a failure to take into account appropriately their specific vulnerabilities can lead to an error of law".<sup>30</sup>

This section is obviously not exhaustive and other sources and guidance should be researched in full.

### **The impact of vulnerability on the assessment of a protection application**

Vulnerability, and the lack of procedural safeguards for vulnerable clients, may have a detrimental impact on the ability of clients to present their

applications, including the following:

- Restricting their effective access to the protection procedure;
- Hindering the ability to present the elements needed to substantiate their protection application including inhibiting disclosure of the persecution suffered due to feelings of shame, stigma or mistrust;
- Inability to clearly and coherently present their protection needs due to previous trauma;
- Memory loss and difficulty recalling events due to trauma and/or other mental health issues. Research has shown that persons seeking protection who have post traumatic stress disorder (PTSD) and/or depression are far less likely to be able to recall specific memories when prompted to do;<sup>31</sup>
- Impaired sense of time and space in the chronology of events;
- Late disclosure of protection needs (sometimes resulting in subsequent applications for protection).

Lawyers must reflect on how the client's specific vulnerabilities impact the legal analysis of their application. The following may be relevant:

- In-depth COI research related to similarly situated persons in the country of origin for example: the treatment of persons with disabilities, gender-related COI;<sup>32</sup>

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<sup>29</sup> Council of Europe, Convention on preventing and combating violence against women and domestic violence, 2011, Article 60 (Gender-based asylum claims).

<sup>30</sup> Carolus Grutters, Elspeth Guild, Sebastiaan De Groot, 'Assessment of Credibility by Judges in Asylum Cases in the EU', November, 2013

<sup>31</sup> Belinda Graham, Jane Herlihy and Chris Brewin, 'Overgeneral memory in asylum seekers and refugees', 2014, Journal of Behaviour Therapy and Experimental Psychiatry

<sup>32</sup> Be aware that COI may not be readily available to support claims from vulnerable groups. COI reports often lack sufficiently detailed information on the position of vulnerable groups such as women and children. Therefore the personal testimony of the client will be of increasing importance in the adjudication of her protection needs and it may be appropriate to also seek expert evidence.

## Chapter 2: Early Legal Advice for Clients who are Vulnerable or have Special Procedural Needs

- The relevance of specific circumstances with respect to legal concepts such as access to internal protection;
- Whether the persecution is from state agents or non-state agents and the impact of that in analysing the sufficiency of state protection;
- The link between the client's specific circumstances and the Refugee Convention. For example, many but not all gender-related protection applications and those related to sexual identity may engage the Convention ground of membership of a particular social group;
- Whether past events of persecution are indicative of future risk and contribute to establishing a well-founded fear of persecution;<sup>33</sup>
- Assessing whether additional evidence is needed from relevant experts.

### Identifying vulnerability

It is important that the specific vulnerabilities of a person seeking protection are identified early in the protection procedure.

The Enhancing Vulnerable Asylum-Seekers Protection Project (EVASP) refers to vulnerability as a "complex and composite phenomenon of various 'external' and 'internal' dimensions".<sup>34</sup>

Lawyers should possess the necessary knowledge and skills to identify whether a person is experiencing a particular vulnerability, whilst still acknowledging their own limitations as lawyers who are not medically trained. Therefore, it is crucial that, once signs of trauma or other related vulnerabilities

are identified by the lawyer, suitable referrals are made to the appropriate medical services.

There is no definitive way to identify vulnerability, however a number of organisations provide support tools. The PROTECT Questionnaire, for example, aims to facilitate the early recognition of persons having suffered traumatic experiences, victims of torture, psychological, physical or sexual violence.<sup>35</sup>

### Providing early legal advice to vulnerable clients

Once the client's specific vulnerability has been identified, the next step is to adapt the provision of ELA accordingly. The person concerned may be part of a family group of clients or dependent on a partner's application. If so, it is important not to assume that vulnerable persons simply have dependent applications. Such clients may have substantially different applications to their family members that may warrant a separate application.

People react differently to trauma, stress and other external factors. UNHCR has noted that people who have suffered traumatic events frequently avoid thinking or talking about the event.<sup>36</sup> Sometimes a client may not even be conscious that she is doing this. This can make it difficult for lawyers to facilitate disclosure of all the relevant information required to draft the personal statement. If there are indications of a specific vulnerability you should reflect on what specific procedural needs your client will have during the protection procedure. Lawyers should consider applying the following:

- Adjustment of the timeframes for the protection procedure for example requesting more time to complete any application form, to submit

<sup>33</sup> Article 4 (4) of the recast Qualification Directive

<sup>34</sup> Enhancing Vulnerable Asylum Seekers Protection, 'Trainer's Handbook'

<sup>35</sup> PROTECT Partners, 'PROTECT Questionnaire (Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment'

<sup>36</sup> UNHCR, 'Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report', May 2013

the personal statement or further evidence and submissions;

- Request prioritisation of the client's protection application or postponement of the personal interview depending on the client's needs; prioritisation could be applicable when the applicant has a strong protection claim. See the section on delays in decision making contained in Key Stage 9;
- Submit appropriate referrals where necessary to access medical or psychological services on behalf of the client with consideration as to whether a medico-legal report may be sought;
- Ensure that the client has appropriate supports in place such as psychological services or counselling where necessary;
- Keep the client regularly informed, both verbally and in writing, as to the progress of her application and the next steps to be taken;
- Ensure that there are emergency protocols in place for at-risk clients who may present a danger to themselves and/or others;
- Depending on the circumstances of the client's case it may be useful to communicate with the decision-maker, early in the procedure, to state which aspects of her application the client finds particularly traumatic in preparation for her substantive personal interview. A sample of such a letter (pre-personal interview submissions) is provided in the annex;
- Requesting that the client's reception conditions are adapted to her needs, for example, that the client is released from detention and/or placed in specific reception centres designed for the special needs of traumatised persons. The detrimental impact that unsuitable

accommodation and reception conditions can have on the client's ability to present her protection needs should not be overlooked.

### Taking instructions from your client

When taking instructions from your client consider the following:

- Ensure sufficient time for meeting with the client to establish trust and rapport;
- Create an open and safe environment for conducting meetings;
- Conduct separate interviews without the presence of husband/wife and/or children;
- Ensure confidentiality during meetings;
- Arrange where possible that the same interpreter is used for each consultation thereby ensuring continuity and a building of trust;
- Actively listen to the client;
- Respond appropriately to the client when she is distressed and/or emotionally distressed and break or stop interviews where necessary.

Lawyers should be careful to not re-traumatise the client when taking instructions. Questions can be asked around a traumatic event rather than recalling details of the actual event when the client is traumatised. Sometimes lawyers may note the distress of the client during a particular part of the personal statement as a footnote in that document or in separate legal representations.<sup>37</sup>

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<sup>37</sup> By way of example, sometimes the following could be added as a footnote in the Personal Statement: 'It was noted by the lawyer [name] that the client was emotionally distressed at this point in the consultation meeting.'

## Chapter 2: Early Legal Advice for Clients who are Vulnerable or have Special Procedural Needs

### The personal interview

It is important to advise a vulnerable client of what happens during the personal interview. If the client is particularly anxious about the personal interview, it may be appropriate to take the client to the location of the interview, before it takes place, to ease her concerns. As noted above it may also be appropriate to notify the decision-maker of any vulnerability prior to the interview.

Be aware that Article 14 (2) (b) of the recast Asylum Procedures Directive allows for the personal interview to be omitted if the determining authority is of the opinion that the applicant is unfit or unable to be interviewed owing to enduring circumstances beyond her control. When in doubt, the determining authority shall consult a medical professional to establish whether the condition that makes the applicant unfit or unable to be interviewed is of a temporary or enduring nature. If necessary this Article should be raised, appropriate medical evidence sought and submissions made as to why it should be invoked by the decision-maker.

Article 15 (3) of the recast Asylum Procedures Directive states that Member States shall ensure that the person who conducts the interview is competent to take account of the personal and general circumstances surrounding the application, including the applicant's cultural origin, gender, sexual orientation, gender identity or vulnerability. It may be appropriate to remind the decision-maker of this obligation, before or during the interview itself.

In addition, it may be appropriate to write to the decision-maker and request that the interpreter and interviewer are of the client's preferred gender. Recital 32 of the recast Asylum Procedures Directive states that: "With a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-

sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender-based persecution". This Article can be invoked in any submission requesting an interpreter or interviewing officer of a particular gender.

### Obtaining medical evidence

The need for medical evidence should be identified as part of the case planning process. Requests for medical evidence should be sought with the client's informed consent. Lawyers may need to obtain medical evidence for various reasons including:

- To establish whether scarring or injuries are consistent with the claimed account of past persecution;
- For an opinion as to whether a person has PTSD or any other psychiatric condition;
- For an opinion on capacity to give instructions and/or fitness for interview;
- For a general medical opinion.

Even when the client meets or is examined by a medical expert, re-traumatisation may occur if the client is asked to relive her past experiences.<sup>38</sup> Care should be taken when instructing experts so that they do not ask questions or make an examination that has a high risk of re-traumatisation.

Be aware that Article 18 (1) of the recast Asylum Procedures Directive states that there is an obligation on decision-makers, when they deem it relevant for the assessment of an application for international protection, to obtain medical evidence of their own accord. The Article states that, subject to the applicant's consent, the decision-maker shall arrange for a medical examination of the

<sup>38</sup> The Istanbul Protocol in this regards states: "Despite all precautions, physical and psychological examinations by their very nature may re-traumatize the patient by provoking or exacerbating symptoms of post-traumatic stress by eliciting painful effects and memories. . . . A subjective assessment has to be made by the evaluator about the extent to which pressing for details is necessary for the effectiveness of the report in court, especially if the claimant demonstrates obvious signs of distress in the interview."

applicant concerning signs that might indicate past persecution or serious harm. This Article can be invoked in a variety of situations, for example, if your client presents with scarring or psychiatric illness caused by past persecution.

It is advisable that, in advance of the medical professional's appointment with the client, a letter of instructions is sent. This should contain a summary of the client's case, enclose and refer to the personal statement, and set out instructions as to what issues you would like the professional to consider and what questions should be answered. Be aware that if the case proceeds to an appeal hearing or judicial review the letter of instructions may not be protected by legal privilege so the letter, and any correspondence exchanged, should be written with this borne in mind. Also be aware that the professional is an independent professional and that the lawyer's role is to ask them to give an opinion on matters within their expertise. Doctors, particularly those with little or no experience of working with victims of abuse and torture, could be directed to Freedom from Torture's 'Guidelines for the Examination of Survivors of Torture'.<sup>39</sup>

Depending on the stage of the protection procedure, the lawyer may need to request that a decision is not made by the decision-maker until medical evidence has been submitted. This letter must explain why the medical evidence is relevant to the application. It may be necessary to draw the decision-maker's attention to recital 29 of the recast Asylum Procedures Directive that states that a person in need of special guarantees should be provided with adequate support, including sufficient time, in order to create the conditions necessary for their effective access to procedures and for presenting the elements needed to substantiate their application for international protection.

Be aware that it may be inappropriate, and against your client's interests, to flag to the decision-maker that you are seeking medical evidence, without having yet received it, as that evidence may not add anything to the application or at worst be unfavourable.

The medico-legal report should include a section stating how the medical professional came to their opinion (including details of any meeting(s) with the application and their duration). The professional's qualifications and expertise should also be stated. It may be appropriate to request that the expert append their CV.

Upon receipt of the medico-legal report, the lawyer should review the report in order to ensure the medical professional has answered the questions that they were instructed to answer. The factual history in the report should also be checked against the client's personal statement to identify any inconsistencies between the client's instructions to the lawyer and their instructions to the medical professional. The lawyer may need to refer back to the professional for clarifications on points raised whilst also bearing in mind and respecting the independence of the medical expert.

Any medical evidence submitted, including psychiatric reports, needs to be carefully considered by the relevant governmental authorities. If the decision-maker doubts medical evidence submitted by the applicant, the ECtHR, in *RC v Sweden* and also in *RJ v France*, have suggested that decision-makers should obtain their own medical evidence.<sup>40</sup>

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<sup>39</sup> Duncan Forrest, 'Freedom from Torture, Guidelines for the Examination of Survivors of Torture', 2011

<sup>40</sup> European Court of Human Rights, *RC v Sweden*, 9 March 2010.

## Chapter 2: Early Legal Advice for Clients who are Vulnerable or have Special Procedural Needs

### Submissions on behalf of a vulnerable client

Following the personal interview, submissions for vulnerable clients should make reference to any supporting documentary evidence. This can include medico-legal reports that support the client's account of past persecution, comment on their ability to recount their experiences and/or give an assessment as to the impact on the client of future actions, such as forced return to the country of origin. Studies and literature on the impact of traumatic events on memory and its impact on credibility assessments may also be sourced and relied upon. Depending on the legal issues raised in the client's case, the specific vulnerabilities of the client may be relevant for the determination of certain legal aspects of their application, such as the availability of an internal relocation alternative in the country of origin.

When a decision is received on the vulnerable client's application for protection, lawyers should analyse the decision as to whether the decision-maker has properly taken into consideration the client's particular vulnerability in the assessment of her protection needs. Be aware that if the decision is negative a client may be particularly upset and suffer a recurrence or worsening of any medical condition. It may be appropriate to ask the decision-maker to put you on notice if a decision will be sent to the client and to prepare the necessary supports.

### Useful Resources

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#### Legislation and International Instruments

- Recast Reception Conditions Directive;
- Recast Asylum Procedures Directive;
- The Convention on the Rights of Persons with Disabilities;
- The Convention on the Elimination of all Forms of Discrimination Against Women;
- The UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care;
- The UN Standard Rules on the Equalisation of Opportunities for Persons with Disabilities;
- The Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Council of Europe Convention on preventing and combating violence against women and domestic violence;
- Council of Europe Convention on Action against Trafficking in Human Beings.

## Relevant Case Law

- *MSS v Belgium and Greece*, Application no. 30696/09, 21 January 2011
- *RC v Sweden*, Application no. 41827/07, 9 June 2010
- ECtHR, *Thlimmenos v. Greece*, Application No. 34369/97 6 April 2000
- ECtHR, *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014

## Further Reading

- GENSEN Project, 'Gender-related asylum claims in Europe, a comparative analysis of law, policies and practice focusing on women in nine EU Member States', May 2012
- Fundamental Rights Agency and the European Court of Human Rights, 'Handbook on European Non-Discrimination Law', 2010
- Laurence Debauche-Discart, Asylum seekers with special needs, Ministerial Conference 'Quality and Efficiency in the Asylum Process', 13-14 September 2010
- European Migration Network, 'Identifying Victims of Trafficking of Human Beings in Asylum and Forced Return Procedures: Ireland' May 2014
- 'Protect: Process of Recognition and Orientation of Torture Victims in European Countries to Facilitate Care and Treatment'

- Publications from the Centre for the study of Emotion and Law
- UNHCR Central Europe, 'Response to Vulnerability in Asylum' December 2013
- UNHCR, 'Beyond Proof, Credibility Assessment in EU Asylum Systems: Full Report', May 2013
- EVASP: Enhancing Vulnerable Asylum Seekers Protection
- ILGA-Europe publications on transposition and best practices concerning LGBTI asylum applicants
- Asylum Aid, Unsustainable, the quality of initial decision-making in women's asylum claims
- Freedom from Torture, Body of Evidence: Treatment of Medico-Legal Reports for Survivors of Torture in the UK Asylum Tribunal, May 2011
- IARLJ, 'Guidelines on the Judicial Approach to Expert Medical Evidence'
- IARLJ, 'Judicial Guidelines on Procedures with Respect to Vulnerable Persons'

# Chapter 3: Early Legal Advice and the recast Dublin Regulation



## Introduction

It is essential that applicants receive good quality ELA if they are subject to the recast Dublin Regulation.<sup>41</sup> The Regulation,<sup>42</sup> which has direct effect in all EU member states, provides enhanced procedural safeguards for persons subject to the Dublin procedure and the provision of ELA will enable applicants to assert their rights in practice.

Also, given the technical nature of the recast Dublin Regulation, ELA is a necessary support for asylum seekers subject to it. ELA in the Dublin procedure can be divided into two stages, firstly when ascertaining if the recast Dublin Regulation applies and secondly when your client is in the Dublin procedure.

### Is the recast Dublin Regulation applicable?

The lawyer must first ascertain whether the recast Dublin Regulation is applicable to the individual circumstances of their client. Instructions should be taken from the client to include, but not be limited to, the following:

- The client's personal details and identity documents;<sup>43</sup>
- The client's journey to the Member State in which she is in including transit;
- Critical dates concerning the journey and/or previous stays in other Member States;
- Any documents pertaining to residence or stay in another EU Member State including visa stamps in her passport, residence cards, travel tickets etc.;
- If the client previously resided in another Member State, instructions should be sought on whether she subsequently resided outside of the territories of the EU, for at least three months, and the availability of any supporting evidence;<sup>44</sup>
- Any information as to whether the client previously claimed asylum in another Member State;
- Any information as to whether the client was previously removed and/or deported or voluntarily returned from another Member State to their country of origin or a third country;<sup>45</sup>
- Any information on whether the client was previously fingerprinted within the territories of the Member States;
- Any information concerning the presence of family members, relatives and relations in the present Member State or any other Member State.

<sup>41</sup> See, Bridget Anderson & Sue Conlan, 'Providing Protection Access to early legal advice for asylum seekers', 2014, n 23

<sup>42</sup> Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), O.J. L 180/31 29.06.2013.

<sup>43</sup> Age is particularly relevant in cases where the client may be an unaccompanied child given the specific criteria in place for the assigning of responsibility for protection applications by unaccompanied children.

<sup>44</sup> If she left the territories of the EU for at least three months the obligations of the other Member State responsible shall cease, unless the person concerned is in possession of a valid residence document issued by the Member State responsible: recast Dublin Regulation Article 19 (2).

<sup>45</sup> This will be relevant in terms of the cessation of responsibility of the requested Member State: recast Dublin Regulation Article 19.

## Chapter 3: Early Legal Advice and the recast Dublin Regulation

Annex II of the Implementing Regulation to the recast Dublin Regulation provides a list of probative and indicative elements of proof for various Articles in the Regulation. For example probative evidence relating to Article 19 (2), which concerns whether a person has departed from the territory of the Member States, includes: an exit stamp; extracts from third-country registers (substantiating residence), and tickets establishing departure from or entry at an external frontier. It may be helpful to have this annex to hand when taking instructions from your client.

Your client should be made aware that the decision-maker will check fingerprints, visa information and other records concerning her personal details and previous travels. The client should be advised that she needs to give full disclosure as early as possible about her journey to, and stay in, any other Member State. Failure to disclose such information as soon as possible may also be deemed to impact the credibility of her case and she should be advised of this.<sup>46</sup>

If there are indications that another Member State of the Dublin system played a role in the client's entry into the territories of the EU, for example through the issuing of a visa, a client's case may be considered under the recast Dublin Regulation. Article 5 of the Regulation states that the Member State shall conduct a personal interview in order to facilitate the process of determining the Member State responsible.

Be aware that an applicant's case may be placed for consideration under the Regulation at a later stage in the examination of the application, for example after the substantive personal interview. Therefore, you should advise your client that the personal interview

may contain questions which are pertinent to the applicability of the recast Dublin Regulation.

All relevant evidence concerning the applicability or non-applicability of the recast Dublin Regulation should be assessed by the lawyer. There may also be exceptional situations where your client wishes for the Regulation to be applied, for example, to unite with family members in other Member States. Where appropriate the lawyer should submit written representations on behalf of the client to the decision-maker as early as possible within the protection procedure timescale.

### When the client is in the Dublin Procedure

When the lawyer becomes aware by way of notice from the decision-maker that their client is in the Dublin procedure the following steps should be taken:<sup>47</sup>

- Record the relevant critical dates and timeframes for the Dublin procedure. The time limits for submitting take back or take charge cases run from the date of application of the protection application in the Member State.<sup>48</sup> Whether or not the client is in detention will also impact the time limits for the Dublin procedure meaning that a detained client may need to be prioritised given the shorter timeframes that apply in such cases;<sup>49</sup>
- A request for an updated copy of the client's file should be submitted to the decision-maker this should include a request for any correspondence with other Member States regarding the Dublin Regulation;

<sup>46</sup> It also has implications for the assignment of responsibility under the Dublin criteria: recast Dublin Regulation Article 7 (3).

<sup>47</sup> This is not an exhaustive list of actions as much will depend on the individual circumstances of your client's case.

<sup>48</sup> Other time limits apply to those persons who are apprehended in an irregular manner in a Member State and do not submit a new application for asylum here: recast Dublin Regulation Article 24.

<sup>49</sup> Recast Dublin Regulation Article 28.

- A meeting with the client should be scheduled in order to advise her on the possibility of the Regulation being applied and in order to further her instructions;
- Submissions should be drafted to the decision-maker should the client wish to challenge the assignment of responsibility for her case to another Member State.

### The personal statement

If a client wishes to challenge a transfer to a particular Member State then instructions should be taken as to the reasons why she does not wish to go to that State and why it is more appropriate to have her application examined in the country that she is in. These instructions should then be drafted in to a personal statement which should be read back to the client and then submitted to the decision-maker. Often a lawyer will only have a short window of time in which to take a statement from her client in relation to the Dublin procedure. Therefore, it is vitally important that the client provides all the relevant information as early as possible in the Dublin procedure. It is also important that the client fully understands why the focus is on her journey rather than on the substance of her application at this stage of the procedure. Many of the principles that apply to drafting a personal statement for the substantive procedure apply when drafting a personal statement for the Dublin procedure (see Key Stage 5). It may also be appropriate or convenient to draft a personal statement for the substantive procedure and include paragraphs on issues pertaining to the Regulation.

### Legal submissions

The lawyer should also obtain instructions and undertake research for the drafting of a legal submission, including, but not be limited to the following:

- The reasons why a client does not want to go to a particular Member State. This can be incorporated within the submissions or by way of a supplementary personal statement attached to the submissions;
- Any issues concerning the mental and physical health of the client and supporting evidence. This may involve instructing a medical expert on behalf of your client if necessary;
- Any information pertaining to human rights concerns regarding a transfer to a particular Member State. This may also involve taking instructions on the client's previous experiences in a particular Member State and gathering relevant country information concerning that state;
- Relevant law applicable including national law, EU law and the relevant case law of the ECtHR and Court of Justice of the European Union (CJEU);
- Any procedural steps the national authorities needs to take to ensure the procedure is human rights compliant and takes into account the individual circumstances of the client;
- Where human rights concerns are raised the relevant articles in the ECHR and the CFEU should be cited and an explanation as to why they apply to the particular facts of this case;
- Relevant up-to-date and objective COI concerning the Member State in question.

If your client becomes aware of the presence of a family member in the state she is in or in any other Member State later in the Dublin procedure this information should also be presented promptly to the decision-maker.

## Chapter 3: Early Legal Advice and the recast Dublin Regulation

If your client is detained for the purpose of transferring her under the recast Dublin Regulation, the conditions and guarantees for detainees under the recast Reception Conditions Directive shall apply.<sup>50</sup>

### The right of appeal against a decision to transfer

If a transfer decision is issued under the Regulation the client has the right to an effective remedy, in the form of an appeal or a review, of that decision, before a court or tribunal. Depending on the Member State concerned, the appeal may automatically suspend the client's removal to the other Member State or an application may have to be made to grant suspensive effect. Depending on the national appeal procedure, the lawyer should request an oral hearing when submitting the grounds of their appeal. The court or tribunal can either affirm or set aside the transfer decision. The CJEU, in the decision *Migrationsverket v Edgar Petrosian*, stated that the time limits for transfer are suspended during the appeal procedure.<sup>51</sup>

In some situations the client may actually wish to fully withdraw from the protection process. The CJEU, in the ruling of *Migrationsverket v Kastrati*, stated that the Dublin procedure will no longer apply if the responsible Member State has not already agreed to take charge of the client's application for protection.<sup>52</sup>

### Challenging Dublin transfers

Although this chapter is primarily focused on ELA at the first stage of the Dublin procedure, lawyers should be cognisant of applicable case law on challenges to Dublin transfers which may be relevant throughout the protection procedure.

The ECtHR, in the decision *Tarakhel v. Switzerland*<sup>53</sup> stated that, when assessing the risk to a person upon transfer to another Member State, the individual must show a breach of Article 3 of the ECHR<sup>54</sup> to the standard set out in *Soering v. the United Kingdom*,<sup>55</sup> that is: "where substantial grounds have been shown for believing that the person concerned faces a real risk of being subjected to torture or inhuman or degrading treatment or punishment."

The Court in *Tarakhel v. Switzerland* also clarified that the source of the risk does not alter the level of protection guaranteed under the Convention, or the Convention obligations, thereby rejecting the test of "systemic deficiencies" set out in the leading CJEU decision of *NS/ME*.<sup>56</sup> The assessment of the level of risk depends on the circumstances of the case including, *inter alia*, the duration, nature and context of the treatment feared upon transfer, its physical and mental effects as well as other factors such as the sex, age and health of the client. The evidence must be examined both in light of the client's personal circumstances and the general situation in the State concerned.

<sup>50</sup> The recast Reception Conditions Directive is explicitly referred to in Article 28(4) of the recast Dublin Regulation.

<sup>51</sup> Court of Justice of the European Union, Case C-19/08 *Migrationsverket v Edgar Petrosian & Others*, 29 January 2009

<sup>52</sup> Court of Justice of the European Union, Case C-620/10 *Migrationsverket v Kastrati*, 3 May 2012

<sup>53</sup> European Court of Human Rights, *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014

<sup>54</sup> Article 3 ECHR refers to the prohibition against torture, inhuman and degrading treatment or punishment

<sup>55</sup> European Court of Human Rights, *Soering v. the United Kingdom*, Application no. 14038/88, 7 July 1989

<sup>56</sup> Joined Cases C-411/10, C-493/10 *N.S. v. SSHD and M.E. v. ORAC*, Minister for Justice, Equality and Law Reform, 21 December 2011; For further information on this see RefLAW, Vulnerability, the Right to Asylum and the Dublin System, Maria Hennessy at: <http://www.reflaw.org/vulnerability-the-right-to-asylum-and-the-dublin-system/>

## Timeframes under the Dublin procedure

As noted above it is essential that lawyers record critical dates and timeframes when their client is in the Dublin procedure. Failure to do so may mean a client is erroneously transferred when the responsibility of the other Member State has lapsed due to the expiration of time limits in the recast Dublin Regulation.

References are made to 'take back' and 'take charge' requests in the Regulation. Essentially a 'take charge' request indicates that the person has not previously applied for protection in the requested Member State but responsibility may be assigned to that Member State on a number of grounds including *inter alia* presence of family members or the issuing of visas on their behalf. A 'take back' request indicates the person previously applied for protection in the requested Member State.

The relevant provisions concerning timeframes in the Regulation are set out in Articles 21 – 25. When sending out a 'take charge' or 'take back' request to another Member State that is deemed responsible for the examination of a client's application, the following time limits apply:

- The sending Member State has **three months** from the date of lodgement of the protection application here to request another Member State to assume responsibility.
- If the responsibility of another Member State is established on the basis of Eurodac data (fingerprints), the request must be sent by the sending Member State to the receiving Member State within **two months** from the date the results are received from the Eurodac. Therefore, in practice, there is a shorter timeframe when assigning responsibility on the basis of Eurodac data.

- When the receiving Member State has accepted responsibility for the examination of a client's protection application, the client must be transferred within **six months** of that Member State accepting such responsibility, unless there is an appeal of the transfer decision which leads to the time limits for transfer being suspended until a final decision on the appeal.
- If the client is imprisoned or absconds, the time limit for transfers can also be extended by 12 months or 18 months respectively.

The timeframes for assigning responsibility are also altered if the client is detained during the Dublin procedure and shorter timeframes are provided for in relation to detention under Article 28 of the recast Regulation.

## Vulnerability and the Dublin procedure

The ECtHR ruling in *MSS v Belgium and Greece* acknowledged the vulnerability of all asylum seekers seeking protection in Europe.<sup>57</sup> This was affirmed by the ECtHR in *Tarakhel v Switzerland*<sup>58</sup> which referred to the specific vulnerability of children within the Dublin system. Other categories of clients may also be vulnerable or indeed become vulnerable by way of being transferred to a particular Member State under the Dublin procedure.

Depending on the circumstances of a client's application and the Member State in question, the lawyer may wish, with the consent of the client, to challenge the Dublin transfer and submit representations requesting that the Member State the client is in takes responsibility for the examination of her protection application by way of the discretionary clauses under Article 17 recast Dublin Regulation, which states, *inter alia*, that a Member State may decide to examine an application for protection, even if such examination

<sup>57</sup> European Court of Human Rights, *MSS v Belgium and Greece*, 2011.

<sup>58</sup> European Court of Human Rights, *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014.

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is not its responsibility under the criteria laid down in the Regulation.

If the client is ill or experiencing physical or mental health problems, additional evidence may be considered such as the submission of a psychiatric report for persons at risk of suicide or victims of torture. Letters from GPs, medical reports and a personal statements from the client herself may also be useful in substantiating particular vulnerabilities. COI on the availability of continuing care and medical supports and supplies, with respect to the particular Member State, should also be gathered. An assessment should be made as to whether there would be a violation of the client's fundamental rights including the right to human dignity if she were to be transferred to a particular Member State and appropriate submissions made.

When receiving a transfer decision you should analyse the decision to check whether the decision-maker has made a thorough and individualised assessment of your client's situation with respect of any proposed transfer. Both the first instance decision-maker and the appeal tribunal or court will need to have detailed and reliable information concerning the specific medical treatments and reception facilities available with respect to your client. The decision-maker may need to seek individual guarantees from the responsible Member State that the client will be taken charge of in a manner adapted to their individual circumstances.<sup>59</sup>

If you are representing a family unit, it is important to assess whether the authorities have taken into account the best interests of the child as a

primary consideration when applying the Dublin procedure.<sup>60</sup> The right to family unity must also be considered when assessing the situation on transfer to the responsible Member State.<sup>61</sup> Furthermore, an assessment must be made about whether there is a risk of a vulnerable person being detained in the responsible Member State upon transfer. Whilst the detention of a vulnerable person is permissible under EU law, there needs to be an assessment as to how this would affect the vulnerable individual.<sup>62</sup> The ECtHR in *Dybeku v. Albania*<sup>63</sup> listed three elements that need to be considered in relation to the compatibility of an client's health when in detention: a) medical condition of the detainee; b) the adequacy of the medical assistance and care provided in detention; c) the advisability of maintaining the detention measure in view of the state of health of a client.

If the transfer to another Member State is being implemented, you should also ensure that the state authorities have procedures in place to ensure a continuity of care for the person concerned so that she has access to health care to meet her needs. Article 32 of the recast Dublin Regulation provides for the exchange of health data, before transfer is carried out, for the sole purpose of the provision of medical care or treatment, in particular concerning disabled persons, elderly people, pregnant women, children and persons who have been subject to torture, rape or other serious forms of psychological, physical or sexual violence. This is a non-exhaustive list and other persons may also have particular vulnerabilities requiring safeguards for continuing care. Information about your client's health will be contained in a 'common health certificate' which

<sup>59</sup> European Court of Human Rights, *Tarakhel v Switzerland*, Application no. 29217/12, 4 November 2014

<sup>60</sup> Recast Dublin Regulation Article 6

<sup>61</sup> European Court of Human Rights, *Tarakhel* (n 257); Court of Justice of the European Union, Case C-79/13, *Saciri and Ors v Federaal agentschap voor de opvang van asielzoekers*, 27 February 2014

<sup>62</sup> It should also be noted that the guarantees for people in detention under the recast Reception Conditions Directive (Article 9 and 11) apply to those detained under the Dublin procedure.

<sup>63</sup> European Court of Human Rights, *Dybeku v. Albania*, Application no. 41153/06 18 December 2007

should *inter alia* detail the client’s vulnerability, medical diagnosis and prescribed treatment and matters that should be taken in to account during the transfer. Annex IX of the implementing regulations contain an example of this certificate.<sup>64</sup>

## Children and the Dublin Procedure

The recast Dublin Regulation provides specific guarantees for children and declares that the best interests of the child shall be a primary consideration for Member States with respect to the Dublin procedures. National authorities must conduct an individualised assessment of the best interests of the child when determining responsibility for the examination of an application by an unaccompanied child. Therefore, when preparing legal submissions on behalf of your client in the Dublin procedure, you should also address the best interests of the child, where applicable, in determining which Member State is responsible for the examination of an application for international protection. This is relevant both with respect to accompanied children and unaccompanied children as demonstrated by the ECtHR ruling in *Tarakhel v Switzerland*.<sup>65</sup>

In terms of assigning responsibility on the basis of a family member, sibling or relative being legally present in a particular Member State, it is important

to recall that the term ‘legally present’ is broader than the term ‘legally resident’ and includes all forms of legal presence in the Member States.

You should ensure that the voice of the child is heard during the process and request that the authorities take into account the view of the child in determining Member State responsibility.<sup>66</sup> As affirmed by the CJEU ruling in *C-648/11 MA, BT, DA*, the best interests of the child is paramount and it is in the interests of unaccompanied children not to prolong unnecessarily the procedure for determining the Member State responsible, and to ensure that unaccompanied children have prompt access to the procedures for determining refugee status.<sup>67</sup>

## The obligations of the Member State determined responsible for the application

Although this section is written from the perspective of the lawyer providing ELA to a client who is being transferred to another Member State within the Dublin procedure, you may also work with clients who have been transferred to the Member State in which you, the lawyer, work. Article 18 of the recast Dublin Regulation sets out the obligations of the responsible ‘receiving’ Member State. Once an applicant has been transferred to a Member

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<sup>64</sup> Commission Implementing Regulation (EU) No. 118/2014 of 30 January 2014, amending Regulation (EC) No 1560/2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, Annex IX.

<sup>65</sup> “The requirement of “special protection” of asylum seekers is particularly important when the persons concerned are children, in view of their specific needs and their extreme vulnerability. This applies even when, as in the present case, the children seeking asylum are accompanied by their parents. Accordingly the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not “create ... for them a situation of stress and anxiety with particularly traumatic consequences”, European Court of Human Rights, *Popov v France*, Application Nos. 39472/07 and 39474/07. Otherwise the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the European Convention on Human Rights, *Tarakhel* (n 257).

<sup>66</sup> “[M]easures must be put in place to facilitate their meaningful participation in line with their age and maturity”: SCEP, ‘Good Practice’. See also, UN Committee on the Rights of the Child, ‘General Comment No. 14 (2013) on the right of the child to have his or her interests taken as a primary consideration (Art. 3(1))’ (CRC/C/GC/14, 29 May 2013); UN Committee on the Rights of the Child, ‘General Comment No. 12 (2009): the right of the child to be heard’ (CRC/C/GC/12, 20 July 2009)

<sup>67</sup> *MA, BT, DA* (n 230) [61].

## Chapter 3: Early Legal Advice and the recast Dublin Regulation

State it is essential that the authorities examine and complete the examination of her application for international protection.

Where the client's protection application was refused at first instance in another Member State she must be given an opportunity to seek an effective remedy, i.e. an appeal of that refusal decision, in the Member State she is in. If the client previously (implicitly or explicitly) withdrew her application for protection at first instance, before a first instance decision was made, then upon transfer to the Member State taking charge or taking back, the client is entitled to request that her application is completed or she is permitted to lodge a subsequent application for protection. It is important to note that the subsequent application for protection shall not be treated as a subsequent application under the recast Asylum Procedures Directive 2013/32/EU and therefore not subject to its restrictions.

### Useful Resources

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#### Relevant Legislation

- Regulation (EU) No. 604/2013
- Regulation (EC) No. 118/2014 including Annexes
- Regulation (EC) No. 1560/2003

#### Relevant Case Law

- *M.S.S. v Belgium & Greece*, Application no. 30696/09, 21 January 2011 (ECtHR); *Dybeku v. Albania*, Application no. 41153/06 18 December 2007 (ECtHR)
- *Tarakhel v. Switzerland*, Application no. 29217/12, 4 November 2014 (ECtHR)
- *Sharifi and Others v. Italy and Greece*, Application no. 16643/09, 21 October 2014 (ECtHR)
- Admissibility Decision, *A.M.E. v. the Netherlands*, Application no. 51428/10, 13 January 2015 (ECtHR)
- *A.S. v Switzerland*, Application no. 39350/13) Date needed(ECtHR)
- Joined Cases, C-411/10, C-493/10 *N.S. v. SSHD and M.E. v. ORAC*, Minister for Justice, Equality and Law Reform, 21 December 2011 (CJEU)
- C-620/10 *Migrationsverket v. Kastrati*, 3 May 2012 (CJEU)
- C-245/11 *K. v. Bundesasylamt*, 6 November 2012 (CJEU)
- C-179/11 *Cimade, Gisti v. Ministre de l'Interieur, de l'Outre-mer, des Collectivites territoriales et de l'Immigration*, 27 September 2012 (CJEU)

- C-648/11 *The Queen on the application of M.A., B.T., D.A. v. Secretary of State for the Home Department*, 6 June 2013 (CJEU)
- C-528/11, *Halaf v. Darzhavna agentsia za bezhantsite pri Ministerskia savet*, 30 May 2013 (CJEU)
- C-4/11, *Bundesrepublik Deutschland v. Puid*, 18 April 2013 (CJEU)
- C-394/12, *Shamso Abdullahi v. Bundesasylamt*, 10 December 2013 (CJEU)
- C-19/08, *Migrationsverket v. Petrosian*, Judgment of 29 January 2009 (CJEU)
- Pending CJEU case, C-155/15 *George Karim v. Migrationsverket*
- Pending CJEU case, C-63/15 *Mehrdad Ghezelbash v. Staatssecretaris van Veiligheid EU Justitie*
- *R (on the Application of EM (Eriteria)) v. Secretary of State for the Home Department*, [2014] UKSC 12
- ECtHR, *A.S. v Switzerland*, Application no. 39350/13)
- ECRE, 'Comments on Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), O.J. L 180/31'
- JRS Europe, *Protection Interrupted, the Dublin Regulation's impact on asylum seekers' protection*, June 2013
- Council of Europe Press Unit Factsheet on 'Dublin' cases, November 2014
- ILPA Information Sheet, Dublin III Regulation, January 2014
- AIRE Centre, ECRE and Amnesty International, 'Third Party Intervention in *Tarakhel v Switzerland*' (Application no. 29217/12), Date of Intervention: 12 January 2014
- Maria Hennessy, *The Dublin system and the Right to an Effective Remedy: The case of C-394/12 Abdullahi*, EDAL Blog
- Steve Peers, *Tarakhel v. Switzerland: Another nail in the coffin of the Dublin system*, EU Law Analysis blog, 5 November 2014

### Further Reading

- Dublin Transnational Network Database Project (<http://www.dublin-project.eu>)
- Dublin Transnational Network Project, *The Dublin II Regulation: Lives on Hold*, European Comparative Report, February 2013
- Cathryn Costello & M. Mouzourakis: *Reflections on Reading Tarakhel: Is 'How Bad is Bad Enough' Good enough?*
- RefLAW, *Vulnerability, the Right to Asylum and the Dublin System*, Maria Hennessy, 14 April 2015
- RefLAW, *Establishing a Common European Asylum System by Leaving European Human Rights Standards Behind: Is this the Way Forward?* Francesco Maiani, 4 February 2015

## Chapter 4:

# Early Legal Advice and Children in the Protection Process



## Introduction

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This chapter deals with issues specific to children in the protection system and sets out the benefits of ELA when representing children. It is important to note that this chapter provides general information only and is not designed to substitute the specialist and detailed body of guidance available on this complex area. Lawyers are advised to consult this guidance and seek training when working with children in the protection process.

Information is included on key aspects of representation of children, including the scope of that representation, how to work with separated and dependent children to best present their application, considerations when drafting representations and submissions to the decision-maker, and navigation of any age assessment procedure, if applied.

While there is a distinction generally made between unaccompanied minors and separated children, for the purposes of this manual, in line with guidance of Separated Children in Europe Programme (SCEP),<sup>68</sup> the term, 'separated children' is used as it is a more inclusive definition, encompassing unaccompanied minors. These terms are further defined and discussed below.

There are several aspects of a child's protection application that make it complex. Children have an inherent vulnerability, which may be exacerbated by an experience of trauma. Children experience the challenges of the protection process more intensely; this includes separation from and possible loss of family and friends, social isolation, language barriers, emotional and mental health problems and possible discrimination and racism. In most circumstances, the child will have had no control or choice over

the decision leading to her current position as a child seeking protection. She must then cope with uncertainty as to her future during a critical time of her development and maturity.

In terms of the assessment of facts and circumstances of a child's asylum application, there are a number of considerations a lawyer should take into account. Several factors can affect a child's ability to present her application coherently: a child may have a shorter attention span, limited vocabulary, limited linguistic abilities, and a limited understanding of time and space that will make presentation of a chronological account challenging. Due to a lack of maturity, younger children may be less able to articulate their application and present oral testimony in a coherent manner.

In light of these considerations, it is essential that the lawyer be familiar with the wide-ranging legislative protections that apply to children, both at a domestic and EU level, and be in a position to apply such provisions together with appropriate and relevant guidance when dealing with children's asylum applications.

Legal representation at the earliest possible stage of the protection procedure can ensure that a child's case is put forward taking into account the child's particular age, level of maturity and her inherent vulnerability.

### Key definitions<sup>69</sup>

SCEP define separated children as children under 18 years of age who are outside their country of origin and separated from both parents, or their previous legal or customary primary caregiver.<sup>70</sup> This definition encompasses unaccompanied minors (those who are not accompanied by parents or legal guardians) and those who entered the country

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<sup>68</sup> Separated Children in Europe Programme, 'Statement of Good Practice', 2009

<sup>69</sup> For a list of definitions from different member states see: European Council on Refugees and Exiles, 'Right to Justice: Quality Legal Assistance for Unaccompanied Children – Comparative Report', 2014, section 2.1

<sup>70</sup> Separated Children in Europe Programme, 'Statement of Good Practice', 2009

## Chapter 4: Early Legal Advice and Children in the Protection Process

in the company of traffickers, smugglers or other non-habitual carers or extended family<sup>71</sup> and may have travelled for a multitude of reasons, relating to persecution, fleeing violence or civil war, trafficking and/or exploitation.

Also of note is the definition of an unaccompanied minor under EU law. Article 2 (h) of the original Procedures Directive defines an unaccompanied minor as: “a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.”<sup>72</sup> The recast Asylum Procedures Directive references this definition.

Dependent children are those who are present with a parent or guardian, whether or not they are included in a parent’s application for asylum.

### Scope of legal representation

The role of the lawyer when representing a child is to ensure that the child is enabled to state her case effectively and exercise her legal rights. The lawyer should provide legal support with commitment, responsibility, expertise and knowledge.

It is essential that the lawyer is mindful of the limitations of their role and does not stray into provision of parental or other supports. It is also important that the lawyer establishes what support is already being provided to the child, places themselves within that support structure, and refers the child to any appropriate additional supports and services as required.

Any child in a protection process should have a responsible adult assisting her. UNHCR state that an independent, qualified guardian needs to be appointed immediately, free of charge in the case of unaccompanied or separated children.<sup>73</sup> This may be one of several professionals supporting the child and assisting her with her complex needs; it could also be a foster parent or guardian. The responsibility for identifying an appropriate responsible adult may lie with the local authority where the child resides, the decision-maker or with you the lawyer. Regardless of where this responsibility lies, it is incumbent on the lawyer to liaise with the appropriate responsible adult and other key personnel during the protection process. Obviously the consent of the child should be sought before liaising with any other person. If a personal statement is being taken from the child it may be appropriate that this is shared (with the child’s consent) with other key personnel assisting the child so that instructions about previous experiences only have to be taken once and the statement can be used for future reference.

Other professionals likely to be engaged in supporting the child include: medical and mental health professionals, educational professionals, foster carers, and youth and support workers. The lawyer should also be aware that the child may be engaged in other legal processes, including care proceedings or family law proceedings, and it is therefore important to clearly establish that the lawyer is engaged only in assisting with the asylum process. It may be appropriate to liaise with any other lawyers assisting the child to explain your role and to obtain details of any other such legal proceedings.

At the initial meeting with the child, further detailed below, the lawyer should at the outset explain

<sup>71</sup> Adam Hundt and Zubier Yazdani, ‘Working with Migrant Children: Community Care Law for Immigration Lawyers’, ILPA, 2012) 4.

<sup>72</sup> Article 2 of the 2013 recast Procedures Directive refers to the definition of unaccompanied minor in the 2011 recast Qualification Directive, which is identical to the definition in the 2005 Asylum Procedures Directive.

<sup>73</sup> UNHCR, ‘Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees’, paragraph 69, 2009

their role to the child in clear and unambiguous terms. The lawyer should map out the support being provided to the child at the earliest opportunity and with the child's consent, make further relevant referrals for support that is needed. During the protection process, it is essential that all professionals supporting the child maintain the child's best interests as their primary consideration and provide an effective continuum of support.

### Conflict of interest and children's protection applications

There are specific conflict of interest considerations when representing children in the protection process.

When representing a dependent child, it is not safe to assume that the child's application can be simply advanced through that of the parent or guardian's case. It is important that the lawyer ensures the child's application is fully explored in its own right and any specific risks identified. The application should also be explored and advanced within the context of a parent/guardian's case; specific human rights aspects may apply, particularly with respect of family life.

When representing a dependent child, a lawyer must navigate the line between both respecting the wishes and instructions of the parent or guardian but at the same time ensuring that the voice of the child is heard and her best interests protected.

The lawyer must at all times be mindful that a conflict of interest may arise between professional obligations to the parent or guardian on the one hand, and the best interests of the dependent child on the other. Circumstances may arise where the lawyer will not be in a position to represent

the entire family, because of such a conflict, and separate legal representation will be needed for either the parent or guardian or the child. The lawyer must also be aware of potential for conflict of interest with any responsible adult who is supporting the child in circumstances where he or she may be a relative or friend of the child. Appropriate checks should be completed to avoid any professional conflict.

### Child-specific persecution

UNHCR notes that while children may face the same forms of persecution as adults, they may experience it in different ways.<sup>74</sup> UNHCR also emphasises the greater impact 'hostile situations' may have on the well-being of children, noting that they "are more likely to be distressed" than adults experiencing the same hostility due to their age, immaturity or level of development.<sup>75</sup> In this way, children's experiences of persecution have been described as child-specific. Child-specific forms of persecution include: exposure to, or experience of, domestic violence, trafficking, female genital mutilation, forced marriage, forced, bonded or hazardous labour, forced prostitution or participation in pornography, loss or absence of nationality, underage military recruitment or severe discrimination.<sup>76</sup>

Recital 28 of the recast Qualification Directive states that, when assessing applications from minors for international protection, Member States should have regard to child-specific forms of persecution. Article 9 (2) (f) of the same Directive also states that acts of persecution can, *inter alia*, be child-specific in nature.

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<sup>74</sup> UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', 2009

<sup>75</sup> UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', 2009, paragraph 16

<sup>76</sup> *Ibid.* paragraph 18

## Chapter 4: Early Legal Advice and Children in the Protection Process

An important factor in providing ELA in cases involving children is that you, the lawyer, recognise child-specific forms of persecution and assess any link between that persecution and the Refugee Convention and subsidiary protection law. It is important to note, however, that UNHCR states that the persecution feared must only have a link with a Convention ground.<sup>77</sup> The lawyer should also ensure that the benefit of the doubt is applied liberally in children's cases due to their inherent vulnerability and their developmental immaturity which can result in an inability to recount past experiences in the same way as an adult.<sup>78</sup>

### The obligations on a decision-maker when considering a child's application for protection

The lawyer should be aware of several legal obligations on the decision-maker to ensure that the best interests of the child is the primary consideration throughout the process. Article 3 (1) of the UN Convention on the Rights of the Child (UNCRC) sets out this obligation most explicitly.<sup>79</sup>

Recital 33 of the recast Asylum Procedures Directive states that best interests of the child should be a primary consideration of Member States when applying the Directive, in accordance with the CFEU and the United Nations Convention on the Rights of the Child. The recital goes on to state that in assessing the best interest of the child, Member States should in particular take due account of the minor's well-being and social development, including her background.

Recital 18 of the recast Qualification Directive states that the best interests of the child should also be a primary consideration of Member States

when implementing that Directive. The recital states that when assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations, and the views of the minor in accordance with her age and maturity.

There is also an obligation on decision-makers to take into account the inherent vulnerability of children. Article 20 (3) of the original Qualification Directive and the recast Qualifications Directive oblige the decision-maker to take into account vulnerabilities including the fact that the applicant is a minor or a separated child.

Article 15 (3) (e) of the recast Asylum Procedures Directive also states that Member States shall ensure that interviews with minors are conducted in a child-appropriate manner.

### Interviewing a child client

Article 12 of the UNCRC states that where children are capable of forming their own views, those views should be taken into account and given 'due weight'.<sup>80</sup>

Children should always be interviewed independently of parents or guardians. It is therefore recommended that the lawyer have a separate and child-friendly consultation with the child to ensure her voice is heard and to determine if a separate application should be made.<sup>81</sup> As part of this process, it is essential that a conflict of interest check is completed to ensure there is no difficulty with the same lawyer acting for the parents and the child.

Younger children in particular are often unable to

<sup>77</sup> Ibid. paragraph 40

<sup>78</sup> Ibid. paragraph 73

<sup>79</sup> United Nations, Convention on the Rights of the Child, 1989

<sup>80</sup> Ibid. Article 12

<sup>81</sup> See generally, the Swedish Migration Board for more information on interviewing dependent children separately for the purposes of submitting an asylum claim: Swedish Migration Board, Children in the Asylum Process, September 2014

articulate their application as well as an adult.<sup>82</sup> As a result, a personal statement, where appropriate, can facilitate the child's voice being heard more clearly heard within the asylum process as well as assisting the decision-maker in fully understanding the child's application.

Given the challenges children face in navigating the protection process, when preparing and considering the application of any child, the lawyer and decision-maker should be fully cognisant of the age and maturity of the child and the risk of child-specific persecution.

As mentioned above this chapter is only a guide and introduction to the topic. Other guidance should be considered carefully. Kalvir Kaur's chapter, 'Voice of the Child', in the publication 'Working with refugee children, Current issues in best practice'<sup>83</sup>, published by the UK based Immigration Law Practitioners' Association (ILPA), is an extremely thorough and helpful starting point.

### **The interviewing room**

An appropriate interviewing room can assist in communicating with a child and put her at ease. As when interviewing adult clients, the interpreter should sit to the side so that the lawyer and child can communicate face to face. The room should be free from outside noise.

### **Asking a child questions**

Try to put the client at ease at the beginning of the interview and be alert throughout the interview in case the client becomes anxious. Maintain eye contact, use appropriate body language and vocal tone. Explain the different roles of each person who is in the room. Ensure that the child is comfortable with all parties present. Check to see if the child is well and whether she has eaten or requires something to drink.

Take some time to reassure the child that you will be working for her and that they are the most important person in the room. Use appropriate language throughout ensuring no terminology or complex legal jargon is used. Encourage the child to ask questions.

### **The personal statement and child clients**

Much of what applies when drafting a personal statement for an adult, applies when drafting a statement for a child. Be aware that it will normally take at least several meetings to have sufficiently detailed instructions for a personal statement, often more appointments than when taking instructions from an adult. It is important that the personal statement reflects the child's voice. Similarly to that of adult clients, it should not include legal or formal language unless used by the client. It may be appropriate to advise the client that detail in the statement may mean the decision-maker will ask fewer questions at the personal interview.

### **Client care and children**

Be aware that the methods used for client care for adult applications may be inappropriate for children. For example the standard client care letter, while a useful foundation for the relationship between yourself and the client, may have to be simplified. Particular terms or ideas can be elaborated on in greater detail orally and when appropriate. It may also be appropriate to explain the protection process using several simple concepts which can then be built on during the application. If the client prefers, and it is appropriate, communication by text message can be a useful way to stay in touch and inform the client of information such as appointment times. It may be appropriate, with the child's consent, to convey details regarding appointment and administrative issues to their guardian and any support worker.

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<sup>82</sup> UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', 2009, paragraph 73

<sup>83</sup> Immigration Law Practitioners' Association, 'Working with refugee children Current issues in best practice, January 2012

## Chapter 4: Early Legal Advice and Children in the Protection Process

### Interpreters and children

Similarly to adult applications, it is not suitable to use a family member as an interpreter. Care should be taken to identify a suitable interpreter, who will ensure circumstances conducive to the child giving her instructions openly and without inhibition. Be aware that, as a person who speaks the same language, the interpreter may be an important person to the child, particularly if the child has little contact with others who speak her language. The gender of the interpreter should be chosen by the child. The possibility of having continuity of interpreter, for example the same interpreter being used by any health care professional or social worker, should also be explored. The child should also be made aware of the role of the interpreter and given every opportunity to express any concerns with the interpreter.

### Age determination procedures

As a minor is considered to be any person under the age of 18, states often engage in age assessments where the child's status as a minor is in doubt<sup>84</sup>.

There are large amounts of guidance and literature on age assessment and determination procedure which should be considered in detail if your client is subject to such a procedure.

UNHCR state that such assessments should be conducted in a safe, child- and gender-sensitive manner with due respect for human dignity and that the margin of appreciation needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child.

### The personal interview with a decision-maker

The lawyer should attend the personal interview. It may also be appropriate to have the child's

guardian attend. Time should be taken to explain to the child as to what will happen at the interview. It may also be necessary to contact the decision-maker prior to the interview to try to agree what issues are in dispute, what they will ask questions about and to flag any subject matter that the child finds distressing and to ask that questions not be asked on these topics. If necessary the decision-maker should be reminded that Member States must ensure that interviews with minors are conducted in a child-appropriate manner.

If you feel at the end of the personal interview that the child has not had an opportunity to express her concerns about returning to her country of origin, or any other issue pertinent to the application, it may be necessary to ask the decision-maker to ask a particular question so that the child can properly express themselves and so that her voice can be heard.

### Evidence and submissions on behalf of children

A child should not be rushed when giving instructions and it may be necessary to request early in the application that the decision-maker give additional time for submissions to be made or a personal statement prepared. UNHCR state that the child should have sufficient time to prepare and reflect on her experiences.

If it is in the best interests of your client, consider requesting that the decision-maker process the application, when submitted, as a priority. UNHCR state that applications made by child applicants, whether they are accompanied or not, should normally be processed on a priority basis, as they often will have special protection assistance needs.<sup>85</sup>

<sup>84</sup> UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees,' 2009, paragraph 75

<sup>85</sup> UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees,'

As children are not always able to articulate the reasons why they have been subject to persecution, there is an onus on the decision-making authorities to gather relevant COI to inform their decision.<sup>86</sup> Be mindful of the limitations of COI in children's cases. Be aware that much COI does not focus on child-specific issues.<sup>87</sup> It is essential to conduct research into appropriate COI, reviewing material produced by NGOs and agencies working specifically on children's issues. For example, UNICEF has published a tool, known as 'Child Notices' that provide child-specific COI.<sup>88</sup> As noted above it may be necessary to flag with the decision-maker that child-specific persecution has been experienced and direct them to any applicable COI or documentary evidence.

It may be necessary to request that the decision-maker assume a greater burden of proof when establishing the application. UNHCR states that if the facts of the case cannot be established, the examiner needs to make a decision on the basis of all known circumstances, which may call for a liberal application of the benefit of the doubt. UNHCR also states that the child should be given the benefit of the doubt should there be some concern regarding the credibility of parts of her application.

The lawyer should consider whether it is appropriate to commission a medical report or expert report relating to the child. If necessary a person who has supported the child in the protection process, such as a guardian or social worker, can offer an insight in to the trauma that the child has experienced and can be useful to the decision-maker.

## Useful Resources

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### Relevant Legislation

- 2005 Procedures Directive and its 2013 recast
- 2004 recast Qualification Directive

### Further Reading

- UNHCR, 'The Heart of the Matter: Assessing Credibility When Children Apply for Asylum in the European Union' December 2014
- ILPA, 'Resource Guide for Legal Practitioners Working with Refugee Children', March 2014
- UNICEF Netherlands, 'Child Notices'
- ECRE, 'Right to Justice: Quality Legal Assistance for Unaccompanied Children – Comparative Report', 2014
- Connect Project Report, 'Identification, Reception and Protection of Unaccompanied Children', 2014
- EASO, 'Age Assessment Practice in Europe', Luxembourg 2014
- ILPA, 'Working with refugee children Current issues in best practice' Second edition, Syd Bolton, Kalvir Kaur, Shu Shin Luh, Jackie Peirce and Colin Yeo, January 2012

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<sup>86</sup> UNHCR, 'Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees', 2009, paragraph 74

<sup>87</sup> Ibid. paragraph 74

<sup>88</sup> UNICEF, Child Notices, 2013. An example of a Child Notice for Afghanistan is available from Refworld: UNICEF, Child Notice Afghanistan 2013, 2013

# Annex

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# Sample Initial Client Care Letter

Dear [client name]

This letter confirms that we are willing to act as your lawyer in relation to your application for protection.

This letter explains our terms and conditions while we are working for you. Our terms and conditions are a type of contract between ourselves and our client and sets out the manner in which we provide our services to you. Please read this letter very carefully. To prevent any misunderstandings at a later stage, it is important that you know what to expect and what our service involves. We will be happy to answer any questions you may have on any aspect of this letter.

## **Who is responsible for your application?**

You will be represented by [name of lawyer]. You can contact [name of organisation] on [telephone number] and [email]. Our normal working hours are [state working hours].

## **Discussing your Expectations**

Having agreed to take on your application, we will discuss your expectations about the range of outcomes from your application and tell you whether we think these are realistic. It is extremely important that you understand at all times what is happening in your application. To prevent any confusion or worry, we will regularly give you information about your application as it progresses.

This means that we will advise you in relation to your application for protection, and usually, where resources allow, provide you with assistance in completing the application form and accompany you to your personal interview.

Before your interview, we will usually assist you prepare a 'personal statement', setting out the full extent of your application for protection to the decision-maker in writing in your own words. We may also lodge submissions on your behalf after your interview.

## **Communicating with your lawyer**

You can contact us by phone, email or letter. To avoid any confusion, in making contact with us, please give us your full name, telephone number and reference number which will always be at the top of any communication you receive from us. If you contact us by telephone and we are not available, please leave a message and we will return your call as soon as possible. If the matter is urgent, please ask to speak to another member of our team.

## **Giving instructions to your lawyer**

It is crucially important that you give us full, clear and accurate instructions from the very beginning and also when you get any new information that may affect your application. Such new information may include a change in circumstances in your country of origin, a change in your personal circumstances or those of a family member.

We will do our best to carry out your instructions and to give you a timely, professional and friendly service. When we receive your instructions, we will explain your legal options to you. The protection process can be confusing, as can legal proceedings. It is very important that if there is something that you do not understand that you tell us right away so that we can answer your questions. We will then agree the actions to be taken with you.

We will need to obtain further instructions from you from time to time, sometimes at short notice, as your application progresses. It is very important that you are contactable and available to give us your

# Sample Initial Client Care Letter

instructions as they are needed. If you are not available to give us your instructions, this may damage the outcome of your application.

It is very important that you are active in your own application. There may be documents or information which are/is within your power to obtain and we may advise you to do so, if it is safe and possible, in the interests of your application.

## **Confidentiality**

You are our client and we will take instructions only from you and at all times act in your best interests, only.

We will treat your application confidentially and will not reveal any details that could identify you unless you have given us permission to do so. From time to time we may wish to pass information to other organisations and bodies in respect of the outcomes of our clients' applications; however we will only do this in a way that will not identify you personally. If you have any concerns about this we would be happy to discuss the matter with you further.

## **Key dates and timeframes**

We will always provide you, insofar as is possible, with an estimate of how long your application is likely to take and what the next steps are. We will inform you of any issues or events that are likely to delay your application.

In some situations, however, your application for protection can move very quickly and it is likely that we will need to have a number of consultations with you over a short time frame in order to assist you prepare for your interview. Timeframes are also very short when appealing a decision and for lodging a judicial review application [if appropriate]. Again, at such times it will likely be necessary to have a number of consultations with you over a short time frame in order to prepare your application.

## **Your rights and responsibilities**

As our client you have certain rights and responsibilities. Your rights include:

- (i) You can expect to receive expert legal advice on your application throughout the period of time that you have instructed your lawyer.
- (ii) You will be advised of the prospects of success of your application, insofar as is possible, and be given an informed opinion as to the various scenarios you will encounter in your application.
- (iii) You can expect a professional, timely, courteous service at all times. You have the right to complain about our service if you think it necessary.

## **Your responsibilities include:**

- (i) To provide us with full and accurate instructions, if you do not do so it will be impossible for us to advise and represent you properly and may lead to the termination of our services.
- (ii) To inform us as soon as possible if you receive any updates or documents from the authorities on your application, or if new issues arise which may affect your application. This includes if you receive any documents from your home country or any other document that can corroborate your application. It is important that we are aware of these documents as soon as possible after you have received them.
- (iii) To inform us in good time in advance, if you cannot attend an appointment with us.
- (iv) To inform us immediately if you change your address or telephone number. If you do not do this there is no way that we can inform you of any developments in your application or obtain your up to date instructions.

## **Permission to act on your behalf**

Now that we are acting on your behalf, we will assume that we have permission to take various actions on your behalf. For instance our role as your lawyer may involve:

- (i) Holding information about you on our records, including sensitive data such as medical information.
- (ii) Engage experts, such as doctors, on your behalf.
- (iii) Using information technology, including email, to guarantee the best quality and most efficient service.
- (iv) Please note that we will use any personal information solely to help your application. We will engage other experts only with your permission, and we will select professionals who we believe to be competent.
- (v) Once your application is concluded we will keep a copy of your paperwork in storage for at least 6 years. You are entitled to a full copy of all records we hold on you, at any time – please ask us if you would like copies of your documents.

#### **Complaints and problems with our service**

If at any time you are not satisfied with the service you receive from us please discuss the matter with your lawyer in the first instance. If this is not sufficient to resolve it, please ask your lawyer to register a formal complaint, which will be brought to the attention of the lawyer’s manager, who will ensure it is investigated and dealt with.

#### **Termination of services**

If you decide for any reason to transfer to another lawyer please let us know so we can transfer a full copy of your file to them.

In the event that we feel we can no longer represent you, we will discuss this with you and send you a formal letter of disengagement.

In the event that you do not wish to continue your application for whatever reason, we will discuss this with you, advise you of your options/possible consequences of your decision if appropriate, and send you a formal letter of disengagement.

Please return the enclosed copy of this letter signed by you by way of acceptance of our terms of business.

We are very pleased to offer our services to you and look forward to working with you. Once again, if you have any further questions please contact us.

Yours sincerely

\_\_\_\_\_  
[name of lawyer]

#### **Declaration**

I, (insert name) confirm receipt of this letter. Its contents have been read to me in a language I understand. I confirm that I am happy for [name of lawyer or lawyer’s organisation] to act as my lawyer, to request and submit information to the decision-maker, and to advocate on my behalf in relation to my application to be recognised as a refugee. I understand and agree to the terms and conditions as detailed in this letter.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

# Schedule of Documents and Chronology

## Schedule of Documents

<b>Description of document</b> [e.g. passport, identity card, membership card etc.]	<b>Date of document</b> [e.g. state the date of issue of passport, identity card, membership card etc.]	<b>Original or copy</b>	<b>Date of submission to decision-maker</b> [if applicable]

## Chronology

<b>Date of event</b> [e.g. date of birth, marriage, arrest, detention, departure, arrival in chronological order]	<b>Brief description of event</b>	<b>Source of description</b> [e.g. application form, personal statement, personal interview. Sometimes the event will be described in more than one document, if so list both so they can be cross referenced]

# Sample Pre-Personal Interview Letter to Decision-Maker

Dear Sir or Madam,

We write in relation to our client, named [name of client], whose application for protection is currently before your office.

Please find enclosed a completed personal statement which we submit in advance of her substantive personal interview, which is scheduled for [date of personal interview].

We request that [male or female] interpreter in the [language and dialect of interpreter] be provided for our client's interview, to ensure clear and accurate interpretation.

As stated in her personal statement, our client is a victim of torture and awaits an appointment for completion of a medico-legal report. We request that no decision be made or issued on our client's application before that report is submitted.

We request that our client's personal interview be conducted with due regard to her personal circumstances, particularly that she is a victim of torture.

In addition, we submit that the recent deterioration in the security situation in our client's country of origin indicates that our client has a well founded fear of persecution and is in need of protection. Submissions relating to our client's case will be submitted after our client's personal interview. I [name of lawyer] will be attending our client's personal interview.

Please do not hesitate to contact me if you require further information.

Yours faithfully

---

# Sample Template of Post-Personal Interview Submissions

Dear Sir or Madam

As you are aware we represent the [name client].

We make the following brief submissions in light of our client's interview on the [insert date].

**Enclosed bundle of documents:**

[refer to any documents submitted e.g. country information, news reports and government statements. If documents are numbered state how the document is referred to in the submissions, e.g. "where a document is cited in these representations, the quotation will be followed by brackets containing the relevant page number (e.g.[1]). The relevant quotation is also underlined in red ink."]

**Application summary:**

[give a brief, clear summary of your client's application here]

**Application under the Refugee Convention and subsidiary protection:**

[give a summary of the persecution experienced and feared and a link to the refugee convention and subsidiary protection]

[if your client has a particular profile that requires highlighting e.g. she is particularly vulnerable, do so here]

[highlight here the Convention reason that your client engages]

[refer to any case law that supports your submissions]

[set out any risk to any dependent family member]

**State protection and internal protection:**

[If state protection and internal protection are being considered by the decision-maker, for example a particular area of your client's country was suggested to her as being safe during the personal interview, reference here why it would not be appropriate.]

**Country of origin information:**

[Summarise and reference supporting country of origin information here. Make sure that the material refers to your client's particular circumstances rather than general material. If material is particularly relevant quote it in full.]

**Supporting evidence**

[Reference here any supporting evidence such as a medical report or country expert, its relevance and the authority of its author.]

Thank you for your consideration of these submissions.

Yours faithfully

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# Sample Code of Conduct for Interpreters

## Code of conduct for interpreters

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### Introduction

The role of the interpreter is an integral part of the service which is offered to clients of [name of organisation]. This Code of Practice has been developed to ensure that the interpretation services provided reflect as much as possible established best practice.

We recognise that a client's proficiency in [state here the native language of the country the lawyer is working in] may be insufficient to accurately relate their personal history to the level of detail demanded by the protection process. In such circumstances, it is our policy to engage the services of interpreters. The role of the interpreter is to enable effective communication between the client and lawyer.

### Confidentiality

We have a legal duty to protect the confidentiality of all personal information disclosed by our clients in the course of accessing our legal services.

Interpreters, in consenting to accept work, agree to preserve the absolute confidentiality of all information gleaned through their work. In particular you, the interpreter, agree to the following:

- Everything said during a consultation is subject to absolute confidentiality and must not be revealed to third parties under any circumstances;
- You must not discuss the particulars of an individual client's application with anyone, including other staff – your role is to facilitate communication, not to give your opinion on the information being communicated;
- Where you have previously met, interacted with, or heard information about the client (or any member of his / her family) you must immediately reveal this, in private, to the staff member who is conducting the interview. If this becomes apparent to you during a consultation you must stop the interview immediately so that you can speak to the lawyer in private outside the consultation room;
- You must not reveal that any individual is (or was) a client of [name of organisation]. If you meet a client of [name of organisation] outside of the office you must take particular care not to inadvertently disclose this to third parties.

### Role of interpreters

The role of an interpreter is to convey the words spoken by the lawyer and client accurately, completely and objectively without altering, omitting, adding, editing or summarising anything stated or written by the parties, and without adding your own explanation.

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individual clients for whom they are interpreting, or engage in any other activity which may be construed to constitute a service other than interpreting or translating when serving as an interpreter.

An interpreter may not solicit information not otherwise sought by the lawyer or volunteered by the client or attempt to limit the flow of any information.

# Sample Code of Conduct for Interpreters

## **Role at Initial Interview**

- Please arrive at least 10 minutes before the scheduled appointment. We would ask that interpreters wait in a different area to that of the client. Interpreters should not speak to clients prior to the interview.
- Your initial interaction with the client should be in the presence of the lawyer who engaged you. At this time, if the lawyer does not introduce you, you should be asked to be introduced and for it to be explained that you are an interpreter and for a description of your role.
- If you already know the client, or have met them previously under any circumstances, it is important that you make the lawyer aware of this immediately.
- At this initial introductory stage, you should also try to establish if there are any real or perceived communication difficulties or conflict of interest between yourself and the client.
- Please ensure that your mobile is off before commencing interpretation.

## **Role during an interview**

- You should always use the first person singular when interpreting. If the lawyer refers to you, you should use the third person singular, referring to yourself as 'the interpreter' and not 'me, or I'.
- Always interpret as close to the original speech and its meaning as possible, saying things in the same order as the client did.
- Never embellish or add to what was said. You should not correct erroneous facts or statements that may occur.
- If a word is used that you do not know, never guess what it is. Stop, and tell the lawyer that you need clarification and ask the client to explain the word or expression to you. However, do not enter into lengthy conversations with either party unless necessary for communication purposes, in which case you would inform the other party of your behaviour and intention.
- If the client or the lawyer speaks too fast or for too long, gently stop them. If necessary, you should explain to the lawyer or client that they need to speak more slowly or say only one or two phrases at a time, so that you can interpret what has been said as accurately as possible.
- Do not hesitate to ask the lawyer to clarify or repeat what she has said if you do not understand the meaning of what has been said. If you do not understand something the client has said, tell the lawyer and she can then rephrase or repeat the question. It is extremely important that there are no misunderstandings or miscommunications during the consultation.
- If you feel uncomfortable with any aspect of the interview, please let the lawyer know immediately.

### Interaction with clients outside of appointments

- If the client asks for your phone number, or requests to meet with you, should indicate that you are not permitted to do so.
  - If you meet the client outside of an appointment by chance, you are not permitted to acknowledge that they are a client, or to discuss their application with them.
- 

### Declaration

I have read and understood this Code of Conduct and agree to adhere to every aspect of it during my work as an interpreter.

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Signature

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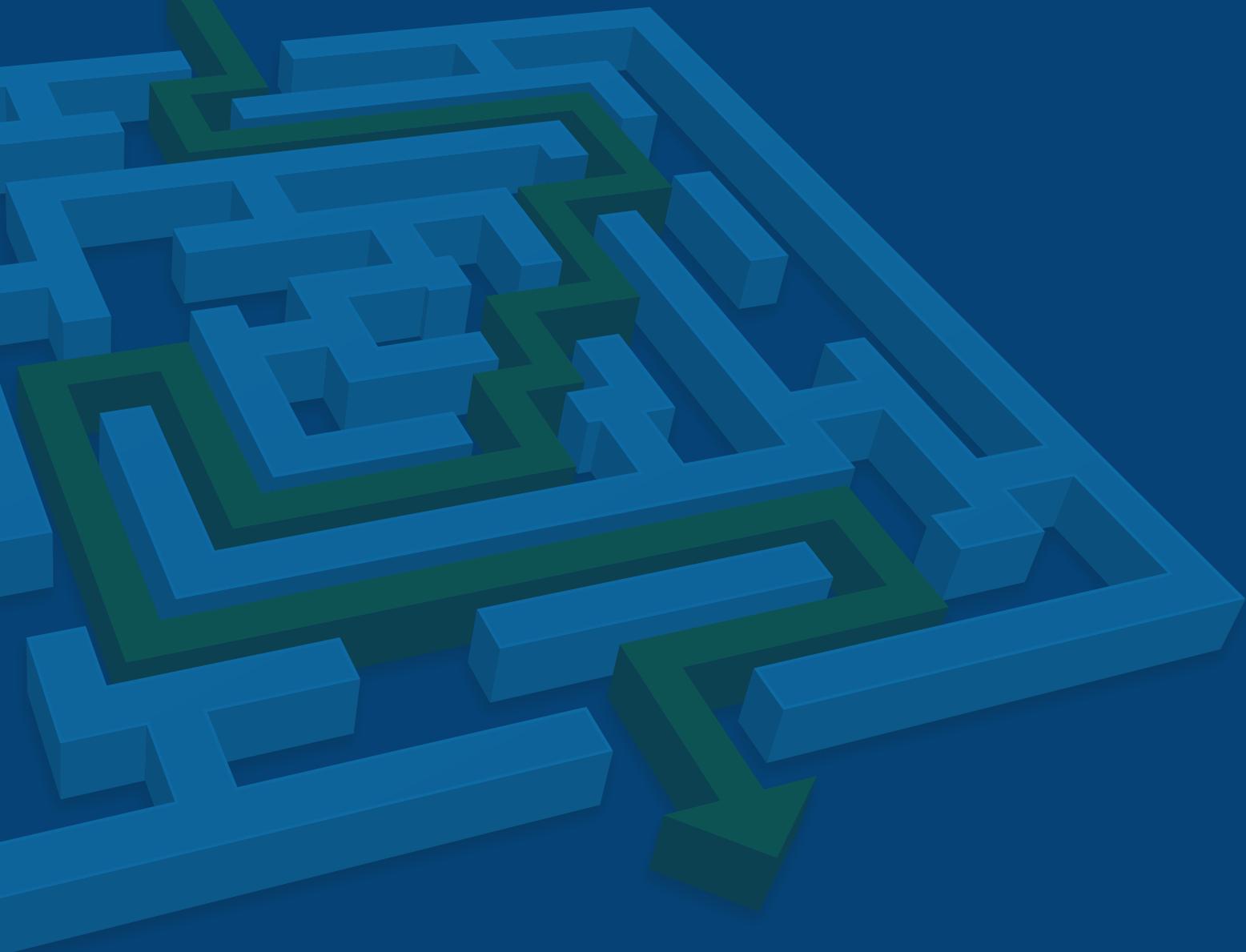
Date

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Name







# transition

from Direct Provision to life in the community

The experiences of those who have been granted refugee status, subsidiary protection or leave to remain in Ireland



**Trinity College Dublin**  
Coláiste na Tríonóide, Baile Átha Cliath  
The University of Dublin



**University College Dublin**  
Ireland's Global University

This study was funded by the Irish Research Council under its New Foundations (Engaging Civic Society) funding stream and conducted in partnership with the Irish Refugee Council

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June 2016

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We would also like to acknowledge the funding provided by the Irish Research Council's New Foundations Engaging Civic Society Grant without which the research would not have been possible.

While the assistance of everyone was appreciated, Muireann Ní Raghallaigh and Maeve Foreman take responsibility for any errors in the report.

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June 2016

# Foreword

The moment that an asylum seeker receives the news that they have been granted permission to stay in Ireland is one of very mixed emotions. On the positive side is the relief that the uncertainty is over after an average of more than three years in Direct Provision, the system of accommodation, support and dispersal for people seeking international protection. Added to that is the joy that they can finally take control of their lives. But it is soon tempered with the anxiety that comes from leaving the institutionalised life of Direct Provision, and the frustration that comes with the barriers that they, like many on the margins of society, face: lack of capital to get on their own two feet; difficulty in understanding and working highly bureaucratic systems; and, prominent amongst them, finding accommodation in a housing crisis whilst dependent upon an unpredictable and almost uncontrolled private rental market. As many asylum seekers would say, when you are in Direct Provision you are in, but not of, Ireland. Then all of a sudden you receive a ‘get out of jail free card’, yet you have but the barest of knowledge and experience about living in the wider community.

This report – *Transition: from direct provision to life in the community* – which was funded by the Irish Research Council and involved a collaboration between University College Dublin, Trinity College Dublin, the Irish Refugee Council (IRC) and asylum seekers, is a very timely reminder of the responsibility that Ireland has to people who have been infantilised for years. The experience of the IRC and others who work directly with asylum seekers is one of the state not acknowledging the impact of years in the Direct Provision system and therefore not putting in place the supports that are needed to make that transition.

The report, based upon interviews with 22 former asylum seekers, involving peer researchers who themselves knew the reality of Direct Provision, shows the precarious journey that asylum seekers make as they attempt to move on from Direct Provision. Many of its findings echo those in the IRC report, *Counting the Cost: Barriers to employment after Direct Provision* (Conlan, 2014) and of a pilot project run by the IRC with the National Learning Network (NLN). The IRC-NLN project particularly highlighted the centrality of access to housing as the first and most important step on the way to

independence. More than 500 people have received their documents granting them permission to remain in Ireland but cannot move out of Direct Provision because they cannot find accommodation. Unable to work whilst in the asylum system, they are forced to rely on rent supplement, which is not the preferred option of many landlords.

The report makes recommendations which need not just consideration but also implementation at the earliest opportunity. These include a comprehensive, interdepartmental resettlement system with co-ordinated support to asylum seekers both prior to and after making the transition from Direct Provision. The framework for that exists in the refugee resettlement programme, although the greater involvement of civil society and local communities is essential to make integration more effective. In addition, the right to work whilst in the asylum system, and the timely provision of documentation to enable access to services to those granted permission to stay, would greatly assist them in the transition.

Since the introduction of the Direct Provision system in April 2000, and despite widespread condemnation of the damage which the system does, successive governments have been determined to keep it in place. That therefore comes with a responsibility to address the needs of those who have been required to live in Direct Provision and who are now attempting to move on.

**Sue Conlan**, CEO, Irish Refugee Council

June 2016

## List of Acronyms

Acronym	Full form
<b>CEAS</b>	Common European Asylum System
<b>CIC</b>	Citizens' Information Centre
<b>DP</b>	Direct Provision
<b>EC</b>	European Commission
<b>ECDL</b>	European Computer Driving Licence
<b>EU</b>	European Union
<b>FETAC</b>	Further Education Training Awards Council
<b>FLAC</b>	Free Legal Advice Centre
<b>GNIB</b>	Garda National Immigration Bureau
<b>IHC</b>	Immigration Holding Center
<b>IRC</b>	Irish Refugee Council
<b>NGO</b>	Non-governmental Organisation
<b>OPMI</b>	Office for the Promotion of Migrant Integration
<b>PTSD</b>	Post-traumatic Stress Disorder
<b>RIA</b>	Reception and Integration Agency
<b>RCNI</b>	Rape Crisis Network of Ireland
<b>SH</b>	Stakeholder
<b>UK</b>	United Kingdom
<b>UNHCR</b>	United Nations High Commissioner for Refugees

# Introduction

*After years spent in the institutional environment of Direct Provision, there is a moral responsibility to support individuals, children and families who have received their status, to secure appropriate accommodation and to assist them with the challenges of transitioning to life in the community.*

Eugene Quinn, National Director, Jesuit Refugee Service, Ireland, June, 2014<sup>1</sup>

**T**his participative study was carried out in partnership with the Irish Refugee Council (IRC) between March and November 2015. It aims to develop a deeper understanding of the experiences of those who have been granted refugee status, or other forms of protection, as they transition from Direct Provision (DP) accommodation to life in the community. The project looks at people's hopes, fears, challenges and opportunities and how the existing structures support or hinder the transition process. We will consider how life in DP and a protracted decision-making process contributes to the immediate challenges of integration and a longer-term legacy of adjustment to everyday life in the community.

Transitions are usually precarious. The move from the familiar to the unknown often encompasses a mix of fear and joy as those poised on a life threshold can but anticipate the complex, often unpredictable dimensions of what is to come. In relation to transitioning from DP, after years of institutionalised living, many may feel a great sense of relief and satisfaction that their application for protection has been granted, and also a sense of freedom and excitement about the future. However, those leaving DP are also likely to experience anxiety as they face difficult social, economic and cultural challenges. Years spent with little autonomy or privacy may have a detrimental impact on individual

---

1 <http://www.catholicireland.net/hundreds-asylum-seekers-entering-limbo/>

and family life, and on physical and mental wellbeing. With few economic resources, recent employment experience or qualifications, people must locate accommodation in an unfamiliar cultural context, where rented properties are in short supply. They must look for work with skills and capacities that may be unrecognised or obsolete and, often with limited social networks, they will need to navigate a complicated welfare system (Crosscare et al., 2014).

In the pages that follow we find evidence of how these significant challenges played out in the lives of 22 people awarded status in the Irish system. The focus is not on DP itself but rather on the transition from the dependency that characterises living in state-run institutions to the challenges of autonomously establishing one's life in the broader Irish community. The report is presented in five chapters:

**Chapter One** provides a background to the DP system in Ireland and explores relevant literature relating to the DP system and relating to transitions.

**Chapter Two** examines the research data by looking at how life in DP has an impact on what is to follow. It also looks at people's responses when the long awaited letter of acceptance is received.

**Chapter Three** looks at the journey that begins when status is achieved and as people try to make the move out of DP. In particular, it explores the challenges that people face as they attempt to make the transition out of DP.

**Chapter Four** focuses on the evidence in the data about education, employment and family reunification.

**Chapter Five** presents evidence-based recommendations about how the process of transition might be improved and strengthened by paying attention to the views and experiences of those who have undertaken this journey.

# 1

# Research Context: Literature and Methodology

## Introduction

This chapter firstly introduces the Irish system of accommodation for asylum seekers and places this within the Common European Asylum System (CEAS) context. It also examines some national and international literature about refugees and asylum seekers. While the broader literature is touched on, our focus is on literature that relates to the transition from accommodation centres into the wider community. This literature either looks directly at transitions and integration or explores factors that influence those transitions in some way. Finally, the chapter briefly outlines the methodology used in the research.

## Background to the Direct Provision System

The European Union (EU) through the CEAS has attempted to introduce uniformity in the treatment of those seeking protection<sup>2</sup>. Ireland participates in all of the directives introduced as part of CEAS, with the exception of Council Directive 2003/9/EC, known as the Reception Conditions Directive. This lays down minimum standards for the reception of asylum seekers. Ireland (alongside the UK and Denmark) is not bound by the directive but has the option to participate if it so chooses<sup>3</sup>. In practice Ireland has opted into some but not all of the CEAS instruments and unlike other EU partners, including the UK, does not give the right to work under any circumstances.

There are two types of protection status: refugee status deriving from the Geneva Convention and subsidiary protection afforded under European law to those who do not qualify as refugees, but are nonetheless prevented from returning home because of the risk of ill treatment. Both groups may be accommodated in Direct Provision (DP) while awaiting confirmation or rejection of refugee

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2 <http://www.inis.gov.ie/en/INIS/Pages/asylum>

3 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:310:0353:0355:EN:PDF>

## 1 Research Context: Literature and Methodology

or subsidiary protection status or failing that, leave to remain in Ireland on humanitarian grounds. Unlike other EU countries that have a single application process, Ireland has, up until 2015, operated a two-stage sequential procedure that first explores eligibility for refugee status and only thereafter begins to determine whether subsidiary protection or leave to remain will be offered. In December 2015 the International Protection Act was signed into law and introduced the promise of a single stage application procedure.

DP was created in April 2000 in response to a rise in the number of those seeking protection and a shortage of accommodation. DP refers to a system of minimum support for those applying for refugee status, subsidiary protection or leave to remain. Applicants are generally dispersed around the country, provided with accommodation - usually in the form of a shared room in a designated centre - as well as meals and an allowance of €19.10 per week for adults and, until recently, €9.60 for dependent children. This payment is not index-linked and remained the same between 2000 and early January 2016 when the allowance for children increased to €15.60 per child. The recommendations in the recently published Working Group Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers - henceforth, McMahon Report (McMahon, 2015) - had proposed more substantial increases to the allowances for both adults and children, but at the time of writing, these had not been implemented. Asylum seekers are not entitled to any other social welfare payments (including child benefit) (Thornton, 2014a). Those in DP usually have no facility to cook, are not allowed to work and generally cannot attend third level education<sup>4</sup>.

Since its inception, there have been consistent calls for the closure of DP and its replacement with a more humane and efficient form of reception and integration for those seeking refuge and protection in Ireland (Aikidwa, 2012; Fanning et al., 2001; FLAC, 2009; Irish Refugee Council, 2013; O'Reilly, 2013). The Department of Justice and Equality administer the DP system through the Reception and

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<sup>4</sup> Since Sept 2015 young people who have lived in DP for more than five years, and have spent five years in the Irish School system are now eligible to apply for third level education grants.

Integration Agency (RIA). The RIA further delegates responsibility for day-to-day management of DP facilities to private companies that are subject to inspection and regulation. Despite its name, the RIA does not appear to take any responsibility for integration of asylum seekers. This function was assigned to the Integration Unit of the Office of the Minister for Integration. However, the post of Minister for Integration has not existed since March 2011 (Irish Refugee Council, 2016). The Office for the Promotion of Migrant Integration (OPMI) is charged with the promotion and coordination of integration measures for legally resident immigrants but the remit of OPMI does not extend to those in DP, as integration policy in Ireland applies only to those to whom status has already been granted.<sup>5</sup> Linkages with local communities are patchy, left very much to staff in individual centres and are not part of any strategy governing DP (McMahon, 2015). Following consultations, the McMahon report (2015) asked that the government ‘give consideration’ to including protection for applicants in their integration strategy and that they make funding available for local integration initiatives.

### Living in Direct Provision

From 2000 to 2015, there were 70,648 applications for asylum, with 55,091 of these applicants being accommodated in DP. With an overall capacity of 5429, there are 35 centres in all, including a reception centre. Only two of the centres are self catering. Over 90 nationalities are represented in DP, with the largest groups (52% in total) coming from Nigeria, Pakistan, DR Congo and Zimbabwe. Of 4811 people who were accommodated by RIA in September 2015, almost a quarter, 23%, were children, and 32% of them had been in the system for over five years (RIA, 2016). The McMahon Report (2015) found that the length of time applicants remained in DP while decisions were made was excessively protracted. At its inception, it was estimated that those seeking protection would spend a maximum of six months in DP while their application was being processed. The excessive amount of time now spent, in what

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<sup>5</sup> See <http://www.integration.ie/website/omi/omiwebv6.nsf/page/aboutus-roleofofficepromotionmigrantintegration-overview-en>

## 1 Research Context: Literature and Methodology

is essentially temporary accommodation, creates significant problems for individuals and families in both the immediate situation and longer-term process of integration (McMahon, 2015). The McMahon Report recommended that all those awaiting a determination for five years or more should be granted leave to remain, as should those awaiting implementation of a deportation order for five years or more. This suggests the likelihood – if these recommendations are implemented – that more people will make the transition out of DP into the community in the foreseeable future (McMahon, 2015).

Having fled an array of turbulent and traumatising conditions in their countries of origin, individuals and families seeking asylum in Ireland have numerous emotional, physical and mental health challenges that are not necessarily all caused by living in DP but are certainly not helped by it. Notwithstanding the resilience of asylum seekers and refugees, as evidenced in the literature, (Rape Crisis Network Ireland (RCNI), 2014) people have an immediate need to deal with these past traumas as well as sizeable current economic, social and cultural adjustments and integration challenges. People are often unequally treated in the asylum process depending on their location. Rather than there being structured, regulated services, it is left to luck whether or not people receive the level of care and supports they and their children need to survive and flourish in their new life.

The negative impact of DP has been highlighted in numerous studies and the system has been criticised by key actors and organisations including the Ombudsman (O'Reilly, 2013) the government's Special Rapporteur for Child Protection (Shannon, 2012; 2014) and by international bodies such as the United Nations Committee on the Elimination of Racial Discrimination (UNCERD, 2011). Attention has been drawn to the negative impact of DP on physical and mental health (Conlan, 2014; Foreman, 2009; Nwachukwu et al., 2009), which is in keeping with international literature, particularly in relation to the impact of awaiting application outcomes for protracted periods. The international evidence suggests that lengthy waiting times have implications for physical and mental health, both during the period of waiting and in the aftermath when individuals are attempting to integrate (e.g. Bathily, 2014; Gerritsen et al., 2006; Fliges et al., 2015). For example the Danish study by Fliges et al. (2015) found that depression, anxiety and PTSD issues that were present in those awaiting decisions about

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their status, extended well beyond the point of transition into the community. The study concluded that deterioration in mental health was a direct consequence of the ‘detention’ process for an already vulnerable population (Filges et al., 2015). While DP is not a form of immigration detention, the findings may still be of relevance, particularly given that many DP residents experience DP as a form of prison, as will be outlined below. In addition, research recently conducted by Aisling Hearn of SPIRASI<sup>6</sup> suggests that for people who have suffered trauma, DP is often not a safe enough place to begin recovering<sup>7</sup>. This means that their recovery – like much of their life – is on hold until after they leave DP. This again suggests that for some, mental health and psychosocial difficulties may surface when the transition has been made, rather than while in DP. This is in keeping with the international literature which suggests that exile-related stressors may adversely affect an individual’s trauma recovery process (Miller et al., 2002).

The negative impact of DP on children and on family life has been highlighted consistently. It has been argued that the DP system violates the rights of the child and that Ireland is not in compliance with its obligations under the UN Convention on the Rights of the Child (Thornton, 2015). Concerns have been raised about child development, child welfare and child protection within the DP context (Shannon 2012, 2014; Arnold, 2014; Foreman & Ní Raghallaigh, 2015), and a number of pieces of research have shown the detrimental effect that DP has on family life (Foreman & Ní Raghallaigh, 2015; Uchechukwu Ogbu et al., 2014). For example, in the study by Uchechukwu Ogbu et al. (2014), parents living in DP described how their capacity to parent was undermined in a range of ways, by the system. Lack of economic resources, cramped conditions, lack of privacy and autonomy all conspired to create additional stress and impede parents in providing a safe, caring and nurturing environment for their children (Uchechukwu Ogbu et al., 2014). The existing evidence raises concerns about a long-

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6 Spirasi is an Irish based organisation working with asylum seekers, refugees and other disadvantaged migrant groups, with special concern for survivors of torture. <http://spirasi.ie/>

7 At the time of writing this research had not yet been published. The information is based on personal communication between the IRC and Aisling Hearn

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term, multi-generational impact of living in DP, where the model of family life and relationships is constrained by the institutionalised environment. Children miss out on ‘normal’ family life in that they never see their parents cook a meal or work outside the home and the lack of privacy affects all aspects of family relationships (Foreman & Ní Raghallaigh, 2015).

Elsewhere, repeated concern has been expressed about the marginalisation and social exclusion experienced by asylum seekers in the DP system (Arnold, 2012; Fanning & Veale, 2004; Nwagwuagwu, 2009) resulting in limited social networks and a sense of isolation, which in turn, affects mental health. The dependency engendered by the DP system (UNHCR, 2014), where people have little control, choice, or autonomy, is likely to also impact on emotional well being and mental health. Szczepanikova (2013:130), writing in the context of the Czech Republic, found that the combined impact of control and assistance produces “an oppressive environment that engenders asylum seekers’ dependency.” The literature suggests that this could equally be said of the DP system, something which is likely to lead to significant challenges for some people when suddenly, on receipt of legal status, independent action is required and choices need to be made.

The material hardship caused by life in the DP system has been highlighted frequently. For example, Fanning and Veale (2004), writing from a child poverty perspective and drawing on evidence from a number of locations, argue that as a result of living in DP, asylum seeker children experience extreme poverty, material and housing deprivation and social exclusion. Breen (2008) asserts that Ireland’s policy of DP is in contravention of international and European legislation and violates asylum seekers’ right to an adequate standard of housing. Indeed, Thornton (2014b:23) has argued that, overall, “there has been a tendency to exclude asylum seekers from supports that are seen as essential to allowing citizens and legal residents to live with a basic degree of dignity”. Related to the poverty experienced by those in DP, the Rape Crisis Network Ireland has noted that the DP system increases vulnerability to sexual violence and exploitation, including the risk of trafficking and prostitution, sexual harrassment, and sexual abuse (RCNI, 2014). For those who had sought support from Rape Crisis Centres, instability in living conditions and frequent change of location often interrupted counselling relationships. This has implications also for the transition process, where established therapeutic relationships may be

disrupted by the challenges of integration into the community.

While the focus of this report is not on life within DP centres, the living conditions and circumstances that exist while in DP, as outlined above, are likely to impact on people as they attempt to move out, particularly in the case of poverty, mental health difficulties, and weak social networks. As the Irish Refugee Council points out in its recent submission to the Oireachtas Housing Committee, after years in DP, which allowed for little self-determination or independence, transitioning out is a very daunting task (IRCb, 2016)

### Challenges of Transition

Within the literature, little is known about how protection applicants manage the process of leaving DP. Some information is available from broader research on integration of asylum seekers and refugees (e.g. Conlan, 2014; Feldman et al., 2008; Portley, 2015; UNHCR, 2014), although the focus of these studies has not been on the actual transition process. Conlan's (2014) research examined the experiences of 20 people living in different parts of Ireland, whose application for protection had been successful. The research focused on their experiences of leaving DP and looking for work. Findings illustrate the damaging, deskilling impact of long periods spent in DP without access to work, education or social networks. Initially, people struggled to make the transition, not knowing how to access services and finding it difficult to find places to live. People found it difficult to fend for themselves, having lived as dependents within the DP system. No preparation for this new life was provided and little information was forthcoming. Participants described loss of confidence and anxiety about the future. Many described the detrimental impact of DP on their mental health, with some reporting that they engaged in self-harm or attempted to take their own lives. At the time of the study, only one person out of the 20 interviewed had found work. To some extent this was explained by the generally poor employment climate but also participants attributed it to lack of work experience and subsequent gaps in their CVs while in DP, the need to improve their language and other skills, and a

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loss of confidence and ‘dynamism’ (Conlan, 2014).

The United Nations High Commissioner for Refugees’ (UNHCR) (2014) study of refugee integration in Ireland highlights a number of ways in which the system of DP negatively impacts on the process of integration. Research with 71 people about their experiences of integration into Irish society revealed that the social stigma associated with having been in DP was difficult to overcome and hindered prospects of integration. Participants felt that time waiting for asylum applications to be processed could be better spent improving language skills, building social networks and volunteering in new communities. Lack of economic resources, poor information, discrimination and racism were impediments to social inclusion that left people without opportunities to gain valuable local knowledge and to make social connections (UNHCR, 2014). In their study, UNHCR also found that long stays in DP centres led to a certain level of dependency and disempowerment which impacted on the ability of people to access housing upon transition. These circumstances were exacerbated by previous experiences of trauma. Problems accessing credit and a lack of practical supports in transitioning from DP were also highlighted by the UNHCR research.

Recent doctoral research by Finn (2015) highlighted many of the challenges faced by those leaving DP as they search for housing, in a context where no formal supports were available. These included considerable financial limitations, limited social connections to assist with house searches, and discrimination based on colour. “Networks of ethnicity” (Finn, 2015: 134), as well as chance encounters with benevolent volunteers or advocates often proved helpful, as did, on occasion, specific members of the Department of Social Protection who were happy to use their discretion to provide financial assistance.

A report by Crosscare et al. (2014) on issues faced by immigrants in accessing social protection, is also of relevance. This report found that the quality of first instance decision making is not up to standard, with a high rate of refusals as a result. It also found that there were many customer service issues of a worrying nature, including rudeness and racism, and that misinformation and omission of information were problems. In addition, interpreters were not always provided when needed. These

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issues would suggest that those leaving the DP system, who would generally have very little knowledge of the social protection system, might face barriers in accessing their entitlements and in navigating the system, thus making the transition more difficult.

In 2015 the IRC set up a Transition and Employment programme to provide advocacy and assistance to people who, having received their papers, have to move out of DP centres. According to their annual report (IRC, 2016a), over 50 people have been assisted with transition issues since the start of the programme. While the main issue highlighted so far is access to housing, other problems cited include accessing and navigating the Department of Social Protection, access to information on processes, access to employment, access to education, family reunification, integration and acquiring valid identification documents (IRC, 2016a:18).

The difficulties people have leaving DP is starkly evidenced by the fact that as of February 2015, 679 people who had been granted status some several months previously, were still living in DP (McMahon, 2015). A major factor in the transition process is the shortage of rental accommodation, especially in Dublin and other cities. The IRC emphasises that it is the marginalised and vulnerable – including asylum seekers / refugees – who “bear the brunt of the problem” (IRC, 2016b:4). The fact that there are few targeted supports to assist them, exacerbates the difficulties faced by those in transition. The lack of strategic planning, information and support from the state or their agents, means that those who have been unsupported in terms of community linkages are then faced with becoming part of a community about which they often have little awareness or cultural understanding. In addition, the challenges to actively integrate into a new culture and community are exacerbated after long periods of enforced passivity. As the McMahon Report states:

*“...those who have been in Direct Provision for lengthy periods of time experience an erosion of personal autonomy over the most basic aspects of their daily lives, and the development of a dependency mentality which is difficult to overcome. As a result of a loss of skills and becoming institutionalised, mental health issues also arise”*  
(McMahon, 2015:237).

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In light of the complexities of transition, an interdepartmental task force on transition issues was established in July 2015 and due to report in September 2015. At the time of writing, the task force report has yet to be published, although the group has produced an information booklet: ‘Your Guide to Living Independently’, which provides information for people transitioning out of DP.

### The Approach to Study: Methodology and Participants

The research was funded by the Irish Research Council, under its New Foundations – Engaging Civil Society strand, and was conducted as a partnership between the Irish Refugee Council, University College Dublin and Trinity College Dublin.

Throughout the research process attention was paid to ensuring that the research was conducted in an ethical manner. This was particularly important given that, notwithstanding their resilience in the face of adversity, asylum seekers and refugees are considered to be vulnerable. Ethical approval was obtained from University College Dublin’s Human Research Ethics Committee (Humanities). Key research ethics principles such as informed consent, voluntary participation, anonymity and the commitment to doing no harm were adhered to throughout.

Training in qualitative research, interviewing techniques and research ethics was provided to asylum seekers who were involved with the IRC in various capacities. Two of those who were trained – Siphathisiwe Moyo and Gabriel Wenyi Mendes – were subsequently invited to join the research team as peer researchers.

People who had received refugee status, subsidiary protection or leave to remain and who had lived in DP were invited to take part in the study. The peer researchers assisted with recruitment of participants by informing people in their networks about the study. Stakeholders also assisted with recruitment. As such, the sample is not a representative one. A selection of stakeholders who worked with asylum seekers was also invited to take part.

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In all, a total of 22 individuals with experience of living in DP were interviewed; 14 men and eight women, ranging in age from 20 to 45 years of age. They came from Algeria, Angola, Cameroon, DR Congo, Guinea, Iran, Nigeria, Somalia, Sudan, Uganda and Zimbabwe.

The majority, 12, had already moved out and 10 were in the process of trying to make the transition. The shortest time a participant had lived in DP was 11 months; the longest was 11 years. Six stakeholder interviews were also conducted, representing a range of non-governmental organisations (NGOs) from Dublin, Monaghan and Waterford. The peer researchers conducted some of the interviews, with Muireann, Maeve and Clíodhna also conducting interviews.

Interviews were transcribed and the data was then analysed thematically, using Nvivo software.

## Conclusions

The DP system has been the focus of much criticism since its inception. The evidence suggests that the system has a detrimental impact, on multiple levels, on those who have sought protection from the Irish state. While concern has often been expressed about the long term implications of DP even after people leave the system, little is known about the experiences of people as they move beyond DP. There is a dearth of research in relation to the transition from DP to life in the wider community. It is therefore this gap in the literature that this piece of research seeks to address, focusing primarily on the voices of those who have made the transition or who are attempting to make it.

# 2

## From Direct Provision to Status

*“It has been one of the most dreadful periods I have ever had in life... because it’s very hard to wake up and you sit .... not allowed to do this, you’re not allowed to do that. You are not sick or you’re not ill but you are there. Mentally it is tormenting, so tormenting. It’s dehumanising actually.”*

### Introduction

**I**n the light of the evidence in the literature reviewed in Chapter One, we now turn to the data from the study participants, about the impact of life in Direct Provision (DP) on their readiness for transition. We focus on the manner in which people’s capacities to move on with their lives are influenced by the physical, emotional and psychological legacy accrued while living in DP. This chapter looks at the experiences of DP up to the point of receiving papers affirming status. As in the other findings chapters, the words of the research participants form the backbone of the evidence offered.

### The Impact of Direct Provision

#### *Eating and Sleeping*

Comments on the nature of life in DP were predominantly negative. Whilst there was an initial recognition that DP provided shelter and basic requirements in terms of food and safety, for many, the monotony and the long delays in receiving an outcome to an application soon changed that initial relief to disappointment and depression.

*“It’s taking all your time. I know you need to be protected, the only thing is just you have a bed to sleep. Just a bed.”*

A stakeholder spoke of the DP regime “breeding a cycle of apathy or inability to function” that had a long-term detrimental impact that stretched beyond the time spent in the facilities. In keeping with the literature, concerns about the impact of delayed determinations of asylum claims were repeatedly in evidence in the testimonies of those seeking protection.

*“How you can keep somebody for eight years, for 10 years and how you going to start the new life if you give me the paper? He can give you refugee or he can give you humanitarian, or he can give you deportation. How are you going to start this new life after five, eight years, 10 years is stressful in the Direct Provision?”*

There was a sense of futility for many about life being on hold and devoid of purposeful activity. One man, who had studied law in his country of origin, was frustrated to find his daily routine reduced to “eating and sleeping, eating and sleeping”. Similar sentiments were expressed by many other participants:

*“It’s just like wasting of life, wasting of years. You wake up in the morning. All you have to do is go for your breakfast. Go back to your room, sleep or watch TV. Come for your lunch. Same thing everyday.”*

Those hoping to start a new and better life were eager to be meaningfully engaged in work, education and social connection. Although many made concerted efforts to keep busy by undertaking voluntary work or partaking in whatever limited educational opportunities were available, people often became gradually disaffected by the delayed outcome of their application and the interim inactivity. These made the demands involved in embracing the opportunity of transition and integration more daunting and complex, when their papers finally came through.

### *Loss of Autonomy*

Many research participants compared DP to ‘prison’ or ‘living in hell’. The prison references were supported with examples of over-regulation, disempowerment, surveillance and loss of freedom. In some facilities, there were ‘guards’ and ‘cameras’ and a pervading sense of institutionalisation.

*“It’s just like you’re under pressure, like, it’s just like an open jail, an open prison. It’s open. You can go out but the way it is, it’s just like a prison you know because morning to evening, there’s a camera. Everything you have to beg...”*

The loss of autonomy experienced by those in DP has been repeatedly referenced in the literature (Arnold, 2012; Breen, 2008; Conlan, 2014; Uchechukwu Ogbu, 2012). This loss was particularly evident in relation to food. The provision of meals to a strict timetable, the absence of choice about when and what to eat and the passivity imposed by the absence of cooking facilities, all stripped people of a sense of autonomy. Participants spoke of being infantilised, deprived of adult freedoms and punished, in the everyday way that food (and life in general) was controlled.

*“It’s just like they are giving the food, they are giving the Pampers, they are giving the baby food, they are giving everything.... People decide your life for you. They decide when you eat, when you go out.”*

Other participants also talked about the lack of control and the impact this had, with several of the participants referring to the fact that people then became lazy. For example, one man who spent eight and a half years in DP described his descent from hope, to a sense of imposed inaction.

*“You come here when you have a lot of things you plan to do, but when you are in the hostel, everything... you become a lazy man. You cannot do anything.”*

The data describe a loss of independence and self-reliance that results from a highly regulated environment. Adult responsibilities are suspended while others make decisions about the minutiae of day-to-day life and this makes it difficult to engage with new systems and cultural approaches and potentially causes problems when determinations are finally made. One female participant stated:

*“You have no say. You lose your self-esteem and this is the thing that is needed to build up again, to feel that you belong. I think that is where the problem is, because after so long when you’re being controlled, when you’re being told to do this way. You can’t cook for yourself. You can’t go and buy food. These are all challenges. What do I buy? Where do I buy? What do I need?”*

People also had little or no choice regarding who they lived with. The enforced communal living in the accommodation centres evoked varied reactions. Sharing a bedroom and bathroom with strangers was sometimes a source of stress and occasionally, conflict. In the wider environment the sheer numbers of cohabitants was a challenge, and added to an already stressful environment. One participant stated:

*“People fight. Small thing make people fight.”*

Another said:

*“It’s too many people. You have too many people.”*

### *Impact on Mental Health*

In keeping with the national and international literature (e.g. Conlan, 2014; Bathily, 2014; Fliges et al., 2015; Gerritsen et al., 2006; Nwachukwu et al., 2009), there was evidence in the data of poor physical and mental health, resulting from the isolation, uncertainty and powerlessness experienced in DP. Stress and anxiety were commonplace:

*“To me it was so difficult just to wake up without knowing what I can plan for tomorrow so for me it was so, so bad to the extent that it was stressing me every second.”*

There were fears expressed too, about the mental health of children and the vulnerabilities of young and older women who are isolated in DP facilities.

*“There’s a huge apathy; there’s going to be huge mental health issues and basically nothing to get up for. There is absolutely nothing [for children] they’ve been playing in the corridors. They’ve been playing on the stairs. They’ve got a big huge field right beside them that they’re not allowed into. DP has a detrimental effect on long term children’s mental health. And there are women we are not seeing...”*

*“The women are very vulnerable to trafficking and prostitution because of income poverty.”*

Issues of mental health, suicidal ideation and self-harm also arose for men in the study, as they too, waited in unfamiliar and isolating circumstances for a determination about their future. Some felt emasculated in front of their families by not being responsible for the family environment, whilst others were sidelined by age and ethnicity.

*“It was hard for me as a man. There were just three men in that hostel, with family. Most of them were single men from Africa. Very lovely people and all, very warm and friendly. After two, three years I tried to go out. I got frustrated about the situation. I feel I am going to be mad. Depression.”*

Stakeholders were particularly concerned about the length of time young people were spending in DP at a point when their lives should be filled with hope and opportunity, and about the longer term impact of this on their future mental health and integration. Overall, concern was expressed that people with mental health problems would face particular challenges transitioning out of DP and integrating into the broader Irish society.

## Resilience and Coping

Residents of DP coped in different ways with the challenges of waiting and living in an institutionalised setting. People talked of keeping busy, taking exercise and engaging in voluntary work in the community. People learned to be patient, to cope with long stretches of empty time and to find an inner strength in themselves. One woman pleaded to be allowed to clean the DP facility so that she could feel she had a purpose to her day, but this request was declined. Another young woman described a docile acceptance of whatever was demanded of her by those in authority.

One man who had been in eight different hostels in two years was baffled as to why he was moved so often. He coped by disengaging.

*“I never know why they always change me the hostel. I never know why, but anyway, I don’t think again too much about that.”*

Another man became involved in a local NGO, as the DP residents' representative, and similarly talked about distracting himself and not dwelling too much on his immediate difficulties.

*“My daily routine, they were just for me to miss trouble, not to lose hope, not to be... There is a spirit, just to try to be strong what they answer. On a daily basis I do a lot of voluntary job, just keeping myself busy. I do a lot of training. I was do boxing just to keep myself fit.”*

Some complained, some passively accepted, and others tried to cope by creating some personal control, for example by hiding a kettle to make coffee or asking for alternatives to what was on offer in the main dining facility. For the most part, people succumbed to the regime, which had inevitable consequences for the future process of transition.

Without rigorous state regulation and supervision, it is clear that some DP facilities operated more supportive regimes than others and had more supportive staff. The kindness of some made a great difference. While few respondents had any positive comment to make about life in DP, one young woman, who had come to Ireland as an unaccompanied minor, made good relationships with staff in the DP centre and she missed these relationships when she moved.

*“The most positive things I had was that the workers are good to me. That’s the thing. Especially the manager. They are so nice to me and I don’t make any trouble so I think to be honest that’s the most positive thing that I can ever think about. I got along with the cook – the chefs, everyone. I didn’t have any problem with them so actually I miss everyone in the hostels.”*

Small incidental kindnesses from individuals on the staff also emerged in otherwise bleak lives.

*“There’s only one man. He is nice. He’s a security guard. He’s Irish. He’s nice to everybody... otherwise nobody...”*

Whilst there is evidence of occasional friction, there is abundant data about the friendships formed in solidarity with other residents. The good relationships made while in DP sustained people and made life tolerable. For children, the ever-present company of other playmates was enjoyable. People

talked about learning from others and creating networks of support, sharing information and advice and problem-solving collaboratively. These social networks – including networks with people who had already moved out of DP – proved important when individuals ‘got their papers’ and were preparing to move. However, as will be evident below, the relationships that were formed in DP also meant that sometimes it was difficult to leave.

## Receiving a Positive Determination

When the time came to begin the integration process that had been kept on hold for so long, people’s response to receiving their papers varied between relief, joy and regret at so much wasted time. For many, the arrival of ‘the letter’ signified the end of a lengthy and stressful wait and as such, they were very happy and relieved when the letter arrived. One participant stated:

*“Oh gosh it was my best day ever, I was very happy. Very, very happy. I was shouting, I did not want to eat, shouting, shouting, shouting. ....So I was shouting making noise, screaming everything. I was ringing my friends to tell them, my friends they were ... I was very happy. Very, very happy.”*

Sometimes people did not react in the way that they thought they would react:

*“But then, before I got my papers I was telling my friends, you know, telling them when we’re all talking about it “if I got my papers I would scream. Everybody would not sleep in the hostel and I would be shouting, I would be knocking on everyone’s door” But that day when I got my paper, I was just so quiet. I was so speechless. I was like, “After all these years.” I just sat down and everyone was crying, everyone was screaming, I just sat down, I called my parents at home. My mom, she couldn’t believe me. She was like, “Don’t joke with me.” And I was like, “I’m not joking, why am I joking, this is very serious”, then she screamed.”*

One man talked in terms of a ‘miracle’ after receiving a response after only three years, when he was aware that others have waited for 10 years and more.

*“My feeling for me it was a miracle, it was a miracle, because when I saw the other people in the hostel for 10 years, 12 years, for me it was no life.”*

In keeping with the viewpoint that DP was like a prison, many participants felt a sense of freedom once they received their letter indicating that their status had been granted. A woman who had been waiting less than a year, felt a sense of arrival and new life after a period of being caught in a sort of limbo. She, like many others, was initially shocked and found the news hard to believe.

*“It was like I’m born, like I’m born with everything. You’re born when you’re already grow up. You seeing everything. Now I’m a new person. I’m here now. I was so happy. I didn’t know how to express my feelings because I remember when my lawyer called me, telling me the good news, I stayed for an hour without even telling anyone or calling anyone, because I didn’t know what to do. I didn’t believe I was so happy.”*

Some expected their joy to be boundless and were surprised at the complex nature of their emotional response when their letter finally came. For some, the arrival of the letter highlighted the many lost opportunities, having waited so long. After eight years, one man felt sad when he received his papers. The authorities expressed their happiness to inform him that his application was successful, but he felt a sense of sadness that he had waited such a long time and had no sense of transformation or optimism. His words highlight the long term damage done by the system:

*“When I received the letter I was not happy that they say I am happy that you have a paper. I was just feeling down. I was just say, I expect this for long to me to build my way. After how many years now...You give me that today. I’m not happy for anything. I see myself the same that I used to be in the Direct Provision.”*

After waiting six years, one man described his reaction to receiving his letter of approval as one of anticlimax and disbelief at so much invested in this one paper.

*“You don’t believe it because you have been expecting for the paper for a long time. Maybe we imagine something big, but it’s just one paper. One letter and the letter can just give you permission. You read and you read again. Repeat reading.”*

One man talked about how his three year-old son was frightened by his father's reaction, when his determination came through. The 'paper' takes on a huge significance for children, without their understanding the detail, and the child was confused and upset by the whole episode and by the apparent emotional disruption it caused.

Overall, the participants' descriptions of receiving their papers demonstrate not only the importance that they attached to being granted status but also the significance of being able to leave the DP environment and have the freedom to start their new lives. In addition, the reactions in many cases indicate the negative impact of the DP system on them as individuals, particularly those who spent lengthy periods in the system and felt that so many years had been wasted.

### Conclusions

The evidence gathered from the 22 people in this study is corroborated by the stakeholders who work closely with those seeking asylum, both during their process and after it is complete. It is clear that long term detrimental effects result from a regime that removes people's independence, ensures they are bereft of all but the most basic resources and at the same time, does not allow them to work, and limits their potential to learn or form social networks. For adults, children and the wider community there are lost opportunities for intercultural enrichment. Individuals suffer, as do family relationships, and for some poor physical and mental health are a consequence of the system. Unsurprisingly, it was hugely significant for people when they received notification that their applications for protection or leave to remain had been granted. However, for some this news was overshadowed by feelings of resentment or regret in relation to the years lost while living in limbo. In addition, as will be seen in the next chapter, initial joy often changed to stress when the challenges involved in transitioning from DP became apparent.

# 3

## Transitioning out of Direct Provision

*“You start slowly, slowly, because you are used to living in hostel. You get food, you get sleep. You’re very relaxed, you think about nothing. But when you go outside, another world, you have to do everything. To do everything for a long time is very hard. So you tend to feel like you are a little boy and then you’re a grown up.”*

### Introduction

**I**nitial joy at receiving a letter granting status is followed up by the painful reality of the difficulties involved in finding a place to live, accessing social welfare, and looking for work. The systemic infantilisation and loss of autonomy while in Direct Provision (DP), and the toll of the accumulated physical, mental and psychological harm becomes obvious when, after years of waiting passively, suddenly action is required. Having been passive recipients of state provision for protracted periods of time, those granted status are then faced with a daunting transition for which they are ill prepared mentally, economically or in terms of cultural awareness and vital social links. The response varies from case to case. For many, the transition was a complex blend of regret about the wasted years in DP, relief to be out or on the way out of DP, and hope for a brighter future.

*“I am going to be honest, behind me is very difficult because it is something it is not easy to forget. I hope very quickly I will be forgetting. I will look forward for my future to do other things.”*

*“We don’t have much, but to think we are out of that place. It just make you happy. We are still talking about it. We are still talking about it so it’s still affecting me.”*

*“It was a transit. You have passed it. You need to do a new life and move forward.”*

### 3 Transitioning out of Direct Provision

This chapter looks at the information and supports available to people during the transition period and some of the challenges that they faced.

## Provision of Information

Initially, those who were granted status were instructed to register with the Garda National Immigration Bureau (GNIB). This process seemed to run smoothly for the majority of those interviewed and participants reported that they were treated courteously by the Gardaí concerned. Usually their GNIB card arrived within the two weeks promised.

Other than this initial instruction about GNIB, very little other information was given to those interviewed by the Department of Justice and Equality or by the Reception and Integration Agency (RIA). The initial letter was followed by a letter from RIA, informing them that they have 21 days to move out of DP. The following is an excerpt from this letter:

*“You must now make arrangements to move into the community and begin your new life in Ireland. Your current accommodation centre... is reserved solely for persons who remain within the asylum process. Having been granted Permission to Remain, you are no longer within that process. You must therefore make arrangements to move out of the centre as soon as possible but no later than (date). Please leave your accommodation in a clean and tidy condition. Do not take with you any property belonging to the centre.”*

The letter then went on to ask individuals to ‘pay particular attention’ to a number of things regarding accommodation. Individuals were told that they should ‘apply, in the first instance, for accommodation to the local authority for the area in which you intend to reside’ and it was also suggested that people may wish to look for rented accommodation.

The letter lacked specific information regarding how they should make an application to the local authority, where local authority offices were located or how they should seek rented accommodation. While the ‘community welfare officer’ was identified as someone with whom difficulties in finding

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accommodation could be discussed, details were not provided about how community welfare officers could be contacted or where their offices were based. It is of note that, within the study, participants did not talk about getting help from community welfare officers.

There seemed to be an underlying assumption that people would know what to do upon receipt of the ‘granted’ letter. This was an unrealistic assumption, given that many of those transitioning were living in a system which caused them to be dependent on the state and isolated from the general population and from those who might be familiar with the processes involved. They had no understanding of the intricacies of a complex welfare system nor procedures for accessing rental accommodation in a market experiencing dire shortages of supply and constantly rising rents. Participants made the following comments:

*“That’s the thing. It’s a surprise. There’s no structure to inform you what you are supposed to do.”*

*“I’m just finding that it’s difficult because you don’t know anything. We don’t even have a list what to do next really, like even stage number one when you get your papers, you don’t know where to go and collect the form. We don’t totally have that information.”*

The lack of information caused anxiety and confusion for people who had been given no preparation, during time in DP, about what might happen afterwards.

*“... it is all stated in the letter, the means and what they offered you. Health service, you can use the health service like any other Irish persons. You can look for employment. You can look for education but it didn’t tell you how to do that.”*

As mentioned in the previous chapter, the Task Force on Transitional Supports, set up in the wake of the McMahon Report (2015), produced an information booklet at the end of December 2015. They advised at the time that the booklets are being distributed by RIA to those in DP with status. This booklet provides those leaving DP with information about the services and supports available to them. For the respondents in this study, no information booklet existed and so support, in the absence of state structures, was sought from many unofficial sources and networks.

## Sources of Support

People's access to and need for support during transition varied, but what is clear from the data is that they were generally dependent on non-statutory sources for this information and advice. Some managed to get information about social welfare and housing from others who had gone through the system before them, from the occasional supportive DP hostel manager, from non-governmental organisations (NGOs) that they were already linked in with, or from the local Citizens' Information Centre (CIC). These methods of getting information proved problematic for individuals who were not well networked, especially those who were experiencing mental health problems or who had not been in the country for long. Because of lack of clarity some acted on misinformation. One participant highlighted the fact that different people had different types of status, with different entitlements and procedures, depending on their status. This meant that advice from a former DP resident might not always apply to a particular individual's case.

For many of those interviewed, NGOs proved particularly important in providing support. They provided local knowledge about accommodation and services. NGO staff and volunteers took people, step by step, through the complicated processes of transitioning. They provided specific and practical help with form-filling, with sourcing accommodation (assisting with checking property websites, phoning landlords etc.) and with applications for family reunification. Participants valued the personalised approach of NGOs whose focus was to ease the path to integration in the face of complex and frustrating bureaucracy

*"I know of [named NGO] and I start going there... They fill my form... From there if I got any letters or I wanted to fill form or if I have any problem, I need someone to advise me I go to [NGO]. They help a lot of time. I think they're great people."*

It should be noted that many of those who participated in this study were recruited by NGOs. As noted earlier, the sample is thus not representative and in fact it is likely that the more vulnerable individuals transitioning from DP did not participate in this study. NGO staff observed multiple and varied support needs and were concerned about individuals who do not have the motivation or the

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know-how to access the help they need. As a result, their needs go unidentified and unsupported.

*“It’s a whole spectrum of people with different needs, different abilities. I would say that there is quite a portion of people there that just don’t know how to deal with it because of the institutionalisation and because of the problems they have brought with them. The ones who need help may be the ones you don’t see.”*

*“Those that are struggling the most are the ones that are least likely to look for or access services. They are least likely to engage in research or study reports and therefore it’s more difficult to reach the need of those that are furthest removed from services.”*

The transition from DP to community living was particularly hard for those suffering from depression, who found it hard to leave the legacy of their old life behind. In keeping with the literature, for some, the process of recovery from trauma or from mental health difficulties could only really begin when the move out of DP occurred and the uncertainty of the asylum process ended. The data suggests that counselling was a positive support in these instances.

*“After having my paper that’s where I manage to do, to cry. I never really cried before. Sometimes it’s hard for me. I am just a person who gets depressed... I think when I was going for my help to the counselling thing it really helps me. My doctor told me, you’re only going to see something ahead. Backward is just backward. That is why I say my first life is my first life – gone. Then my new life is now this one – my new life.”*

One woman had to rely on advice from her lawyer for ongoing information, after her status had been awarded.

*“Because I just get my papers before I know anything in the country. I was still new so everything I’m doing after getting my paper I have to be directed by someone. So on that stage I am still referring to my lawyer: ‘What can I do next?’ It makes my process go slow. Another thing, I’m applying for my child to join me so they’re trying to find out if he can join me soon, so that I can know which accommodation to look for.”*

For many, the best source of support was others who had been through the transition process before

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them and had untangled the steps in the welfare and housing systems.

*“A lot of people who left Direct Provision, they know people who have left Direct Provision also, so they contact those people and they get their supports. Sometimes they link with them. They stay with them until they get a house. Those supports are always there.”*

Some people reported being treated harshly by DP managers, whereas others experienced kindness and flexibility in the interpretation of the system. In some cases DP managers provided ongoing supports while people tried to locate a place to live and the finances to pay for it. There was evidence that participants who were living in the same hostel were treated differently by a manager, with some being put under pressure to leave the centre quickly, while others were told that there was no rush to leave.

*“Then I went to my manager and said I have not got any house so you’ll have to hold on for me and she said, ‘no problem’. But they were not pushing me, They were not telling me that I had to leave, no...”*

This additional support was at managers’ own discretion and not a feature of state policy or regulated practice. Another participant had a very different experience to the person quoted above. She stated:

*“I told them I can’t leave because I have a baby. They said to me you have three weeks, you have time. That’s the answer they give me.”*

All this discretion and serendipity leaves the system open to inequalities, where individual asylum seekers may be treated more, or less favourably between and within different accommodation facilities.

## Financial Hurdles in Transitioning: Accessing Social Welfare and Rent Supplement

Getting access to social welfare and accommodation are interlinked, yet the systems seem to obstruct

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one another in allowing people to transition from DP into the community. In order to register with the Department of Social Protection to be able to claim Jobseeker's Allowance or other entitlements, proof of address is required, but the majority of participants were told that the DP hostel was not acceptable as an address. In keeping with the research by Crosscare et al. (2014), which found that misinformation or omission of information was a problem for immigrants accessing social protection, in our study people were often not informed of their full entitlements, including Exceptional Needs Payments and the fact that they could get a reduced rate of Jobseeker's Allowance while in the hostel. Most of the participants continued to receive the minimal DP rate while they attempted to make the transition, although there were a few exceptions, thus suggesting inconsistency in the system. One participant talked about his friend who had been given the full allowance once his status had been granted, even though he was still living in DP:

*“They pay him the full money, weekly money. They say OK - you can stay here [in DP]. You don't need to pay bills or pay any rent. You can save this money for your deposit or for your first rent. Then you can go and pay that money for your rent or for your deposit. It's as simple as that.”*

A stakeholder talked about the challenges of getting a deposit together when one was receiving only €19.10 per week:

*“I suppose there is a long period of time between getting social welfare payments changed over from the Direct Provision €19.10, to their own individual entitlement. Without that changeover happening, they cannot access supports for rental allowance. They don't have a deposit. They have been surviving on €19.10 a week, so they don't have a deposit saved up. A lot of accommodation would require a three-month deposit plus one month in advance.”*

In reality, it would seem that all of those who had been granted permission to remain should have been entitled to a Jobseekers' Allowance of between €100 and €188 per week, depending on their age, instead of the DP allowance of €19.10. Indeed these individuals may in fact be entitled to make retrospective claims in relation to this money. In addition, many if not all should probably have been able to access an

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Exceptional Needs Payment to pay for the desposit. There also appeared to be discrepancies between social welfare offices in relation to what people were entitled to. One stakeholder spoke about a client's experiences:

*“He said they don’t pay [deposit]. I think that most of the social welfare officers don’t pay deposits. It wasn’t long ago that they started doing that. ... we were campaigning and we were saying a lot of things about how difficult it was. I think that changed and social welfare officers in [named office] started paying. I don’t know for other areas or other hostels if they pay their deposit for them.”*

Participants described the information that they had been given. One woman told how she could not access Jobseeker’s Allowance without first having an address. Yet obtaining rental accommodation which would provide this address was very difficult without having a social welfare payment. Thus she was caught in a vicious circle:

*“I went to social welfare first. They gave me an interview for Jobseekers [allowance]. But they said, I have to get a house, I have to have an address, before they see me, before any other thing, because they can’t interview [me] while I’m living in Direct Provision.”*

Finding an alternative address was extremely difficult in circumstances where participants could not afford to pay deposits and rent while receiving only €19.10 per week. Landlords generally required a deposit and at least one month’s rent in advance and so people were caught in a bureaucratic bind where one set of rules was out of sync with those of another department. This resulted in delays for people leaving DP even after their long-awaited approval for status had been delivered, with the time taken to leave DP accommodation varying from between one month and seven months, for those who had already completed the process.

People who had found themselves waiting for long periods in DP for a determination on their status then found themselves in another limbo between getting status and moving out of DP. A woman who had been 11 years in DP had received her papers one month prior to the research interview and was

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still living in DP. She stated:

*“I can’t pay for the house myself and actually there’s no fund that is readily being given to people to access that. You have to go through social welfare, but the social welfare you have to ask for that money (rent supplement) when you already have got the house, but to get the house you need that money. That is where the trick is. That is number one. This is why I am two legs. One leg is still in here and I’m trying to move out. Moving out is not as flexible as it would seem to be.”*

Delays in receiving rent supplement were common. In many instances people who had managed to move into private rented accommodation - usually by borrowing money for the deposit and for the first month’s rent - then faced the challenge of waiting for their rent supplement for several months. Many of the participants were paying out €100 a week out of their €188 Jobseekers’ Allowance, in order to pay their rent while they waited for their rent supplement to be processed.

*“Looking for a house is so difficult because most of the landlords, they don’t want rent supplement ... they just want you to come and pay their money. But after a while we got somewhere ... and she is willing to take the rent allowance. We had to use our basic allowance to pay the rent. We are still waiting for the rent allowance.”*

One participant, who was under 25 years of age and in receipt of just €100 unemployment allowance per week, was paying €93 for rent and electricity, which left him with €7 a week for food and other essentials. This was significantly less than he had been getting in the DP system, where he was provided with all his food. Having been dependent on the DP system for several years, he was now forced to be reliant on food vouchers from the Society of Saint Vincent de Paul, and the kindness of friends. Even when the Rent Supplement came through, the amount of money provided was usually not sufficient to cover the rent, as is often the case for the general population.

In addition to the problems getting a deposit / first month’s rent and paying the rent in the absence of rent supplement, participants also faced expenses in obtaining household items. Having moved to Ireland with few belongings and having lived in DP hostels on €19.10 per week, most participants did not have items such as bed linen, cutlery, or crockery. Purchasing these items resulted in further

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financial pressure. One stakeholder commented:

*“They may have a cooker in place ... but certainly in terms of pots and pans and even cups and plates and all that type of stuff, no, you’re expected to provide your own. We have a reputation of trawling through all the second-hand shops ... trying to help families in particular, to kit out their kitchen so that children have something to eat on.”*

The result of the current system is that the majority of people get into debt, be it formal or informal, to enable them to leave the DP hostel. This may be in addition to a previous debt incurred while in DP. Those with a social support network borrowed from friends (often people who have made the transition before them); others went to lending agencies (one cited a €120 charge for a €400 loan). One stakeholder stated:

*“Some people are borrowing money off loan sharks to get out, get deposits together so then they’re going to be caught up in that trap for a while. People really want to get out as quickly as possible... they’ve been in there [DP] for so long.”*

The net result of an inhospitable and often obstructive social welfare system is increased likelihood of cycles of poverty, where people cannot access their entitlements and are forced to borrow while they wait for the state systems to function appropriately.

Applying Baker et al.’s theory of equality (2004) or Amartya Sen and Martha Nussbaum’s (1993) capability approach helps illuminate the resulting discrimination, inequality of opportunity and lack of capability experienced by those attempting to move on from DP (Gateley, 2014). Lack of income and resulting poverty, and the lack of ability to participate fully in society, are key indicators of social exclusion. Already socially excluded by the policy of dispersal and DP accommodation, this is clearly exacerbated rather than alleviated by the lack of support around transitioning out of DP, accessing social welfare and sourcing accommodation (Crosscare et al., 2014).

## Other Hurdles: Finding Accommodation

As mentioned previously, within a fortnight of the Minister for Justice and Equality's letter arriving, most received a letter from RIA giving them just two to three weeks to vacate the DP hostel. Notwithstanding the financial challenges discussed above, actually finding suitable accommodation was very problematic, with multiple barriers in place.

*“No it's just, after days I receive letter from, the granted letter, to say that I should leave the accommodation within two weeks or three weeks.”*

*“Well, the first big challenge is getting accommodation outside, that's the first big challenge. There are a couple of challenges that you meet but that's the first one because you really don't know where to start ... (you don't know) your left from your right.”*

Participants reported that – apart from the financial challenges of affording to rent - they faced numerous other hurdles in attempting to find accommodation and therefore could not move out of the DP hostel quickly. To begin with, many of the participants simply did not know how to look for accommodation, having been isolated from the general population and never having rented previously. For example, some did not know about property websites such as daft.ie nor did they know that one often needed to arrive early to view properties, as many other people could be looking at the property. Also, the rural locations of some DP centres meant that it was difficult to travel to view properties.

In addition, they were faced with the challenge that landlords often would not accept rent supplement and instead preferred tenants who were working. Given that as asylum seekers the participants had not been permitted to work, this placed them at a significant disadvantage.

*“Actually, all of the houses, the landlord need only people who's working. If you don't have job, if you not working, you can't get a place, that is your problem.”*

Another challenge individuals faced was getting appropriate references for landlords, given that they had not rented or worked previously in Ireland. Some DP hostel managers supplied them, other DP

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hostel managers said that they could not, indicating that there is no clear cut policy on this. Language barriers served as another challenge. Individuals had difficulties filling in forms or trying to understand the process they needed to navigate.

*“Apart from that you have to fill a lot of forms. You have to apply for Jobseeker Allowance. You have to fill many forms. At that time I don’t speak English good and my English is still bad but at that time my English not very well at all, so I have to find someone who can help.”*

An additional challenge related to the belief that people were being discriminated against because they were not Irish. One of the stakeholders made reference to this:

*“A lot of people don’t know how to go about finding a house. They go to phone ... different rent-out places and they refuse them because they have foreign accent and they don’t want to give it to a foreigner. That always happens. There are a lot who do give it to foreigners as well, so there’s a balance as well. Even if you get a house a lot of people are sharing houses with other families. Two bedroom and they are sleeping on the floor, this kind of thing.”*

Given the current Irish housing crisis, accommodation is often in short supply and so the challenges facing those leaving DP meant that competing with others in the rental market was even more difficult.

*“I was looking for a place every day. On daft.ie and on Rent.ie I call many times. Sometimes I called to see the place and there’s a lot of people there that are looking for a place. Sometimes you go, you would see maybe 80 people in small rooms, they’re waiting to see the place.”*

Another participant talked about his time in DP, when he was attempting to make the transition:

*“Sometimes I feel so depressed. Sometimes I stopped looking for a place, even I don’t want to check in on daft (daft.ie) or those places. I said maybe I don’t know what to do, the place ... to find a place is simply impossible. I have friend who say everything at the beginning is very hard so you don’t have to give up.”*

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For many of the participants, eventual success in getting accommodation was because of a mixture of perseverance, assistance from NGO's, friends recommending them to their landlords, sympathetic landlords or luck. One man described how he went to view a property and when the landlord discovered that he was from the same country as his wife, he rented the property to him and did not require him to provide a deposit of a month's rent in advance, until his social welfare payments came through. He reflected on this:

*“This, I think, just for me. Most people, they don't have this chance. They are completely stuck in hostels. How the people can pay, for example, €1,000 or €1,200 deposit when they pay you weekly €19 or something ...”*

There is also the issue of setting up bank accounts and accessing other services (e.g. gas, electricity etc) that need proof of identity and address. Seemingly simple things like providing proof of address in the form of utility bills often proved impossible for individuals who had only lived in DP since arriving in Ireland:

*“I don't have any account, bank account. They want a utility bill. I don't have nothing. Even the letter they gave me from Justice is not helping me. They have to look for the travel document, travel document is not helping me. It's like useless so you have to get the letter...”*

One man described how 'the social' (community welfare officer) informed him that he needed to provide a bank statement before he could be provided with his social welfare payment. This did not seem to be normal practice and it was unclear why he was asked. The man described the problems he had in opening a bank account to meet this condition, as he did not have an acceptable 'proof of address' for the bank.

*“In Dublin, the first thing that they ask me, they ask me bank account. I couldn't make that bank account, because all the bank here ask me for proof of address. I was new in that home, and I couldn't make any address. My friend told me it's better to make contact with one of these internet [companies] like UPC or something... I called to UPC and I give all my things, all my details. Even the UPC asked me [for] the proof of*

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*address. I said, “You are my proof of address.” They asked me, “You have to give us the proof of address.” I was stuck in that situation. I couldn’t make any proof of address to make a bank account.... I couldn’t get any money from the social.”*

The man approached a number of banks. One bank’s head office stated that they could not open a bank account for him because he was from Iran and he might want to transfer money there – perhaps because of US sanctions against Iranian financial institutions at the time, which affected some Irish banks. Having approached a few banks, this man eventually met a sympathetic bank manager, in a small branch, who allowed him to set up an account.

## Conclusions

At the time of our research, the state had made little information, advice and support available to those granted status as they attempted to transition from DP into Irish communities. The recently published information booklet mentioned above goes someway to address these issues. Accessing social welfare and finding accommodation are interlinked and complex bureaucratic processes often contradict each other. People are delayed in DP by their inability to satisfy conflicting requirements of government departments, and because of the challenge in finding rental accommodation without financial resources for a deposit and payment in advance. This is exacerbated by the accommodation crisis in Ireland, where waiting lists for social housing are long and rental costs exceed the amounts paid in rent supplements. Having waited for years to be awarded status, those seeking protection in Ireland find themselves faced with endless systemic and practical hurdles, in their efforts to begin the long process of integration.

# 4

## Transitioning into the Local Community

*“The first thing is that the big, big thing for you is going to a big community. You don’t have any clue what will happen in the future. You feel you are alone. People don’t know how to swim and they put them in the big sea. You have to try and save yourself.”*

### Introduction

There is a great sense of freedom for those who finally have a chance to make a home for themselves after the institutional life of Direct Provision (DP). Yet, those who make the first steps into Irish communities through contacts with friends, church groups and NGOs and who manage to find accommodation in a difficult housing market, find that they still have many issues to face. They report the change in their lives from dependency to autonomy with a mixture of pleasure and justifiable fear, given the daunting systems with which they are confronted. Dreams become tempered with the realities of financial management on meagre resources, sometimes with poor language skills, limited knowledge of Irish culture and scant social networks. Some continue to visit their friends in DP and for some, access to an occasional meal helps them to cope on a very restricted budget. According to stakeholders it is those with the most traumatic history, and mental health issues, who are more likely to be socially isolated and not linked in with support organisations. They can remain where they are in DP for long periods, without the necessary knowledge and support to begin to navigate the system. Such individuals require intensive support in making the transition. Without such support there is a risk that, upon transition, mental health problems can increase in the face of isolation, intransigent social policies and structures. This chapter looks particularly at the experiences of those who managed to leave DP and, in particular, at their narratives about education, employment and family reunification.

## Getting Settled

Having found accommodation, the main challenge faced after transition was integration into the community, to make friends and to feel at home. As mentioned previously, despite RIA's name – Reception and Integration Agency – there was no evidence from participants that RIA played a part in facilitating the integration of those transitioning from DP hostels. Similarly the Office for the Promotion of Migrant Integration (OPMI) does not appear to take any responsibility for the integration of people leaving DP, despite the fact that they have secured their status in Ireland. For the most part people who took part in this study were left to their own devices.

*“Yeah it was very hard you know, but you must do your best to be integrated. You can't stay ... at home. No, you have to be together with those people, with Irish people.”*

Although most of the research participants were still struggling, to various degrees, with establishing the most basic of requirements for an integrated life – as was evident in the previous chapter – some at least, were able to dream of better times ahead.

*“Freedom – you can do what you want to, live where you want to live. Yeah, I like to get a good job... just like everybody else.”*

Similarly, although still in DP two months after receiving her papers, one woman sustained herself with a dream for her future.

*“I'm just comparing being free and the separate rooms, imagining the kitchen where I listen; my child is watching TV while I am cooking or he's going to the bedroom and study there while I am in my own room. I am just imagining something like that comparing to the hostel where other people they're living with their children in the same hostel room.”*

People had a vision of their future that was humble and unassuming. Their dreams were about surviving their long ordeal and maintaining a level of resilience to carry them through the process of settling down in Ireland, now that their papers have finally come through.

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*“I just want to live in peace. What do I mean by that? To be able to pay my rent and to survive, to manage to pay everything. My bills. Everything to live, to live a quiet life. A good life. Yeah.”*

Being integrated and contributing to the community featured in the plans of a number of people whose future settlement was above and beyond personal interests and linked to being a useful and connected member of a community.

*“I see myself finished at school, and helping people, stable and smiling. I don’t know how to say it but I am thinking positive.”*

A sense of community and solidarity motivated another woman to become part of supporting others, so that their hopes of a new life might be more easily achieved.

*“So what I am doing in [named advocacy group]... actually now is I’m just trying to find a way of giving back. Because they were a lot of support to us. And the [advocacy group] was a huge, huge support to me towards the end of last year and this year as well. So that’s why I want to make myself available to help, and help people that are going through the same thing as I am. Since I have experience...”*

One woman explained that what most people hope for is a place to call home, a place where they know they have become truly integrated as members of a community to which they really belong.

*“Having been in isolation for so long, you come out and you’re there on your own. If you’re not the kind of person that wants to reach out or mix up, it’s difficult to get into the society and establish yourself, that you’re a member of this society. I’ve been living in Knockmore<sup>8</sup> now. It’s a very small society, community. It’s lovely. I’m trying to get involved in my children’s school. That’s one way of getting, maybe, involved in the community. But most people still find it hard. They’re still isolated because Direct Provision is all they’ve known. You might have been here nine years and you can’t really say, ‘oh I’m from this place’...We still don’t feel like that. So hopefully living in*

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8 ‘Knockmore’ is a pseudonym

## 4 Transitioning into the Local Community

*Knockmore now, in this small community. Getting to know people from the school, going to school plays and all that. Hopefully we'll be able to say soon that we live in Knockmore we belong to the community of people in Knockmore. So that's another challenge."*

For many, it was difficult to create networks of support in the wider community, when they were used to being surrounded by people in DP. They had forged a life and connections that were difficult to leave behind, even though this was a cherished goal. One participant described the challenge of leaving these connections and friends behind, when she was moving out.

*"Sometimes in life you meet some lovely people that you don't want to leave them behind. I feel like crying. My children say 'No. We are not going. We want to be playing. I miss my friend. I miss this. I miss that.' I just have to close my eyes and say, 'We just have to go now. We will come and visit them.'"*

Another participant's words suggested her isolation within the community, when compared with the companionship that was available in DP:

*"I miss sometimes the people... when they come to eat and talk you forget the problems and I miss that."*

Some participants returned to visit the DP centre frequently, in order to maintain the social connections. These friendships were particularly important when it proved difficult to form new relationships within the community. One stakeholder expressed concern about this, particularly with regard to people's mental health:

*"They suffer isolation and stuff like that because they're so used to having all the people around them. They're very isolated and we have to be very mindful of those out in the community then, in case their issues around mental health or anything like that increases".*

## Financial Pressure

Having been provided with all basic accommodation and food whilst in DP, there are many new issues to deal with in the transition process. There is uncharted territory in the registration and payment for utilities and other household bills, in budgeting and managing limited budgets while establishing a home, from scratch. There is evidence in the data that people needed support with the practicalities of operating household goods and heating their homes without creating huge electricity bills. At the same time, delays in payment of entitlements like rent supplement – as discussed above – made the financial management task excessively hard. Some people were told they would have to wait for up to six months for the payments to which they were entitled. There are unexpected and unsupported costs for bins and transport and the imperatives of money-management on small budgets become apparent all too quickly.

*“First life. You start step by step, then you get used, you learn by everyday. That’s the thing, paying the bills and managing the little money. You’re supposed to buy food so you know how to space it and to cut it in chunk you know.”*

Support groups feared that debt and financial pressure made people vulnerable to exploitation by money lenders and others who may take advantage of their situation.

*“I think there’s the potential for exploitation. I don’t necessarily... I can’t say that it’s going to be prostitution. I can’t say that it’s going to be anything, but when you really are struggling to live, you are vulnerable and that’s our worry.”*

A man who had been in DP for eight years regretted nothing in his move into the community, other than the new stress in his life of trying to meet the demands of bills. He saw the financial conundrum as a government responsibility, and struggled to understand why the state would award status without realising the financial costs that accompanied this for those who wished to integrate into Irish society, including the costs incurred in getting a GNIB Registration card (a cost of €300 every time the card is renewed).

*“The government have to consider when they know they give a paper for people in Direct Provision. They have to know those people doesn’t have nothing in their pocket. The government have to support them. They’re not supposed to pay like a GNIB card. The government have to support them to give them some deposit money for them to get the location for their house. Have to give them some pocket money where they can buy their duvet, their things for the house...”*

Overall, participants were of the view that there was a failure to recognise the financial costs of resettlement or the bureaucratic processes people must negotiate, with little support.

## Transitions for Children and Parents

For children too, who have known little other than life in DP, there are difficulties in transition. As mentioned above, they miss their friends and familiar routine. Some asked to be brought back to the accommodation and took time to get used to the fact that their new home marked a permanent move from DP. Parents, and sometimes new friends, worked hard to encourage adjustment. One mother spoke about this and referred to her landlord’s kindness:

*“They adapt easily. They can’t even wait. Even my daughter will say, paint my room pink. My teddy bear, my Hello Kitty by my bed and everything. I do everything like that, so they were happy. When we first moved, they first of all feel lonely. They said, oh, my God, I miss my friends. They said, ‘Mommy, can we go back and play?’ I said, ‘no, we are not going back. This is our house. We’re going to stay here now.’ ‘But nobody to play with, it’s so quiet, it’s so this and that.’ I said, ‘you’re going to adapt with it. You’re going to adapt’. Funny enough, my landlord did a tree slide for them in the garden.”*

The move out of DP gave some parents a renewed sense of autonomy in their role. One mother of four children was awarded status after seven years in DP. She spoke about what this meant to her both as an adult and as a parent:

*“When you have freedom out of the asylum seeker system, you know that you have got*

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*your dignity back, your freedom back, everything back because you're now back on your feet. You can now decide, oh, I want to eat fried rice this morning, or I want to eat plantains and beans in the afternoon, or I don't feel like eating today, I just want salad or I want to take my children to the park or I want to take my children to the cinema. Let's go and watch a movie. You are now the controller of your life and the destiny of your life and your children. You know what is good for them."*

Getting used to additional space, to having separate rooms after sharing a room with all the family, also requires adjustment. Children born in the hostel had no other reference point for normality and needed to be gradually introduced to a new lifestyle

*"...we are training him to sleep alone now. Most of the time, he woke up and asked us, "Where are you?" It's very hard, because he was there for ... He was born in 2012, yeah for two years, we sleep all together. Another thing that was in hostel, for children, the children who lived in hostel, or were born in hostel, it's a very hard situation for them."*

Older children who had felt hugely disadvantaged, in comparison to their peers at school, had waited impatiently for the 'response' to come and status to be awarded. They too had experienced social exclusion and isolation. They had not wanted to accept invitations to friends' houses because they were aware they were unable to reciprocate when their turn came. They listened while peers talked about holidays and regular family routines, and struggled to understand why their family situation compared so disfavouredly to that of others. For them, the awarding of status and the move out of DP presented new opportunities and new prospects for the future, but these were not without hurdles.

## Education

### *Education while in Direct Provision*

While in DP, although children can access primary and post primary education, access to education for adults is extremely limited. Most do not qualify for funding for third level education. This is because of the years of residency required to be eligible for education supports and non-recognition of their years spent in DP. As a result, many of the participants completed courses well below their existing level of education because they wanted to remain occupied. One man with a degree in bio-medical technology, who wanted to do a Masters in Pathology, did a Further Education and Training Awards Council (FETAC)<sup>9</sup> course in Healthcare Assistance because he was not eligible for anything at his own level of qualification. People studied English at a range of levels as well as Social Care, IT and Accounting, but seemed to be only able to access courses up to FETAC Level 4. Some had done every FETAC course possible, during their time in a DP hostel. This was the case for one participant, who spoke about the monotony of the DP regime, living in a DP hostel for eight years and how he made the most of the opportunities he could get.

*“... Same thing, everyday. But while I was there I was able to do some courses, you know....the manager told us about it. ... I did ECDL while I was in the hostel. I did horticulture....I did payroll technician, I did business studies, secretarial, and I did few other ones, which, lots anyway ... anything that come my way, just to keep myself going rather than just sleeping.”*

Many completed courses that they were not really interested in because they allowed escape from the monotony and stresses of life in DP. Many saw education as an opportunity to be grasped whenever possible, and regretted the limited educational opportunities that were available in DP. Some people appeared to know little about FETAC courses and were not sure what their entitlements were, in this

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<sup>9</sup> People who have not completed the Leaving Cert often undertake FETAC courses as a means of getting into university. A FETAC Level 5 needs to be completed to gain access to a university degree as a mature student.

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regard. Those interviewed who did not speak English as a first language had attended English classes mainly run by voluntary organisations and had often done everything possible to prepare themselves for the world of work, although long stays in DP hostels had militated against this. A stakeholder felt that education classes in the community, for those resident in DP, were an effective first step for people on the road to integration.

*“We try and build on people’s skills as much as we can so that when they do leave, they’re ready to hit the ground running.”*

Overall, while many of the participants participated in as many educational courses as was possible and valued these learning experiences, ultimately many saw their time in DP as wasted time which could have been spent learning what they really wanted to learn and building on prior qualifications, something which would have made the next stages, whatever they were, much easier for them. For those who attended post primary school, they regretted the fact that upon reaching school-leaving age, they had not been able to move on to third level and as such, were left without a purpose, while their peer group moved on to college. Since September 2015, school leavers who have been in the system for five years and meet certain criteria, can now apply for financial support to access third level education.

### *Education upon transition*

Upon receipt of status, many of the participants talked about their excitement about the opportunities that would now become available, in terms of education and employment. Gaining status opened doors that were previously shut and gave hope. One man spoke about the possibilities for the future.

*“I wanted to go to the further education. They told me they can’t pay my fees there because of my status. If you are an asylum seeker you’re not entitled to go to that college because the fees are high. When I went back to them with my status they were able to help me. That’s something. That’s something that shows that opportunities are there. I think there are opportunities. It’s good to... I think education is the key to many things.”*

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Having left DP many of the participants were eager to start studying straight away. However, again, many barriers were faced. To begin with, some participants had unrealistic expectations, believing that they could leave DP and begin a university degree immediately. Often this was not the case, due to various reasons including their English competency not being of the required level, previous qualifications not being recognised, not being eligible for grants, not understanding admissions procedures and having missed deadlines for college applications. Again, this lack of knowledge stemmed from their lack of integration and from their social isolation while living in DP.

Many research participants, including advocates working with those transitioning from DP, seemed very unsure about the system of eligibility for education grants. Some of those who wished to know how to access third level education asked the academics conducting the study how to access particular courses within their universities. The convoluted regulations around educational grants and admissions posed barriers for those trying to integrate into communities and eager to build their skills as a route to employment and a better life. For the most part it was friends, charitable organisations and NGOs that provided opportunities for those in transition and supported them with information, payment of fees and recommendations about learning opportunities.

It was evident that, in accessing education, the particular circumstances of those exiting DP were not taken into account, particularly in relation to financial barriers. One participant who had a degree and wished to pursue a masters, spoke about the Back to Education Allowance (BTEA), explaining that in order to qualify for it for a third level course, he firstly had to be on the Jobseeker's Allowance for nine months. Having spent years in DP, he felt that he now had to waste even more time before he could continue with his education.

*“Like me, if I want to go to study, there’s a big barrier in front of me. If I want to go to second level, study in second level, I have to be in Jobseeker Allowance for 76 days. It means for 76 days you have to be in Jobseeker allowance, they give you Back to Education allowance. For third level, you need to have 286 days. If I want now, today, to apply for a third level, I have to wait another year. Just wasting time. They are all very bad system of barriers.”*

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In relation to families, sometimes the transition out of DP made educational matters more difficult. Supports for children's education and links to schools that were sometimes facilitated in DP are ruptured on transition and it can be challenging for those with fewer language skills and resources to recreate these relationships, without supports.

*“The link to schools is broken when you leave Direct Provision so they have to do everything on their own and many of them don't know how to go about these things.”*

### Employment

For many people, the securing of status meant one very important thing: the right to work. Having spent years living in DP, participants were eager to become self sufficient as quickly as possible:

*“The positive things is I know one day I'm going to get a job. I'll be able to look after the family, be able to sort my bills and stuff. That's what I'm looking towards now, nothing much, just a job and live on... We have to move on. That's the only thing that I see here.”*

A previous report by the Irish Refugee Council, *Counting the Cost* (Conlan, 2014), showed evidence of the many barriers faced by asylum seekers in accessing employment following time in DP. Similarly, for those who participated in this study, accessing employment was very challenging when the transition from DP was made. Only one of those who had made the transition was working: this man was working as a leaflet distributor, having already worked illegally in that role while in DP. Reflecting the findings of *Counting the Cost*, a number of reasons were identified for this, including the fact that people had been out of the workforce for many years resulting in long gaps in their CV, that most had never worked in the Irish context, an inability to speak English well enough, a lack of qualifications, or the fact that qualifications from abroad were not always recognised, as well as there being potential racial discrimination.

The requirement to have previous experience was particularly frustrating for people who had spent

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years in DP wanting to work, but not permitted to do so. One man, keen to get any kind of employment, found that even for the most low-skilled jobs, there was an emphasis on prior experience.

*“I have been looking for a job, but everywhere even for cleaning... can you imagine I apply for cleaning online. They ask me for experience... for kitchen porter – experience. If you say I was an asylum seeker for six years, they reject you.”*

A woman with third level qualifications in social care similarly found that the gaps in her CV, when she was in DP and not allowed to work, were impeding her from getting jobs for which she applied. The feedback she got in relation to being turned down for work was that others had a wider range of experience.

*“I have qualifications, third level qualifications in social care, but since I’ve graduated, it’s two years I’ve not worked. I tried to apply for jobs but like I don’t have experience. These are the answers I got through applications I made. People have more different experience. This is where the trick is.”*

After almost four years in DP, one man found accessing employment an insurmountable problem. He was loathe to make the accusation of racism but was convinced that the training and employment structures favour those who are not black skinned.

*“Job issue in Ireland is hell, that one is another big challenge, hell. They will always favour their Irish citizens before they think of black people, that one is clear and certain. They will prefer to train an Irish person and give the Irish person the job, rather than accepting a person who got their certificate that will offer the person a job. October will make me four years into the country, I have never worked. It’s not that I don’t have the experience or I don’t have the certificate, I got the certificate. I’ve given so so many CVs out, so many Cvs outside, I have not attended even two interviews. I don’t know I can say it’s something like racist, I cannot say it’s racist, but the issue of getting a job in this country is one of the greatest challenges I face and even after leaving the hostel.”*

This man had become disillusioned about the prospect of finding work, and was now considering

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emigration, like many Irish people who have sought work outside the country.

In the absence of employment opportunities, several people spoke of having worked voluntarily – both while in DP and since leaving it – as a way of making connections and preserving their mental health. There is some evidence in the data also, of people pursuing opportunities for self-employment through starting their own business. One woman who had left DP described how she had her own business, a bakery, prior to coming to Ireland. She was finding the on-going dependency and inactivity difficult, following the transition into the community. She had tried voluntary work but as a lone parent, she found the lack of childcare in Ireland a barrier to her entering the workplace.

*“Before I came here I was working...I had my own business. I always be on my own, and to come here on that, you know dependent on somebody else is not easy for me. I’m feeling nothing, I want to survive myself. I was running a bakery, you know, with like a take-away.”*

Reflecting the concerns that many Irish people have, another woman feared that setting up her own business might lead to hardship if things did not work out as she might be no longer eligible for social protection and medical cover.

*“You really need a medical card, because every appointment you have you pay €50. What if you start a business and things are not working the way you envision it? That’s my problem. I’m better off working. I’m using my hobby, what I know how to do best, as my second part-time job.”*

People gave much evidence of their willingness and enthusiasm for work, but in an employment market showing only tentative signs of recovery work was still in short supply. In addition to job scarcity, those with unrecognised professional skills and possible language difficulties find it hard to compete. The time in DP could have been spent on developing an increased awareness of Irish and European culture, on developing language proficiency and other social and employment skills but opportunities for doing so were often not available or at best, were very limited. Instead, people lost confidence, their skills became less current and alongside their lack of familiarity with the Irish workplace, they became

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increasingly disadvantaged.

There is evidence that NGOs and local education providers make some provision for refugees and asylum seekers to participate in courses and assisted with job seeking, but this is ad hoc and by no means designed to meet the specific and varied needs of those recently granted status and leave to remain in Ireland. In 2015, the Irish Refugee Council partnered with the National Learning Network in running a pilot project which provided tailored support to 20 asylum seekers who had received papers and were trying to access employment. The evaluation of the project showed evidence of the benefits of such a scheme (IRC, 2016). All this highlights the need for specialised education, and for preparation for employment programmes to be customised for those who are new to Ireland and generally cannot be expected to compete for jobs without additional, targeted supports. This needs to be another element in an holistic resettlement system.

### Family Reunification and Supporting Family Members at Home

For many of those who received refugee status, family reunification was a key priority. Some of those with refugee status had already applied for family reunification but this is not an option for those with leave to remain, unless they are working and earning at least €30,000 per annum. A mother of three who had spent over three years in DP, had wasted no time in trying to get her children to come and join her.

*“Yeah, I’ve already applied for them for family reunification. In the [Department of] Justice I’ve sent for them their passport, birth certificate and everything so I’m waiting for them to answer me back.”*

Some families had been separated for so long that children were uncertain about coming to Ireland to join their parent, who had been gone for many long years. Maintaining contact while in DP was costly and relationships inevitably suffered. One woman with four children in her country of origin had been waiting in DP for over eleven years, during which time her relationship with her children had become

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complicated and inevitably more distant. This highlights the irreparable damage to relationships done by the protracted nature of the asylum determination system and lengthy stays in DP.

*“Yeah, I’m going to try this reunification... family reunification, but then there is a problem. They are not interested in coming. They’re interested in seeing their mother more than coming. That is where the trick is. We have to talk and see. We have to talk and talk and talk.”*

What was clear was that for many for whom reunification was a possibility, this was their priority. All other plans and dreams were dependent on being reunited with family members.

*“But my plan is just when I will see my family and I will see what to do in future.”*

*“I am just expecting to see my family again soon and living happily, having a good environment, a house.”*

A man who had separated from his wife while in DP, urgently wanted to sort out the emotional and affective aspects of his life, before looking at economic and material stability.

*“The first thing I need would be family. I can’t stay alone like this. Look elsewhere and find who else will love you for the rest of your life? Your wife. And then get my son to see me, maybe he could come over for the weekend. And I want to get a good job for myself. Not any job. I want a good job. And do something for the community.”*

Many participants continued to struggle with knowing how to navigate the family reunification system and there were related issues with language barriers and interpretation services. Little information was available about how to go about this or how long the process was likely to take, although this clearly impacted on their overall sense of wellbeing and immediate and long term housing needs. Some stakeholders fear that lack of information leaves applicants open to exploitation by those who would claim to be able to satisfy hopes for family reunification.

*“The problem is that lawyers are exploiting people in family reunification. I told people that you don’t need to have a lawyer. Your case will go forward anyway. Whether you are successful or not, it’s all down to the Department of Justice, not down to a lawyer.”*

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Once again those seeking protection need to be able to negotiate a complex bureaucratic system, where there is a lot of paperwork and a general lack of clarity about timescales and other aspects of the process. Things are further complicated by the need to provide documentation, some of which requires contact with countries and regimes from which people have escaped because of risk to their lives.

In addition, participants spoke about their desire to support family members who were in their countries of origin. While doing so during their time in DP might not have been possible, supporting family became somewhat more feasible following transition. One young person who had recently been granted refugee status stated:

*“My brothers, they’re in school so of course in [country of origin] the situation is very hard. There’s no job. There’s nothing. The country every day is going down. For them they need my help. I have to help them. They don’t put pressure on me. I feel what they’re going through.... I understand them that’s why I have to help them sometimes. Whatever I got I have to help them.”*

Attempting to support family at home resulted in even more financial pressure for people making the transition from DP.

## Conclusions

For the most part, people moving out of DP and beginning the process of integration voice modest hopes for the future. Alongside the immediate challenges of transition from DP into the community, people’s hopes were related to reunification of family members and stability in terms of education and work. For a few, there is a tentative dream of travelling a little and owning a home but for the most part, people desire security, stability and a less stressful life. Those who had already made the transition appreciated simple but significant differences between their old and new life.

## 4 Transitioning into the Local Community

Participants again faced multiple challenges. While many longed for the normality and satisfaction that education would bring, they were again confronted with rules and regulations that made some courses inaccessible to them. Work remained purely an aspiration for almost everyone interviewed in the research, with many finding that their time in DP had left a legacy that made obtaining employment very challenging.

In addition, there was evidence that financial management was a challenge for people and that it was also difficult to organise family reunification, something that was a priority for many. While people were glad to have moved on from DP, many missed the companionship that was instantly available within DP centres.

Overall, the evidence in the data pointed time and again to the need for a comprehensive resettlement system for individuals and families that would encompass information and advice, financial supports and practical and psychosocial support. The next chapter will outline what is needed in more detail.

# 5

## Recommendations

### Summary

This research and a number of national and international studies have shown that time spent in Direct Provision (DP) does not contribute positively to transition and integration (Arnold, 2012; Conlan, 2014; Fazel et al., 2005; Health Service Executive, 2008; McMahon et al., 2007; Szczepanikova, 2013). On the contrary, people report becoming progressively disempowered and depressed, as their search for safety and protection takes away their autonomy and leaves them without opportunity for work, learning or adequate respect and privacy. Those waiting for long periods in DP for a definitive response to their application are shown to be at risk on various fronts. The loss of autonomy experienced in DP can result in negative implications for self esteem and mental health, both of which impact detrimentally on the transition process. The denial of the right to work and limited access to education means that people are ill-prepared for the transition from DP to community life. The impact of long periods spent in DP on children is also a cause for concern, both while they are in the DP system and throughout the integration process. Much time spent in DP is currently wasted and all the skills and richness of asylum seekers are left unrecognised.

The data in relation to moving from DP centres into communities gave a stark account of the challenges faced, virtually unsupported, by those granted 'protection' by the Irish State. The paucity of resettlement infrastructure was clear in people's lack of information about the steps to be taken to best avail of their newly awarded status. Individual DP managers and community support groups tried to fill these gaps in the state systems without adequate resources. As mentioned previously, this meant, in practice, that while some had information and guidance, others were left 'in the desert' without direction. Following the negative impact of life in DP hostels, came evidence of the daunting experiences of accessing social welfare and finding affordable rental accommodation in a time of extreme shortage. Consequently, many respondents were still living in DP centres several months after receiving status or leave to remain in Ireland. Rather than grasp their long awaited freedom, they were unable to find a way through the maze of bureaucracy and financial demands that would allow them to transition. For many it was necessary to get into debt in order to make the transition. Prevented by the DP system from forging social networks

## 5 Recommendations

or acquiring the necessary cultural knowledge, people were largely dependent on other asylum seekers for support. The search for employment and access to education brought yet a further series of challenging hurdles. In addition, those who wished to pursue their entitlement to family reunification, found difficulties with accessing accurate information and advice.

Overall, the process of transition and integration emerged in the data as muddled and unsupported at a systemic level. Those who had made some progress, frequently attributed this to the kindness of individuals, community groups and DP staff. These were people who went beyond their remit to provide information and guidance that should have been automatically triggered by the award of status.

### Recommendations

The overwhelming evidence from the literature, stakeholders and those living and transitioning from the DP system is that DP should end and be replaced with a humane and supportive service for those seeking protection in Ireland. Nonetheless, given the remit and recommendations of the McMahon report (2015), it seems likely that DP will remain in place, at least in the short term. While the recommendations here relate to transition from DP into the wider community, many of them would also be of relevance even if a different system of support and accommodation for asylum seekers existed.

The list of recommendations below draws on the literature, the data in general as well as specific suggestions from participants. While some of the recommendations echo those that have been made about DP for over 15 years, the main focus of the recommendations is on factors that impact on the transition process. As such, the recommendations are aimed at facilitating transitions from DP centres and easing the process of integration of refugees and asylum seekers into Irish communities. Where possible, research participants' words or those of stakeholders are used to ground the various suggestions. The recommendations are presented under two main headings: namely *'preparation and support prior to transition'* and *'transitioning and settling into communities'*.

## Preparation and Support Prior to Transition

### The Direct Provision System

- **All those living in the Direct Provision system, should have access to supported self-catering facilities.** Currently the loss of autonomy experienced by those in Direct Provision centres is detrimental to the welfare of an already vulnerable group. There is evidence that the negative impact of this loss of autonomy extends beyond Direct Provision centres, into the transition and integration processes.
- **Delays in the asylum process must be reduced as a matter of urgency.** This is particularly important given the evidence of the harm caused by protracted waiting periods, both while in Direct Provision centres and subsequently, while trying to transition and integrate.

*“Waiting is the same as not knowing what’s going to happen tomorrow. It’s very hard. It’s very painful.”*

- **Payments for adults and children living in Direct Provision centres should be increased to a level sufficient to allow residents to meet their own living needs, including catering for themselves.** The poverty experienced by people in the Direct Provision system hinders the ability to integrate, both while in Direct Provision centres and when one leaves the system. The transition is made particularly difficult because of the fact that those leaving Direct Provision generally have no financial resources to use while seeking accommodation and attempting to restart their lives.

### Integration and Support:

- **While living in Direct Provision centres, cultural integration should be supported by designated, well-resourced organisations with local knowledge**

**and an understanding of the complexities of interculturalism.** Mutually beneficial opportunities for community integration should be facilitated while the applications for refugee status, subsidiary protection and leave to remain are being considered. Time spent in the Direct Provision system should allow people to be meaningfully occupied according to their capacities, from the outset, and opportunities for learning about Irish culture and communities should be available. The unknown outcome of an application for protection does not require the lives of asylum seekers to be placed on hold. Integration does not just require asylum seekers to learn and adapt to new and unfamiliar circumstances. It also suggests reciprocal learning and adaptation on behalf of those responsible for developing and implementing the social structures and for those that live within them.

*“[There needs to be]...more integration while people are in hostels. There’s very, very little integration. Most hostels are outside of towns or outside of communities. There’s no interaction and so if people start integrating from the start...it would make the transition easier and make their life in Direct Provision a lot easier.”*

*“[We need to know]... how to connect to the other people outside. I think it’s bigger, because when you go out without knowing really people outside, what are you going to face? How are you going to find all those things?”*

- **The number of primary care social workers providing a service to Direct Provision centres should be increased.** These professionals can provide practical and emotional support to individuals and families and can develop essential links between the Direct Provision centre and the local community, thus facilitating integration and easing the transition process. There is currently only one primary care social worker nationally with this brief, located in Baleskin reception centre.

## Education and Work

- **Asylum seekers should be allowed to study and to work.** The right to work and to study should be granted to those seeking protection, within a reasonable amount of time, so that they are socially integrated and better prepared for life, irrespective of the outcome of their application. The majority of countries within the EU allow asylum seekers to work, after six months in the system.

*“First thing is to let everyone in Direct Provision go to school, college, third level education. Whereby what they are doing, at least by the time they’re finished, they can work. Then moving out they can go straight to job. Or they should allow them, those who can work. To work and make a programme rather than just giving to them. Let them work.”*

- **While awaiting the right to work, asylum seekers should be facilitated to participate in targeted volunteering and internship schemes that would allow them to maintain and develop their skills.** This would ultimately facilitate their entry into the labour force, their transition from Direct Provision centres and their integration into Irish society.

## Transitioning and Settling into Communities

### Provision of Information

- **Upon receipt of status, people should be provided with clear written information on what is needed to make the transition out of the Direct Provision system.** Further verbal information, through a designated person, should also be available. The information should include information on registering with GNIB, housing options, the social welfare system and rent supplement. In addition, information should be provided about local organisations that can provide support and advice. Since this research was conducted, the Department of Justice produced a valuable information booklet, in English, for those getting refugee status, subsidiary protection or leave to remain. However, it needs to be printed in several languages, and backed up with access to individual personal support, advice and advocacy.

*“I think you should let some people know, give them direct support, whereby you let them know what to do, the next steps to do, because some people, they just got their papers and they don’t know how to move on. It’s tough. Whereby you’re looking for a house I think government should be able to assist in that way. Provide houses for people since the landlord don’t want rent supplements.”*

### Seeking Accommodation

- **Once granted refugee status, subsidiary protection or leave to remain, people should be provided with a realistic timeframe of at least three months for exiting Direct Provision hostels, especially given the current housing shortage.**
- **Ensure acceptance of the Direct Provision hostel as an address, for those with refugee status, subsidiary protection or leave to remain, so that they can obtain social welfare payments and rent supplement and so that they can open bank accounts.**

*“If they give you address and then everything is coming one after one.”*

- **The Reception and Integration Agency (RIA) should provide a standard reference to those exiting Direct Provision, in order to help them obtain rental accommodation.** In instances where RIA is not willing to provide a reference, written reasons for this should be given and an appeal mechanism should be put in place.
- **Ensure that Rent Supplement is paid in a timely manner.**

### Access to Financial Support

- **As soon as people receive their papers, they should be entitled to normal social welfare allowances instead of the Direct Provision payment.** This should apply to everyone and should not depend on the discretion of different Department of Social Protection personnel. Providing everyone with this payment immediately would help to poverty-proof the transition period and would allow those transitioning to save money while looking for accommodation.

*“Not everyone has friends. Not everyone has opportunity.  
Not everyone can borrow money.”*

- **Staff of the Department of Social Protection should be provided with training so that they are sensitive to the needs and experiences of those transitioning from Direct Provision Centres.** In the meantime, designated officers should be appointed in local Department of Social Protection offices, to help people to navigate the system and to ensure that people are fully aware of their entitlements.

*“Even if you can put in the Social, somebody to talk to and direct,  
to tell you and advise you. You have to work. You have to do this.  
You have to do that. You understand. Not to leave people like in  
the desert and you don’t know what direction to take. And the  
person you meet, the first one just bring you down again.”*

- **A resettlement grant should be provided.** It should be large enough to pay for a rental deposit, first month’s rent and household essentials such as bedding and kitchen utensils. Overall, every effort needs to be made to ensure that the process of transitioning out of Direct Provision hostels is poverty-proofed, especially considering that people involved have lived in poverty for many years while in the Direct Provision system.

*“[They need to give]... financial support to help you move out, quick as possible, to go to settle down. Then you try to plan your future, what you are going to do next. You go to school or you look for a job between the studies.”*

## Resettlement Support

- **An interdepartmental resettlement office should be established to provide both programme refugees and those exiting Direct Provision centres with the necessary supports to ease the challenges of transition and integration.** While resettlement officers from the Office for the Promotion of Migrant Integration (OPMI) currently support programme refugees who arrive in Ireland, this support does not extend to those exiting Direct Provision centres. As is currently the case with the OPMI, an interdepartmental resettlement office would be responsible for the implementation of all aspects of a carefully conceived resettlement process, from arrival in Ireland to full integration and family reunification. It should work in close collaboration with civil society, including NGOs and local communities. Particularly intensive support should be provided in the six month period after status is achieved, during the initial three months when the individual may still be in the hostel, and for three months after leaving. Longer term support may be needed by some, particularly those who have experienced trauma or mental health problems.

*“I think that the government should put in place a scheme or a programme that will help the people in the hostel because if there is something that will link them to the services, how to take care*

*immediately of people who are going out of the hostel, of those situations, would be something nice, though it's not easy. ...The situation is that sometimes it is not easy for us who just go like that out and sometimes you will have depression from the hostel that you have to leave."*

- **In the absence of the availability of a government resettlement team, funding should be provided so that organisations can employ resettlement workers or keyworkers to provide outreach, advocacy and support to assist people through this transition period.** In the study, it was found that some community organisations have actively started reaching out to those over five years in Direct Provision hostels, on the understanding that they will shortly be given their papers (in line with the McMahon report recommendations). They worked with people to try to ensure that their future integration needs might be purposively anticipated and supported. However they were not funded to do this and it is putting a strain on scarce resources.
- **Outreach workers or key workers, whether state employed or working for NGOs, should endeavour to be proactive in offering support to individuals in Direct Provision who may be unlikely to seek out services by themselves, due to reasons of vulnerability, ill health, lack of confidence or lack of motivation.** At the same time, workers must of course, respect the fact that some people may not want or need any support with the transition process.
- **Service providers need to be aware that for some people, the process of recovery from trauma or from mental health difficulties may only begin when they leave DP and a safe place has been reached. Therefore, ongoing support may be needed when the transition has been made.** This reflects ongoing research by SPIRASI and highlights the need for counselling to be available and for continuity in counselling relationships.

## Education and Training

- **Customised educational and preparation for employment programmes need to be available to people leaving Direct Provision.** Opportunities for upskilling and for internships for those coming out of long periods in Direct Provision centres should be explored. The Irish Refugee Council's collaboration with the National Learning Network is a good example of a scheme that has been deemed successful and that helped people on their journey towards employment and integration, following Direct Provision.
- **Time spent in Direct Provision centres should always count in relation to residency requirements for access to third level education grants.** Time spent in Direct Provision should also count when applying for citizenship.
- **People exiting Direct Provision should have immediate access to the Back to Education Allowance.** The criteria for eligibility for Back to Education Grants needs to be altered to ensure this.

## Family Reunification

- **People exiting Direct Provision should be provided with clear guidance and assistance in relation to the family reunification process. Family reunifications should be completed in a timely manner. Reunified families should be offered psychosocial support to help rebuild relationships, if necessary.**

## Identification

- **People need assistance in acquiring acceptable forms of identification, so that they can do practical things like open a bank account or acquire a driving license.**

### Different Needs of those Granted Leave to Remain

- **The different challenges facing those granted *Leave to Remain* need to be recognized and considered**, for example, the fact that they have to pay €300 each time they renew their GNIB card and the fact that they do not have an automatic right to family reunification.

### Further Research

- **More research needs to be carried out into the longer term experiences of the resettlement process and the statutory and community supports that are needed to ensure real and lasting integration.**

## Final Words

The fact that transitions are complex moments in the life trajectory is widely acknowledged, be they moves from primary to secondary school, from work to retirement, or from independent living to living in care. Civil servants preparing for retirement are entitled to fully resourced courses to enable them to transition from work to retirement. Prisoners being discharged from Irish prisons have access to ‘resettlement services’ and support for ‘reintegration’.<sup>10</sup> Those who have been granted refugee status, subsidiary protection or leave to remain in Ireland are faced with transition and integration challenges of a substantial nature. Many of those transitioning have spent long years in Direct Provision centres, living on extremely limited financial means, in a system where they cannot work or pursue higher education and training. Consequently, they do not have access to the financial or cultural resources that enable easy integration into local communities. Nevertheless, there is no systematic, supported process of resettlement and transition for these individuals. Provision of refugee status, subsidiary protection or leave to remain are just the beginning of a process that should activate a carefully considered and well resourced programme of transition and integration, such as that already available to ‘programme refugees’. Those who have been accepted as having the right to remain and make their lives in Ireland urgently require clear, comprehensive and accessible supports, in order to ensure that they can fully integrate into Irish society. In sum, these words from the Department of Justice, Equality and Law Reform document, *Integration: A two way process*, still apply: “Afforded the appropriate support and opportunities, refugees will be enabled to demonstrate their talent, skills, enthusiasm and culture and contribute to the social fabric of Ireland.” (Interdepartmental Working Group on the Integration of Refugees in Ireland, 2002:42).

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<sup>10</sup> <http://www.irishprisons.ie/index.php/services-for-prisoners/reintegration>

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