

One Size Doesn't Fit All



A FLAC analysis of the direct provision and dispersal system

Presentation by Saoirse Brady, FLAC Policy & Campaigns Officer, 18 Feb 2010

2010 marks the tenth anniversary of the direct provision and dispersal system in Ireland. The system was originally set up as a pilot scheme in November 1999 but became a national policy in April 2000. The title of our report *One Size Doesn't Fit All* refers to the way in which residents within the system are not treated as individual human beings with individual requirements and circumstances, but as identical units who all fit the same mould.

Asylum seekers are people seeking protection from persecution in their home countries. Ireland is a party to the 1951 UN Refugee Convention and it is important to understand that anyone who comes to Ireland "to seek and to enjoy... asylum from persecution" is entitled to enter and remain here until a final determination is reached on their protection status. FLAC's report focuses specifically on the system of direct provision rather than the broader asylum process itself, however if there was a fair and efficient procedure in place providing people with a decision within a reasonable timeframe, there would be no need for people to spend protracted periods living in direct provision accommodation. It was originally introduced as a measure to deal with increasing numbers of asylum seekers coming to Ireland, but it was always envisaged that people would spend a maximum of six months in direct provision. Currently the number of people claiming asylum in Ireland is at its lowest since 1996 but the number in direct provision has remained relatively high in comparison. More than a third of residents have been there for more than three years.

One point which the report serves to emphasise is that the duty of care for asylum seekers, and others seeking another form of protection, lies with the Department of Justice, Equality and Law Reform. The Reception and Integration Agency or RIA, was set up as a dedicated unit to manage the operation of the direct provision and dispersal system and is comprised of civil servants from various government departments and statutory agencies. The system as it is currently administered was set up by civil servants to make it easier for them to discharge this duty of care, rather than being constructed to serve the needs of the people which it is supposed to serve, i.e. the residents. Legislation has never been put in place to define and regulate the direct provision and dispersal system. RIA contracts out the provision of these services to private businesses who tender for the contract. According to the latest RIA statistics available for December 2009, there are currently 54 centres in total; that is 2 reception centres, 48 accommodation centres and only 4 self-catering centres. The accommodation is made up of former hotels, hostels, guesthouses, convents and nursing homes and in many cases, these are not sufficiently adapted for the use of longer-term residents. Each centre differs and residents hear about better conditions in other centres and wish to be relocated there, but as we discuss in the report, a person who is in the hands of the direct provision system has absolutely no say as to where they will live, often spending months or even years in accommodation unsuitable for their particular circumstances. No needs assessment is

carried out at the outset when a person first claims asylum, a situation which often leads to further isolation or deterioration of the person's condition.

While the Government may contract out the provision of these services, the Department is ultimately responsible for the care of asylum seekers. Therefore it is essential that proper safeguards are put in place and that the system is properly supervised. The Government has never met its own target on inspections. FLAC is concerned that the inspections do not take into account all of the relevant conditions nor the views of residents or indeed staff. Instead, RIA states that information clinics are held in the centres where residents can air any grievances or bring matters to the attention of RIA. In practice such clinics are not held on a regular basis in most centres. Unlike the inspection reports, written records are not kept of the issues raised at these meetings as RIA try to resolve them informally on the day of the visit. This means that unlike the inspection reports, the views of residents are not recorded and RIA does not undertake follow-up action as a matter of course.

Following on from this, the complaint mechanism which is currently in place has been the subject of some debate due to the apparent lack of transparency and independence associated with making a complaint. A resident first has to make a complaint to the centre manager which is then forwarded to RIA if it is deemed to be a "genuine grievance". In effect residents are making a complaint to the same Department which is not only responsible for accommodating them, but which will also make a decision on their application for protection. The Ombudsman has issued guidelines on internal complaints procedures which could be adapted to the situation of direct provision. In order to ensure that the process is sufficiently independent and fair, there should be a dedicated complaints unit in RIA and "Chinese walls" should be set up and enforced within the Department to make certain that information cannot be transferred from one section to another.

A right to fair procedures is enshrined in both the Constitution and European Convention on Human Rights. At the moment, a person can be evicted from direct provision without any right of appeal as RIA's decision is binding. These people can end up destitute on the streets. A review of the House Rules including the complaints procedure was carried out between September 2007 and May 2008. The review committee consisted of different statutory agencies, staff from accommodation centres and NGOs working in the refugee and asylum area. The report has not yet been made public and it remains to be seen what changes, if any will be made to address the problems with the current system.

Direct provision residents receive a weekly allowance of €19.10 for an adult and €9.60 for a child. This is the only social welfare payment which has never been increased since it was introduced ten years ago. In terms of other payments, direct provision residents may receive clothing allowances in the form of Exceptional Needs Payments at the discretion of the Community Welfare Officer. They may also apply for a once-off Urgent Needs Payment and the Back to School Clothing and Footwear Allowance but these payments are also discretionary.

In fact, since the introduction of direct provision and dispersal, the Government has taken steps to restrict the access of residents to social welfare payments. In 2003 asylum seekers were prohibited from accessing rent allowance. Then in 2004, the Government introduced the Habitual Residence Condition as a reaction to the perception that “welfare tourists” from the EU accession states would come to Ireland to avail of the social welfare system. This measure was found to be contrary to the EU principle of freedom of movement so it could not be applied to EU migrant workers. Instead, one of the main groups affected by the change were direct provision residents who now had a further qualifying factor to meet before they could receive certain payments. These payments included the formerly universal Child Benefit which is no longer automatically available to every child in need but definitely not to direct provision residents. This creates an inequality between children living in Ireland contrary to the Government’s own National Children’s Strategy.

After the introduction of the HRC, the Department of Social and Family Affairs operated a policy of refusing any direct provision resident applying for payments subject to this condition. FLAC challenged the Department’s position in a total of nine cases which went before the Chief Social Welfare Appeals Officer for review. The first four decisions were issued in summer 2009. Here, the DSFA had sought to review of positive decisions of an Appeals Officer who found in favour of the appellants and held that a person in direct provision could in fact satisfy the Habitual Residence Condition. The Chief Appeals Officer upheld these decisions and said that each case had to be decided on its own individual circumstances.

In the first week of December 2009, FLAC successfully had five negative decisions overturned on this basis. The Department’s response to these cases was clear. The following week, the Department of Social and Family Affairs took the opportunity of the Social Welfare and Pensions (No. 2) Bill which was to implement Budget 2010, to introduce an amendment seeking to exclude all those in direct provision from being able to satisfy the HRC. It was guillotined and rushed through the Dáil without debate but there was some lively discourse in the Seanad. We are calling for this amendment to be reintroduced so it could be debated fully and given due consideration. The number of people in direct provision is relatively small, about 6,500 and the sensible approach taken by the Chief Appeals Officer to assess cases on an individual basis would ensure that only those people who have been in Ireland for some period of time and have established a connection to Ireland would qualify.

The social exclusion of direct provision residents is due not only to the remote locations in which they are housed, but also to the fact that they often cannot afford to socialise, for example children are prevented from participating in extracurricular activities, sometimes not even being able to go on school trips because of financial hardship. According to RIA statistics for December 2009, there are currently 2,010 children under 18 living in direct provision and 4,377 people of working age.

The parents of these children cannot access family benefits in the same way as other people living in Ireland which is contrary to Article 2 of the UN Convention on the Rights of the Child which forbids discrimination against any child on the basis of his/her parents’ status, which includes immigration status. The best interests of the child must be prioritised in all decisions concerning

children. These obligations are echoed in the Government's own National Children's Strategy which ends this year. It is time for the Government to live up to its commitments and ensure that all children are treated equally.

The majority of people living in direct provision are people of working age however it must be highlighted that they are not actually permitted to work. Ireland and Denmark are the only two EU countries to have a complete prohibition on working. Ireland has opted out of the EU Reception Directive which lays down minimum standards for the reception of asylum seekers. One of the reasons for refusing asylum seekers the right to work is the perception that this would act as a "pull factor" or incentive to people coming to Ireland.

This prevents direct provision residents from providing for themselves, adding to the myth that they are "work-shy" and "spongers" while at the same time they cannot avail of most of the minimum income supports available to other people living in poverty.

The final chapter of FLAC's report examines the State's compliance with both domestic sources of human rights law as well as international human rights instruments. The Irish Constitution is a source of natural rights or human rights and some of these may apply to non-citizens as well as citizens although these may be subject to public policy aims so long as they are proportionate. The European Convention on Human Rights Act 2003 incorporated this instrument into Irish law and compels any "organ of the State" which includes government departments, to act in a manner compatible with the State's obligations under the Convention. Ireland is also party to a number of international human rights instruments of the United Nations and is required to report to the relevant UN bodies on the progress made in protecting and promoting the rights enshrined in each.

All people living in Ireland are entitled to be treated with dignity and respect regardless of their status, in accordance with the obligations the Irish State has undertaken by ratifying these treaties. In fact General Comment No. 31 issued by the UN Human Rights Committee states that "the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party".

As demonstrated in our report, the state's treatment of people in the direct provision and dispersal system may have a negative impact on a number of human rights enshrined in both domestic and international law. These include but are not limited to the right to food, the right to an adequate standard of health and housing, the right to family life, the right to work and freedom of movement. FLAC has found that while the State is fulfilling its commitment at a most basic level to "house homeless people who have pitched up on our shores and over whose heads we have an obligation to put roofs" as it was put by Secretary General of the Department of Justice, Equality and Law Reform, it does not comply with the spirit of the international human rights instruments.

To this end we have concluded that through the current administration of the direct provision and dispersal system, the State has failed to protect and promote the rights of those seeking asylum and

protection in Ireland. FLAC feels that the current system should be abolished but while it remains, it should be completely overhauled in the interest of fairness to suit the needs of residents rather than the needs of civil servants.

We had made a number of specific recommendations in the report but in terms of the overall system FLAC calls on the Government to take the following measures:

- Respect, protect and promote the fundamental human rights of people regardless of their immigration status.
- Following on from this, the State should carry out an audit of its policy of direct provision and dispersal to ensure it meets human rights standards in Irish law and in international human rights treaties that Ireland has ratified.
- A greater level of care needs to be taken to guarantee the rights of those in direct provision who are particularly vulnerable, whether by reason of their age, gender, disability, health, sexual orientation or other attribute.
- The Department of Justice, Equality and Law Reform needs to operate the direct provision and dispersal system in a fair and transparent way. Residents must be given a voice in decisions made about them and an objective and fair hearing if difficulties arise in the administration of the system
- And in making any decision to relocate a person, account should be taken of his/her physical and mental health, cultural, religious and other background and the potential for conflict within a direct provision centre because of the person's ethnicity or history in his/her country of origin.

While we are aware that Irish society as a whole faces challenges in the current economic climate, we must ensure that direct provision residents are cared for and will not be made to suffer further poverty or degradation due to the recession. As the Renewed Programme for Government in October 2009 states,

“In these straitened times we must avoid the temptation to retreat to self interest as a method of survival. We are obliged to protect those who cannot protect themselves.”

We must hold the Government to its word and FLAC hopes that it will honour this commitment not only in relation to direct provision residents but for all those people in need of protection.