



**Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas**
Irish Human Rights and Equality Commission

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Dear Carol,

My colleagues and I at the Irish Human Rights and Equality Commission welcomed the opportunity to meet with the Department of Children, Equality, Disability, Integration and Youth on 26 November, with regard to its preparation of a White Paper on a new international protection accommodation policy.

As you will be aware, reform of this system has been a standing recommendation of the Commission since its establishment in 2014. The Commission has previously highlighted a range of human rights and equality concerns in relation to the treatment of international protection applicants in Ireland through its international reporting, legislative observations, policy work and legal work. In particular, in 2019 the Commission recommended to the UN Committee on the Elimination of All Forms of Racial Discrimination that: *"the State move away from the current for-profit model of direct provision"*. In light of this, the Commission welcomed the commitments in the Programme for Government to *"end the direct provision system"* and to *"replace it with a new international protection accommodation policy, centred on a not-for-profit approach"*.

The Commission has actively engaged with numerous Government initiatives to improve the system, and the international protection process more generally, including, most recently, with the Advisory Group on the *Provision of Support including Accommodation to Persons in the International Protection Process* (the Day Report).

The Appendix below outlines some of the Commission's views, building on our recent discussions. Noting that your current remit for the White Paper concentrates on accommodation policy, we have nonetheless addressed other issues of relevance, including on broader principles and considerations, which, in the firm view of the Commission, should apply to all aspects of reform of the International Protection and



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Reception system. Reform of the wider system, including dealing with unacceptable delays in the processing of protection applications at first instance and appeal, and the failure to introduce vulnerability assessments, must be urgently addressed in order for any real change in accommodation practices to take place.

My Commission colleagues and I are at your disposal should you require further information or discussion of the matters outlined below.

Best regards,

Sinéad Gibney
Chief Commissioner



Appendix

1. Guiding principles for the development of international protection policy.

1.1 Recognising and investing in the contributions of refugees and international protection applicants to our society

Mindful of the State's global role as an incoming member of the United Nations Security Council, the Commission believes that the State must take a leadership role in changing the international and domestic narrative from a negative, and sometimes, racist discourse about asylum seekers to one that proactively welcomes International Protection applicants as participants in and contributors to our society, and as future citizens

1.2 EU Directives: A floor, not a ceiling

Noting the recommendation in the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* (the Day Report), that the State opt into all of the current EU asylum legislation, the Commission reiterates its view that the EU framework should be seen as a floor rather than a ceiling of minimum standards.¹ The *Recast Reception Conditions Directive* should, nonetheless, be fully implemented in the short term. Vulnerability assessments, as provided for in the Directive, should commence immediately. Accommodation plans must then be drawn up for vulnerable applicants, in accordance with their needs.

1.3 Adopting a trauma-informed approach

People seeking international protection encounter significant risk factors for developing mental health issues before, during, and after migration, and have been found to have higher rates of Post-Traumatic Stress Disorder (PTSD) and depression than are found in corresponding host country populations.²

The Commission recommends that international protection policy should take a trauma-informed approach and be guided by the underpinning assumption that all asylum seekers may have experienced trauma. All such trauma must be assessed and responded to comprehensively, in order to ensure appropriate provision of accommodation and services, as well as to ensure fair procedures in the protection system.

Central to this is the introduction of vulnerability assessments, the continuing absence of which places Ireland in violation of EU law.³ The Commission reiterates its recommendation that vulnerability should be assessed in proper reception centres on arrival, but also on an ongoing basis in order to proactively deliver appropriate health, accommodation and other support services to vulnerable applicants, including reasonable accommodation for people with disabilities and supports sensitive to people's gender and sexual orientation.⁴

1.4 Cultural competency and training

Given the core human rights and equality issues at stake, the Commission stresses the need for a reformed international protection and reception system to be staffed at all levels⁵ by personnel who are culturally competent and appropriately trained in human rights, equality and the principle of non-discrimination.⁶ In this context, the Commission welcomes the Day Report's foregrounding of the principle of non-discrimination and fair treatment, and its recommendations on education, training and interpretation.⁷

1.5 A focus on integration from day one

The Commission is of the view that the State must proactively engage with all those in the international protection system, and that all international protection applicants should be supported to integrate into communities from day one of arrival. Such an approach should be informed by a review of international best practice - such as Scotland's *Integration Strategy*⁸ - and co-designed with civil society and other stakeholders.⁹

1.6 Early and effective access to the labour market

Early access to the labour market is central to successful integration. The Commission recommends that labour market access should be granted as soon as possible - within 3 months or less, post application - and that the labour market access should continue until the protection application, including any appeal, is determined. The Commission also agrees with Day that '*no transitional procedures should be necessary*' for those who were deemed ineligible when the right to work was first introduced.¹⁰ Thus, the planned change to a maximum of 6 months announced when the Day Report came out, which has not yet been implemented, should be reconsidered. The short term nature of the work permits granted to date have been a barrier to actually finding employment, and particularly in accessing professional or skill-based jobs for which international protection applicants would otherwise be qualified. The Commission welcomes the commitment to extend the initial permits to 12 months and these should be renewable throughout the period the person is seeking protection, including appeals. There also needs to be specialised supports in place to enable international protection applicants and those with refugee status to set up new businesses

1.7 Access to education and training

It is most important that international protection applicants are supported to access education and training, including English language training. This would involve enabling people to retain existing skills, enhance them and engage in further education as is relevant to their interests and needs. International protection applicants need to have clear pathways through the Irish educational system at all levels of education. Many women and men cannot retrain or help their children in education, without further education and will need access to childcare to allow them to pursue education and training. There also needs to be an educational audit of people's levels of skills and education when they enter Ireland. Many international protection applicants report experiencing a process of deskilling. In some cases, this is related to a lack of recognition of their formal education qualifications. This is a serious barrier to integration and addressing it is vital for people's dignity, as well as for successful integration. A specialised unit needs to be established by the National Qualifications Authority of Ireland to engage in systematic qualification recognition for those seeking international protection, and those who have refugee status.

2. New accommodation model

The redevelopment of the reception system for international protection applicants represents an opportunity for the State to move away from outdated institutional responses, towards a progressive, compassionate and rights-based approach. The Commission believes we must move completely away from the current system based upon Direct Provision in congregated settings, run on a for-profit basis. The Direct Provision model should be replaced with a two stage accommodation system, addressing both initial reception and longer term accommodation needs.

2.1 Initial reception

There needs to be proper reception centres where protection applicants go to when they arrive and make their claim. It is in these centres that the vulnerability assessments should be done. The centres should be located around the country but always close to urban centres in order that there is access to medical facilities and specialist services. The reception centres need not necessarily be congregated settings, and should, if possible, provide for own door type accommodation even if facilities have to be shared. They should be run on a not for profit basis with the assistance of other stakeholders (NGOs) with experience of dealing with and assisting international protection applicants.

It is vital that from the outset applicants have ready access to interpreters in order that new applicants can communicate with staff and other protection applicants. It is also essential that applicants can readily access legal advice and medical services within the

centres. The centres should not involve 'direct' provision and protection applicants should be given a reasonable allowance for food and other essentials.

2.2 Longer-term accommodation

International protection applicants should be able to move out from reception centres to longer-term accommodation after a maximum of 3 months, by which stage they should also be able to access employment. The Commission agrees with the position that different types or sources of accommodation will probably have to be available at this stage, stated at its meeting with officials on the preparation of the White Paper on a new international protection accommodation policy.¹¹

The Commission believes that Protection applicants should have the option of seeking private accommodation, with access to the enhanced Housing Assistance Payment (HAP), and that they should be supported in doing so.

However, providing international protection applicants with HAP, or an equivalent payment, and leaving it to themselves to secure accommodation in the private sector would be problematic. Protection applicants who have been recognised as refugees or granted subsidiary protection or leave to remain for other reasons report great difficulty in securing accommodation, even with the benefit of the HAP. The Commission is concerned that discrimination in the private accommodation market may significantly undermine the efforts of international protection applicants in this regard, placing them at risk of homelessness, where indeed they may be at risk of further discrimination when seeking to access emergency 'homeless' accommodation in competition with homeless people.¹²

There also needs to be public accommodation available specifically for international protection applicants, and this may well have to be built. Again, this accommodation should be own door, of good quality, and have cooking facilities. The scale of these developments for international protection applicants should be limited, possibly mixed with social housing. It is not at all desirable to have huge estates develop where only international protection applicants live. This is a disincentive to integration and may lead to stigmatisation. Special provision for planning permission may have to be made for these developments and this is something that should be looked at in the White Paper.

The Commission reiterates the point that we made at the meeting that there should also be suitable special accommodation available for more vulnerable applicants, including disabled people. A needs assessment for any vulnerable applicant (as defined in the Directive) must provide details of the sort of accommodation they need.

Very careful consideration is needed in respect of accommodation for the victims of trafficking. Gender specific accommodation with access to specialist services should also be considered for the victims of sexual violence and trafficking for the purposes of sexual exploitation.

2.3 Recognising the diversity of housing needs

The Commission is of the view that a thorough housing needs assessment must be carried out by appropriately trained officials within the period of initial reception in order to ensure that international protection applicants' right to housing is fully respected.

Such an assessment should recognise the diverse needs of applicants. This should take into account children and families, as well as people who do not have any English or who are from particular ethnic groups in conflict with other ethnic groups in their country of origin, and the fact that different types of accommodation, combining independent and supported living, will be required in line with these needs. This is separate from the vulnerability assessment required by the *Reception Conditions Directive* in respect of vulnerable people, but should be carried out when applicants are first placed in the reception centre. This assessment should be seen as a living document that can be amended and updated following regular reviews with housing support services.

2.4 Housing support services

The Commission notes that the Day Report proposes a permanent State-led system, which is split up over three phases and makes reference to multi-service support during each phase (the last phase being leaving international protection accommodation altogether).

The Commission agrees with this approach in broad terms and is of the view that a specialist housing liaison service for international protection applicants must be established and staffed with appropriately trained officials - including people who have been through the international protection system - to assist people in finding, establishing and maintaining accommodation as they leave international protection accommodation.

The Commission also recommends that international protection applicants be allowed to change accommodation from 'public' to 'private' and from 'private' to 'public' as necessary during the course of their protection applications and that they would be assisted to do so. They should not be forced to stay in special accommodation for international protection applicants and rent assistance should always be available to them.

2.5 Ambitious annual targets

The Commission notes that the Day Report proposes that the new system should be in place by mid-2023, and in particular, is of the view that construction of new reception facilities and longer-term accommodation should commence without delay. The Commission believes that we cannot wait three years to see meaningful progress and recommends that the State adopt ambitious annual targets for the delivery of the new accommodation model, from 2021.

3. Urgent action to address standards within current provision

The Commission stresses that the current approach to reception of international protection applicants raises urgent and serious human rights and equality concerns that require immediate action irrespective of plans to reform the system.¹³

3.1 Independent inspection

There is a variability in standards between Direct Provision centres, with serious questions of accommodation suitability reported in some instances on matters such as broken fittings, mould and damp affecting residents' health and insect infestations. There are also reports of worrying variations in the treatment of residents by staff. The Commission has called upon the State *"to develop a robust independent inspection mechanism to ensure that the new national standards for accommodation offered to people in the protection process are fully implemented, including in emergency accommodation centres"* while the Direct Provision model remains in place.¹⁴

The Commission welcomes the Government's announcement that it has been engaging with HIQA in relation to inspection of accommodation further to the recommendation in the Day Report.¹⁵ It is essential that an independent inspection proceed immediately, that it provides for a rigorous regime of unannounced inspections and that the scope of the inspection remit extends to all of the rights and equality issues that arise for people who are seeking protection. These must include provisions to ensure safety and freedom from sexual harassment and violation. Furthermore, the inspection regime must provide for rapid and effective redress mechanisms to ensure that problems identified are remedied without delay.

3.2 End use of emergency accommodation

The Commission believes that the use of 'emergency' accommodation in hotels and similar facilities is particularly unsuitable for international protection applicants, who can become very isolated staying in remote hotels, without cooking facilities or other people from a similar cultural background (or who speak the same language). There needs to be a concerted effort to eliminate the need for emergency accommodation as soon as possible. It is essential that emergency accommodation is replaced by 'own door' accommodation, where protection applicants shouldn't have to share 'dorm' type accommodation with strangers and where, within families, adults should not have to share bedrooms with children.

3.3 Procurement and the Public Sector Human Rights and Equality Duty

The *Public Sector Equality and Human Rights Duty* 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 have regard to the elimination of discrimination, promotion of equality of opportunity and treatment, and

protection human rights. Should the State continue to outsource aspects of the new reception system, all such outsourcing should be subject to procurement processes that are underpinned by international human rights standards and the *Public Sector Equality and Human Rights Duty*.¹⁶ The State should be planning for a consistent number of arrivals each year and moving swiftly towards a non-profit model.

3.4 Dealing with administrative barriers

The Commission has noted the significant impact that administrative barriers have on the rights of protection applicants. Such barriers include, for example, delays and difficulties experienced in obtaining PPS numbers, medical cards and access to health services, accessing work permits and having them recognised, as well as exclusion from driving license application and access to financial services.¹⁷

The Commission therefore welcomes the Day Report's recommendation to create a "*multi-services multi-agency centre onsite in the reception centre(s) [to] help applicants to access necessary services and entitlements*".¹⁸ We note that the current long-term isolation from the wider community reinforces these barriers. While greater integration in communities over time will increase access to local information and support, there is an immediate need to ensure that there is increased support for residents to access services, like GP and ambulance services for which Direct Provision staff currently act as gatekeepers.

However, similar to vulnerability and housing needs assessments, the approach to tackling administrative barriers must be ongoing, and not solely focus on an applicant's immediate needs in the first three months. Wraparound administrative services should continue to be made available following placement into community living. The community liaison and regional support approach taken in the context of the refugee resettlement programme may be a useful model to emulate as part of this.¹⁹

4. Fair procedures and access to justice in the international protection process

4.1 Speeding up the application procedure

As documented in the Day Report and elsewhere, the introduction of the single procedure itself has not significantly decreased the time it takes for an international protection application to be processed. In this context, the Commission welcomes the recommendations in the Day Report concerning greater efficiencies in current IPO and IPAT processes, better resourcing of Legal Aid Board,²⁰ and provision of additional decentralised hearings, though the Commission does not necessarily agree with the proposal that all legal assistance must be provided by the Legal Aid Board itself. Many international protection applicants have had difficulty with government regimes in their country of origin and consequently have inherent trust issues with government agencies on arrival in their reception country.

The Commission has repeatedly criticised lengthy delays in the international protection process while also stressing the importance of adhering to due process, natural and constitutional justice requirements, and to fair procedures in any modifications to existing mechanisms. The Commission is of the view that increasing the speed of decision making is only a desirable outcome if the process is fair and procedurally sound, and administered by officials who are appropriately trained. The performance of the IPO and the IPAT needs to be externally monitored. Also, a court or tribunal-based system for all appeals in immigration and protection cases should be considered.

4.2 Clearing the backlog of cases

Reform of the international protection system is an opportunity to address the significant backlog of applications that await processing. Indeed, it is hard to implement any significant improvements while this backlog exists. The Commission notes that the Day report suggests the introduction of a new one-off processing system for applicants who have been in the system for more than two years by the end of 2020. If applicants choose to avail of the proposed system, they would be granted leave to remain for five years and the right to family reunification.²¹ This seems to the Commission to be a good idea, although nobody should be in the protection system for more than 2 years. This offer should also be made available to persons who have judicial reviews of protection decisions pending. This would have the beneficial effect of clearing the court backlog.

The Commission is mindful however that persons granted leave to remain for 5 years will almost certainly develop strong social connections, if not family, in the State during this time. The Commission is of the view that a more comprehensive regularisation scheme would provide a needed pathway to permanence for applications and would avoid leaving people in further limbo.

4.3 Other people in Direct Provision

The Commission believes it is important to consider the position of people in Direct Provision who are no longer international protection applicants because their applications have been refused (at the moment, approximately half of international protection applications end up being refused). They may have deportation orders against them, which prevent them from working and have no option but to stay in Direct Provision centres. Some are non-returnable.²²

What is to happen to these people? They will not benefit from the 2-year scheme described above, or any payment for protection applicants for food or for rent.

The Commission believes that, in order to clear Direct Provision centres within the next couple of years, people who are subject to deportation orders have to be offered some form of alternative accommodation and an opportunity for regularisation. Given that this is quite a significant cohort of individuals currently living in Direct Provision, reference should be made to their accommodation needs in the White Paper and

consideration given to a regularisation scheme. Such a scheme could be introduced while taking into account the security needs of the state and would confirm a strong commitment from Government to deliver on its intention for system reform.

¹ IHREC, [Recommendations on the General Scheme of the International Protection Bill 2015 June 2015](#), p. 5- 6.

² Before migration, asylum seekers may be exposed to persecution, traumatic conflict experiences and economic hardship. During migration, they can experience physical harm and separation from family members. After migration, poor socioeconomic conditions (i.e. social isolation and unemployment) are the main factors associated with poor mental health outcomes for refugees. See: Priebe, Giacco, and El-Nagib. [Public health aspects of mental health among migrants and refugees: a review of the evidence on mental health care for refugees, asylum seekers and irregular migrants in the WHO European Region](#). Copenhagen: WHO Regional Office for Europe; 2016 (Health Evidence Network (HEN) Synthesis Report 47); Miller et al., 'Applying Trauma-Informed Practices to the Care of Refugee and Immigrant Youth: 10 Clinical Pearls', *Children*, 2019, 6, 94.

³ [Directive 2013/33/EU \(the recast-Reception Conditions Directive\)](#).

⁴ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report, October 2019](#), p.117.

⁵ This should include judicial training, the professionalization of interpreting services, and specialised, trauma informed training for staff within health, social care, education and employment services who are involved in providing support to children and adults within the international protection system.

⁶ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report, October 2019](#), p9. See also IHREC, [Submission to the Commission on the Future of Policing](#), (February 2018).

⁷ The Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (the Day Report) recommends appropriate education and training of decision makers to ensure access to justice and avoid delays in processing applications, and the introduction of an accreditation test and code of conduct for legal interpreters. Day Report, p.48-9; 55-56.

⁸ <https://www.gov.scot/publications/new-scots-refugee-integration-strategy-2018-2022/pages/3/>

⁹ The Commission has a statutory mandate to encourage good practice in intercultural relations, to promote tolerance and acceptance of diversity in the State and respect for the freedom and dignity of each person

¹⁰ Day Report, p.77.

¹¹ On 26 November 2020 the Commission met with officials of the Department of Children, Equality, Disability, Integration and Youth with regard to its preparation of a White Paper on a new international protection accommodation policy.

¹² IHREC (2017) [The provision of emergency accommodation to families experiencing homelessness](#). In recent engagement with civil society organisations, the Commission heard that refugees currently receiving the HAP payment cannot access appropriate accommodation to cater for family reunification, with the result that families are becoming homeless.

¹³ In that regard the Commission supports recommendations in the Day Report for the establishment of robust political, administrative and independent oversight for the implementation of these much-needed reforms. Day Report, p.100.

¹⁴ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report, October 2019](#), p.115.

¹⁵ [Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to access work](#), press release, 21 October 2021; Day Report, p.66.

¹⁶ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report, October 2019](#), p.121. In this context, we note the recommendation in the Day report that local authorities should draw on all available housing sources – including privately owned accommodation – in providing own-door accommodation to applicants in the reformed reception model – see Day Report, p.65.

¹⁷ IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report, October 2019](#), p 75. The Commission welcomes the Day report's recommendation to end the restriction of access to driving licences. The Commission is further of the view that current legislation is adequate to permit this, and that the current restrictions are discriminatory.

¹⁸ Day Report, p.12.

¹⁹ Department of Justice, 18 August 2020, "[Minister McEntee launches Call for Applications for funding under the Asylum, Migration and Integration Fund 2014-2020](#)"

²⁰ Day Report, p.47. The Commission has previously recommended that "the State ensure effective legal advice for international protection applicants at an early stage through the Civil Legal Aid Board, to support them in progressing their application. IHREC, [Submission to the United Nations Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report, October 2019](#), p.111.

²¹ Day Report, p.84. The Commission believe rights to family reunification need to be strengthened (see IHREC (2018) [The right to family reunification for beneficiaries of international protection](#) and welcomes proposed legislation to address this (the International Protection (Family Reunification)(Amendment) Bill 2017) currently before the Oireachtas.

²² Day Report, p.73