

# The provision of emergency accommodation to families experiencing homelessness

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**Coimisiún na hÉireann um Chearta  
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## 1. Introduction

The Irish Human Rights and Equality Commission ('the Commission') is both the national human rights institution and the national equality body for Ireland, established under the Irish Human Rights and Equality Commission Act 2014. In accordance with its founding legislation, the Commission is mandated to keep under review the adequacy and effectiveness of law and practice in the State relating to the protection of human rights and equality and to make recommendations to the Government to strengthen and uphold human rights and equality in the State.<sup>1</sup>

The Commission has previously highlighted a number of human rights and equality concerns in relation to the ongoing housing and homelessness crisis. For example, the Commission has recommended reform of key aspects of housing law and policy, such as the supply of quality permanent social housing and security of tenure.<sup>2</sup> The Commission has also expressed concerns about the gender dimensions of the homelessness crisis<sup>3</sup> as well as its impact on children's rights.<sup>4</sup> In its 2015 report to the United Nations Committee on Economic, Social and Cultural Rights, the Commission expressed concern about the growing phenomenon of family homelessness.<sup>5</sup> The national strategy on housing and homelessness, *Rebuilding Ireland: Action Plan for Housing and Homelessness*, recognises that 'families with children presenting as homeless require a response that is separate and distinct from presentations by adult individuals and couples'.<sup>6</sup> The Commission is of the view that family homelessness gives rise to particular human rights and equality considerations that must be taken into account when developing an appropriate response. Such a response must focus on the long-term housing needs of families experiencing homelessness in order to ensure that homelessness and living in emergency accommodation does not become normalised.

*Rebuilding Ireland* also recognises that 'the long-term solution to the current homelessness issue is to increase the supply of homes'.<sup>7</sup> While a further investment into the provision of emergency accommodation of €10 million was announced on 22 June 2017, this investment has been criticised due to the fact that the total investment of €35 million would contribute to a third of the cost of building permanent homes for the families who are now being placed in family hub emergency accommodation.<sup>8</sup>

Bearing the wider issues related to the housing and homelessness crisis in mind, as alluded to above, this policy statement focuses specifically on the State's provision of emergency accommodation to families experiencing homelessness. This paper sets out the Commission's equality and human rights concerns and suggests how these might be addressed in future law and policy development.

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<sup>1</sup> Section 10(2) of the Irish Human Rights and Equality Commission Act 2014.

<sup>2</sup> IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, section 9.2.

<sup>3</sup> IHREC (2017) *Ireland and the Convention on the Elimination of All Forms of Discrimination against Women*, sections 6.2 and section 11.4.

<sup>4</sup> IHREC (2015) *Ireland and the United Nations Convention on the Rights of the Child: Report on Ireland's Combined Third and Fourth Periodic Reports*, section 4.5.

<sup>5</sup> IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland's third periodic review*, section 9.2.

<sup>6</sup> Government of Ireland (2016) *Rebuilding Ireland: Action Plan for Housing and Homelessness*, p. 34.

<sup>7</sup> Government of Ireland (2016) *Rebuilding Ireland: Action Plan for Housing and Homelessness*, p. 33.

<sup>8</sup> Joint Committee on Housing, Planning, Community and Local Government, Debate Action Plan for Housing and Homelessness: Minister for Housing, Planning and Local Government, 22 June 2017.

## 2. Human rights and equality issues of concern

### The right to housing

The right to housing is articulated most comprehensively in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Ireland ratified in 1990. Aspects of the right to housing are set out in a range of international instruments, including in EU law.<sup>9</sup>

The United Nations Committee on Economic, Social and Cultural Rights has developed guidance on what constitutes 'adequate housing' and has identified seven aspects of the right, namely: legal security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; cultural adequacy'.<sup>10</sup>

The United Nations Committee on Economic, Social and Cultural Rights, has stated that the right to housing is 'integrally linked to other human rights'.<sup>11</sup> The Irish Supreme Court in *O'Donnell v South Dublin County Council* also recognised this, to a certain extent, where it was held that constitutional values such as autonomy, bodily integrity and privacy might be engaged by section 10 of the Housing Act 1988.<sup>12</sup> It is also noteworthy that the High Court affirmed the importance of the constitutional provision on children's rights, Article 42A of the Constitution of Ireland, when considering a matter involving the refusal of emergency accommodation to a homeless family.<sup>13</sup>

The Commission notes the commitment in the Programme for a Partnership Government to refer the Eighth Report of the Constitutional Convention, which recommends the constitutional recognition of right to housing,<sup>14</sup> to an Oireachtas Committee. **The Commission is of the view that socio-economic rights, including the right to housing, should be enshrined in the Constitution of Ireland.**

Although the right to housing is not enshrined in the Constitution of Ireland, specific entitlements to social housing and housing supports are set out in primary and secondary legislation, in particular the Housing Acts 1966 to 2015. Section 10 of the Housing Act 1988 empowers local authorities to provide accommodation to a homeless person. A person will be deemed to be homeless if:

- (a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or

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<sup>9</sup> Article 34.3 of the Charter of Fundamental Rights of the European Union.

<sup>10</sup> United Nations Committee on Economic, Social and Cultural Rights (1991), *General Comment No. 4 on the right to adequate housing (art. 11 (1) of the Covenant)*, para. 8.

<sup>11</sup> United Nations Committee on Economic, Social and Cultural Rights (1991), *General Comment No. 4 on the right to adequate housing (art. 11 (1) of the Covenant)*, para. 7.

<sup>12</sup> [2015] IESC 28, para. 68. The case related to the scope of local authority obligations with respect to a Traveller child with cerebral palsy living in a caravan occupied by eight of her family members. The Court held that the child was entitled to damages, and that the local authority had a duty to provide a serviced halting site rather than alternative caravan or mobile home accommodation.

<sup>13</sup> *Gill v Kildare County Council* [2017] IEHC 51. The applicants were successful in a judicial review application against the local authority's decision to refuse emergency accommodation. However, in the interim the proceedings became moot because the applicants entered into private rented accommodation through the Housing Assistance Payment scheme.

<sup>14</sup> Convention on the Constitution (2014) *Eighth Report of the Convention on the Constitution*, available at: <https://www.constitution.ie/AttachmentDownload.ashx?mid=5333bbe7-a9b8-e311-a7ce-005056a32ee4>

(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a),

and he is, in the opinion of the authority, unable to provide accommodation from his own resources.<sup>15</sup>

Section 10 of the Housing Act 1988 affords a wide margin of discretion to housing authorities in terms of the type of accommodation or support they may provide to homeless persons. They may:

(a) make arrangements, including financial arrangements, with a body approved of by the Minister for the purposes of section 5 for the provision by that body of accommodation for a homeless person,

(b) provide a homeless person with such assistance, including financial assistance, as the authority consider appropriate, or

(c) rent accommodation, arrange lodgings or contribute to the cost of such accommodation or lodgings for a homeless person.<sup>16</sup>

This power has been used to provide three different types of accommodation, with the majority of families being placed in hotel and B&B accommodation. Some families have been placed in supported temporary accommodation, which is a small living space within a larger building and sometimes includes 24-hour staff support.<sup>17</sup>

### Emergency accommodation

In practice, emergency accommodation may be sourced and paid for directly by a local authority or financial support may be provided to a homeless person in order to source accommodation for themselves – this is known as the ‘self-accommodation’ option. According to an independent law centre assisting families experiencing homelessness, certain families, such as large families, Traveller families and migrant families with insufficient English, are having difficulty sourcing accommodation for their families.<sup>18</sup> The Commission is concerned therefore about the barriers, such as language barriers and negative stereotypes, faced by families when attempting to source their own emergency accommodation. **The Commission is of the view that, given the level of distress experienced by families by virtue of their homelessness, families should not have to source their own emergency accommodation.**

More generally, for some time there has been significant concern about the potentially negative effects of reliance on hotels and B&Bs to address the emergency accommodation needs of individuals experiencing homelessness and these concerns have escalated with the growth in the number of families becoming homeless.<sup>19</sup>

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<sup>15</sup> Section 2 of the Housing Act 1988.

<sup>16</sup> Section 10(1) of the Housing Act 1988.

<sup>17</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 30.

<sup>18</sup> Mercy Law Resource Centre, ‘The self-accommodation option’ of emergency accommodation is failing vulnerable homeless families’, MLRC Blog, 25 May 2017.

<sup>19</sup> For example: Moore (1994) *B&B in Focus: The use of Bed and Breakfast accommodation for homeless adults in Dublin* Dublin: Focus Point. See also: Houghton and Hickey (2000) *Focusing on B+B’s: the unacceptable growth of emergency B+B Placement in Dublin*, Dublin: Focus Ireland.

Research commissioned by the Housing Agency in 2015 on family experiences of homelessness has found that the ‘stress of being homeless and living in homeless accommodation had a negative impact on their and their children’s physical and mental health’.<sup>20</sup> This research also highlighted the adverse impact of overcrowding in accommodation and limited control over dietary decisions on physical health.<sup>21</sup> In terms of impact on mental health it was found that the ‘many and varied rules in place in homeless accommodation ... are disempowering’ and have a ‘negative effect on the self-esteem and autonomy levels of parents’.<sup>22</sup> The research has also found that ‘given the length of time some families experiencing homelessness are spending in these types of accommodation (which were designed for overnight stays rather than family living) it is not surprising to find that the families reported that the experience of living in homeless accommodation had impacted negatively on their physical and mental health’.<sup>23</sup>

In September 2015, a communication was received by two United Nations Special Rapporteurs in relation to homeless persons’ access to emergency accommodation and to safe drinking water in Cork city. The communication also claims that individuals were unable to access shelters due to lack of capacity and that water and sanitation services in shelters are inadequate.<sup>24</sup>

In July 2015, Ireland’s compliance with ICESCR was examined by the United Nations Committee on Economic, Social and Cultural Rights. As noted above, in 2015 in its report to the Committee the Commission expressed concern about the growing phenomenon of family homelessness.<sup>25</sup> Recognising the ‘overall difficult housing situation’ in its Concluding Observations to Ireland, the Committee on Economic, Social and Cultural Rights expressed concern about the ‘growing number of families and children that are homeless or are at risk of being homeless’.<sup>26</sup> At that time 371 families were living in emergency accommodation in the Dublin region alone. At the end of April 2017, this figure had more than doubled with 1091 families registered as homeless in Dublin and 1302 families experiencing homelessness nationwide.<sup>27</sup>

In its Annual Report Card 2017, the Children’s Rights Alliance highlighted the adverse impact of emergency accommodation on a number of children’s rights, including the right to play.<sup>28</sup> In 2016 the United Nations Committee on the Right of the Child examined Ireland’s record on children’s rights, including the right to an adequate standard of living. The United Nations Committee on the Right of the Child stated it was ‘deeply concerned at reports of families affected by homelessness

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<sup>20</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 31.

<sup>21</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 31.

<sup>22</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 32.

<sup>23</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 39.

<sup>24</sup> Communication from Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context and the Special Rapporteur on the human right to safe drinking water and sanitation to Ireland concerning the extent of homelessness in the City of Cork and the lack of access of those who are homeless to emergency shelter and to safe drinking water and sanitation, Reference: AL IRL 2/2015: See: <https://spdb.ohchr.org/hrdb/31st/public - AL Ireland 25.09.15 %282.2015%29.pdf>

<sup>25</sup> IHREC (2015) *Ireland and the International Covenant on Economic, Social and Cultural Rights: Report to the UN Committee on Economic, Social and Cultural Rights on Ireland’s third periodic review*, section 9.2.

<sup>26</sup> UN Committee on Economic, Social and Cultural Rights (2015) *Concluding Observations on the third periodic report of Ireland*, E/C.12/IRL/CO/3, para. 26.

<sup>27</sup> See: [http://www.housing.gov.ie/sites/default/files/publications/files/homeless\\_report\\_-\\_april\\_2017.pdf](http://www.housing.gov.ie/sites/default/files/publications/files/homeless_report_-_april_2017.pdf)

<sup>28</sup> Children’s Rights Alliance (2017) *Report Card 2017*, p. 13.

facing significant delays in accessing social housing and frequently living in inappropriate, temporary or emergency accommodation on a long-term basis'.<sup>29</sup> The Committee recommended that the State:

'undertake measures to increase the availability of social housing and emergency housing support. In doing so, the State party should ensure that the housing and support provided through those measures are appropriate to the needs of the children affected and subject to adequate safeguards, reviews and evaluations'.<sup>30</sup>

In its Annual Report 2016, the Ombudsman for Children's Office reported an increase in the number of complaints relating to housing and homelessness and highlighted the case of a child who had spent a considerable amount of time in hotel accommodation despite being on both the medical priority list and the homeless waiting list.<sup>31</sup> This increase in housing-related queries and complaints has been replicated in other state agencies, including in the Commission's public information service, where 30 per cent of the queries received in 2016 under the Equal Status Acts 2000-2015 related to discrimination on the grounds of housing assistance.<sup>32</sup> The Office of the Ombudsman also received 364 complaints related to housing in 2016.<sup>33</sup>

In the light of this evidence, **the Commission continues to be concerned about the impact of homelessness and living in emergency accommodation on families and children and is of the view, that families should only be placed in emergency accommodation for the shortest possible amount of time.**

### 'Family hubs'

These concerns about the policy response to family homelessness to date are specifically recognised in *Rebuilding Ireland* which states that 'by mid-2017, hotels will only be used for emergency accommodation in very limited circumstances'.<sup>34</sup> Initially the action plan proposed to replace emergency accommodation with 'suitable permanent family accommodation by delivering additional housing solutions including through an expanded Rapid-Build Housing Programme'.<sup>35</sup> **The Commission welcomes this recognition that families need homes and, that therefore to address family homelessness, the primary policy response must be to ensure that every family has access to suitable permanent accommodation.**

However, progress has been slow to date in meeting the Rapid Build Housing Programme, which committed to delivering 200 units by Q4 2016 and 800 units by Q4 2017. According to the June 2017 *Rebuilding Ireland* progress report, 22 rapid-build homes were completed and occupied by Q4 2016 and 175 homes are due for full completion in 2017.<sup>36</sup> In light of the delays in the provision of suitable permanent accommodation for families experiencing homelessness, the policy focus has shifted towards development of a different approach to the provision of emergency accommodation.

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<sup>29</sup> United Nations Committee on the Rights of the Child (2016) *Concluding observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 61.

<sup>30</sup> United Nations Committee on the Rights of the Child (2016) *Concluding observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 62.

<sup>31</sup> Ombudsman for Children's Office (2017) *Annual Report 2016*, p. 45.

<sup>32</sup> IHREC (2017) *Annual Report 2016*. A total of 1,780 queries were handled by the public information service in 2016.

<sup>33</sup> Office of the Ombudsman (2017) *Annual Report 2016*, p. 58.

<sup>34</sup> Government of Ireland (2016) *Rebuilding Ireland: Action Plan for Housing and Homelessness*, p. 34.

<sup>35</sup> Government of Ireland (2016) *Rebuilding Ireland: Action Plan for Housing and Homelessness*, p. 34.

<sup>36</sup> Government of Ireland (2017) *Rebuilding Ireland: Third Quarterly Progress Report*, p. 14.



Research commissioned by the Housing Agency in 2015 on family experiences of homelessness has found that the quality of emergency accommodation ‘varies significantly from good quality to very poor quality’.<sup>37</sup> While hotels were generally found to have the highest physical standards, other issues such as noise, lack of cooking and laundry facilities and lack of security of tenure were key concerns.<sup>38</sup> The location of accommodation, particularly the proximity to children’s schools, was a significant issue for families experiencing homelessness.<sup>39</sup>

The June 2017 *Rebuilding Ireland* progress report noted that housing authorities will now both procure new properties and reconfigure existing emergency accommodation to provide ‘supported temporary accommodation arrangements such as family hubs’ for families experiencing homelessness.<sup>40</sup> At the time of writing, only two family hubs have been fully operationalised – High Park in Drumcondra and Gleann na hEorna in Tallaght – both of which are run by Respond Housing Association. It is understood that further family hubs will be developed in Dublin as well as facilities in Cork, Limerick and in Kildare.<sup>41</sup>

The policy rationale and design model underpinning family hubs had not been articulated when *Rebuilding Ireland* was first published. However, the June 2017 progress report contains some insight. It is stated that family hubs are more cost effective than hotel arrangements and will offer families ‘a greater level of stability than is possible in hotel accommodation’.<sup>42</sup> It is also stated that supported temporary accommodation arrangements are more suitable for the short-term accommodation needs of families experiencing homelessness and ‘will facilitate more coordinated needs assessment and support planning including on-site access to required services, such as welfare, health, housing services, and appropriate family supports and surrounds’.<sup>43</sup> When officially opening the first family hub in High Park Drumcondra on 16 March 2017, the then Minister for Housing, Planning, Community and Local Government, Simon Coveney TD said:

What this facility means is that we have a setting for families where they have a better chance to go about their daily lives with space to live and breathe, play facilities for your children, a place to sit and relax or watch television. To lead something like a normal life and not be stuck on your own in a hotel room, with no on-site supports or other facilities that are available to families living in the community in their own homes, with their own front doors.<sup>44</sup>

**The Commission welcomes the recognition that emergency accommodation provision must provide for basic family needs but is of the view that further consideration is needed on how this can be meaningfully achieved in practice.**

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<sup>37</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 36.

<sup>38</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 29.

<sup>39</sup> Kathy Walsh and Brian Harvey (2015) *Family Experiences of Pathways into Homelessness: the Families’ Perspective*, Dublin: Housing Agency, p. 30.

<sup>40</sup> Government of Ireland (2017) *Rebuilding Ireland: Third Quarterly Progress Report*, p. 13.

<sup>41</sup> Frances Fitzgerald TD, Leaders’ Questions, 25 May 2017

<sup>42</sup> Government of Ireland (2017) *Rebuilding Ireland: Third Quarterly Progress Report*, p. 13

<sup>43</sup> Government of Ireland (2017) *Rebuilding Ireland: Third Quarterly Progress Report*, p. 13

<sup>44</sup> See: <http://www.respond.ie/events/minister-coveney-launches-new-family-hub-model-of-accommodation/>

The Commission notes that questions are already beginning to emerge from research carried out with families living in family hubs, which suggests that while facilities are more suitable than hotels or B&Bs, family hubs are not adequate to meet the long-term housing needs of families.<sup>45</sup> Families taking part in this research have stated that media reports do not adequately reflect the experience of living in family hubs – for example, while cooking facilities are available, cooking utensils are not provided. Families have also expressed concerns about rules curtailing the use of communal spaces and the policy in relation visitors, which, in their opinion, could lead to a situation where families may be confined to their bedrooms.

On 09 June 2017, the Chief Commissioner of the Irish Human Rights and Equality Commission, Emily Logan, visited High Park family hub in Drumcondra, where thirty two families were living on the day of the visit. During the visit, the Chief Commissioner had a very open and constructive engagement about the family hub model of accommodation with several of Respond’s national management team including the Chief Executive Officer, the Head of Property and Design, the Head of Social Policy, one of the regional managers and staff working directly with and providing support to the families. The staff who engaged with the Chief Commissioner were aware of the potential risk of institutionalisation for families.<sup>46</sup> During the visit, the Chief Commissioner observed that the accommodation provided is of a good standard and includes living space, bedroom and sleeping facilities, communal kitchens, laundry facilities, play areas, eating areas and catering facilities.

According to the Independent Expert on Human Rights and Extreme Poverty, Magdalene Sepulveda, any effort to solve the long-term housing needs in Ireland from a rights-based approach ‘necessitates focus on the type and quality of accommodation being provided’.<sup>47</sup> This recommendation is also relevant to the provision of emergency accommodation, particularly since there does not appear to be a single design model for family hubs. It is noteworthy that forthcoming family hubs will be located in a former city centre hotel<sup>48</sup> and a former warehouse<sup>49</sup>. **The Commission is concerned that families located in different hubs will not have uniform experiences and is of the view that adequate standards of accommodation and support must be provided to all families in emergency accommodation.**

Families living in family hubs have also expressed concerns about the length of time they may spend in hubs given the difficulty they face accessing private rented accommodation through the Housing Assistance Payment scheme and the long social housing waiting lists.<sup>50</sup> **The Commission is of the view that family hubs are only appropriate for short-term emergency accommodation. The Commission is concerned that the use of family hubs could normalise family homelessness, which may then lead to families being institutionalised.**

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<sup>45</sup> These insights have been provided to the Commission by Dr. Mary Murphy and Dr. Rory Hearne (NUI Maynooth) who are currently carrying out research with families living in family hubs as part of a wider EU-funded research project.

<sup>46</sup> The Chief Commissioner observed that although the building itself is an old institution, a former Magdalene Laundry, it is clear the staff have gone to great efforts to remove the trappings of institutional living.

<sup>47</sup> Human Rights Council (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland*, A/HRC.17/34/Add.2, para. 87.

<sup>48</sup> Dáil debates, Leaders Questions, 25 May 2017.

<sup>49</sup> Dáil debate, Topical Issues Debate – Homeless Accommodation Provision, 25 May 2017.

<sup>50</sup> These insights have been provided to the Commission by Dr. Mary Murphy and Dr. Rory Hearne (NUI Maynooth) who are currently carrying out research with families living in family hubs as part of a wider EU-funded research project.

### 3. Embedding human rights and equality considerations into the provision of emergency accommodation to families experiencing homelessness

While emergency accommodation may be a necessary first response for families experiencing homelessness, it must be emphasised that the delivery of long-term permanent housing solutions must remain central to the development of policy responses. In light of the concerns identified above, it is clear that human rights and equality considerations must be embedded into the delivery of emergency accommodation for families experiencing homelessness.

#### Public Sector Duty

The Public Sector Duty, as set out in section 42 of the Irish Human Rights and Equality Commission Act 2014, requires all public bodies in the performance of their functions, including budgetary functions, to eliminate discrimination, promote equality of opportunity and treatment, and protect human rights.<sup>51</sup> Public bodies are required to assess human rights and equality issues relevant to their functions in their strategy statements and are required to provide an update on their activities in each annual report. In its Statement of Strategy 2016-2019, the Department of Housing, Planning, Community and Local Government identified the issue of access to housing and the impact of the housing crisis on particular segments as ‘the most pertinent aspects of its business to which human rights and equality considerations apply’.<sup>52</sup>

**The Commission recommends that in its review of *Rebuilding Ireland*, the Department of Housing, Planning, Community and Local Government, should carry out an assessment of human rights and equality issues in line with its public sector duty obligations as set out in section 42 of the Irish Human Rights and Equality Commission Act 2014.**

In 2016, Dublin City Council spent €72,793,910 on providing emergency accommodation to homeless persons across the Dublin Region, including €9,935,090 on private emergency accommodation and €38,941,522 on hotels.<sup>53</sup> On 25 May 2017, the Tánaiste Frances Fitzgerald TD stated that €15 million is being invested in eight facilities across Dublin to accommodate families experiencing homelessness. The Tánaiste also stated that some of these facilities would be run by charitable housing associations and private companies would run others.<sup>54</sup> The Commission has previously expressed concerns about the State’s practice of subcontracting its functions to non-state actors, in particular in relation to the provision of accommodation to asylum-seekers and refugees.<sup>55</sup>

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<sup>51</sup> Section 42(1) of the Irish Human Rights and Equality Commission Act 2014. The duty came into effect on 1 November 2014. See also: [https://www.ihrec.ie/app/uploads/2016/09/ihrec\\_public\\_duty\\_booklet.pdf](https://www.ihrec.ie/app/uploads/2016/09/ihrec_public_duty_booklet.pdf)

<sup>52</sup> Department of Housing, Planning, Community and Local Government, *Statement of Strategy 2016-2019*, p. 71.

<sup>53</sup> See:

[http://www.homelessdublin.ie/sites/default/files/content\\_uploaded/Public%20Expenditure%20on%20Homeless%20Service%20Provision%202016.pdf](http://www.homelessdublin.ie/sites/default/files/content_uploaded/Public%20Expenditure%20on%20Homeless%20Service%20Provision%202016.pdf)

<sup>54</sup> Frances Fitzgerald TD, Leaders’ Questions, 25 May 2017.

<sup>55</sup> See for example, Oral statement of the Commission’s Chief Commissioner, Emily Logan, to the UN Committee on Economic, Social and Cultural Rights, June 2015, available: <https://www.ihrec.ie/oral-statement-ms-emily-logan-to-the-un-committee-on-economic-social-and-cultural-rights> See also: European Network of National Human Rights Institutions

In 2016, the United Nations Committee on the Rights of the Child recommended that Ireland ‘establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with international and national human rights’.<sup>56</sup> Public procurement regulations now make compliance with certain international social conventions a permissible selection criterion.<sup>57</sup> According to the Dublin Region Homeless Executive, all funded services have a Service Level Agreement in place and the agreed principles include commitments to the principles of partnership, continuous improvement of service quality, transparency and accountability as well as the rights of service users.<sup>58</sup>

**The Commission recommends that Service Level Agreements related to the provision of emergency accommodation should be amended to include commitments to human rights and equality as well as specific references to the rights to family life, autonomy and privacy.**

### A rights-based statutory framework for the provision of emergency accommodation

As noted above, local authorities have considerable discretion in providing accommodation and support to families experiencing homelessness under section 10 of the Housing Act 1988. It has also been demonstrated above that this discretion has led to a number of different policy responses being developed, some of which give rise to particular equality and human rights concerns. A normative comparison of the Irish approach with a legal rights-based approach adopted in Scotland has concluded that the Scottish model ‘appears to offer significant advantages over Ireland’s social partnership model’ citing the removal of provider discretion as one of the key advantages.<sup>59</sup> Section 29(1) of the Housing (Scotland) Act 1987 places a duty on local authorities to provide interim accommodation for homeless persons. Secondary legislation sets out particular standards for such accommodation and designates some types of accommodation as unsuitable. For example, it requires accommodation to be windproof and watertight and suitable for occupation by children.<sup>60</sup>

Similarly, in England, Part 7 of the Housing Act 1996 places an obligation on local housing authorities to ensure that accommodation provided to homeless persons is suitable. Secondary legislation elaborates on the suitability of accommodation and provides that ‘B&B accommodation is not to be regarded as suitable for an applicant with family commitments’ where the applicant has already occupied B&B accommodation for a period of six weeks.<sup>61</sup>

Given the human rights and equality concerns identified above, **the Commission is of the view that the wide margin of discretion afforded to local authorities within the current system of emergency accommodation does not adequately protect the right to housing for families experiencing homelessness.**

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(ENNHRI) (2017) *Common Position on the human rights implications of privatising or contracting out public services*, available: [http://ennhri.org/IMG/pdf/ennhri\\_statement\\_public\\_procurement\\_fin.pdf](http://ennhri.org/IMG/pdf/ennhri_statement_public_procurement_fin.pdf)

<sup>56</sup> United Nations Committee on the Rights of the Child (2016) *Concluding Observations on the combined third and fourth periodic reports of Ireland*, CRC/C/IRL/CO/3-4, para. 24.

<sup>57</sup> Regulation 18(4)(a) provides: ‘In the performance of a public contract, an economic operator shall comply with applicable obligations in the fields of environmental, social and labour law ... established by European Union law, national law, collective agreements or by international, environmental, social and labour law’. These regulations have been in force since 18 April 2016.

<sup>58</sup> See: <http://www.homelessdublin.ie/funding-homeless-services>

<sup>59</sup> Elizabeth Watts (2013) *The Impact of Legal Rights to Housing for Homeless People: A Normative Comparison of Scotland and Ireland*, University of York: Social Policy and Social Work.

<sup>60</sup> Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014.

<sup>61</sup> Articles 3-4 of the Homelessness (Suitability of Accommodation) (England) Order 2003 (SI No. 3326 of 2003).

In light of this, the Commission recommends the following legislative reform:

**Section 10 of the Housing Act 1988 should be amended to place a limit on the time that a family may spend in emergency accommodation. It is suggested that time spent in emergency accommodation should be limited to three months with an obligation on a local authority to provide suitable permanent family accommodation thereafter.**

**The Minister for Housing, Planning, Community and Local Government should make regulations under section 10(11)(a) of the Housing Act 1988 in relation to the type of emergency accommodation that families may be accommodated in. The regulations should specify that the family should have access to cooking facilities and utensils, a play area, a family room and that family's right to autonomy and privacy should be respected.**

### Quality standards and independent inspection of emergency accommodation

The Independent Expert on Human Rights and Extreme Poverty, Magdalene Sepulveda, recommended, following a visit to Ireland in 2011, that Ireland must take measures to solve the long-term housing needs in the country from a rights-based approach.<sup>62</sup> The UN Committee on Economic, Social and Cultural Rights has also stated that the right to housing 'should be seen as the right to live somewhere in security, peace and dignity'.<sup>63</sup> Although a rights-based approach does not form the basis for most homeless services, it is recognised, in a good practice guide developed by service providers, that 'everyone has the right to be treated with dignity and respect'.<sup>64</sup>

During the Chief Commissioner's visit to High Park Family Hub in Drumcondra, Ms. Logan spoke to staff about the absence of objective standards against which to measure the family hub service and the lack of independent inspection. The Commission welcomes Respond's intention to undertake an evaluation of the model at an early stage, which was also communicated to the Chief Commissioner during her visit. The Commission also notes that Dublin Region Homeless Executive is currently working on National Quality Standards for homeless services.<sup>65</sup>

**The Commission recommends that the National Quality Standards Framework for Homeless Services should be developed with due regard to the public sector duty set out in section 42 of the Irish Human Rights and Equality Commission Act 2014.**

**The Commission recommends that, once the National Quality Standards Framework for Homeless Services has been developed and implemented, the homeless services should subject to regular inspection by an independent inspection body.**

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<sup>62</sup> Human Rights Council (2011) *Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona: Mission to Ireland*, A/HRC.17/34/Add.2, para. 87.

<sup>63</sup> United Nations Committee on Economic, Social and Cultural Rights (1991) *General Comment No. 4 on the right to adequate housing (art. 11 (1) of the Covenant)*, para. 7.

<sup>64</sup> Homeless Agency, *Putting People First: A good practice handbook for homeless services*.

<sup>65</sup> See: <http://www.homelessdublin.ie/quality-standards-homeless-service-provision>. Further to a communication received from the Dublin Region Homeless Executive, it is understood that the framework is expected to be rolled out by the end of the summer 2017.



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