

FLAC PRESENTATION TO JOINT OIREACHTAS COMMITTEE ON JUSTICE, EQUALITY, DEFENCE AND WOMENS' RIGHTS

7 July 2010

Firstly, FLAC would like to thank the Chairperson and the members of the committee for the opportunity to raise issues associated with the direct provision and dispersal scheme in Ireland.

FLAC's Work on Direct Provision and Dispersal

FLAC (Free Legal Advice Centres) is an independent human rights organisation which, in pursuit of its commitment to equality of access to justice, uses law reform to promote the human rights of those on social welfare. In this context our work has involved us in an examination of direct provision as an administrative scheme. Since its establishment ten years ago in April 2000 as a substitute for Supplementary Welfare Allowance, FLAC has called for the abolition of the system. We have issued two reports on the system: the first in 2003 entitled *Direct Discrimination?* and the second, *One Size Doesn't Fit All*, in February of this year.

The title of our latest report reflects 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. This was most recently evidenced by the decision to transfer more than 150 people from the centre in Mosney to Dublin without any consultation with the residents. It is not apparent that any consideration was given to their personal circumstances, but was rather solely a cost cutting mechanism.

Asylum seekers are people seeking protection from persecution in their home countries. Ireland has signed up to the UN Refugee Convention of 1951 and the 1967 Protocol and has enacted legislation in the form of the Refugee Act 1996 which sets out the procedure by which a person's refugee status will be determined. It is important to understand that those who come to Ireland seeking the fundamental human right to asylum from persecution are entitled to remain here until a final determination is reached on their immigration status. Asylum seekers, people seeking leave to remain on humanitarian grounds or others applying for subsidiary protection under the EU Qualification Directive or other international human rights law, are legally entitled to enter the State and remain here until the process has been concluded. FLAC's report does not deal with the asylum process or any of the other protection mechanisms; the focus is entirely on the direct provision and dispersal system, except to say that if there was a fair and efficient procedure in place then people would receive a decision within a reasonable timeframe and would not have to spend protracted periods living in direct provision accommodation. There will be an opportunity for Deputies to ensure that such a procedure is put in place with the recently published Immigration, Residence and Protection Bill.

Operation of the Direct Provision and Dispersal System

Direct provision was initially seen as a measure to deal with the increase in the number of asylum seekers coming to Ireland but it was envisaged that people would spend a maximum of six months in direct provision accommodation. Currently we see a situation whereby the number of people claiming asylum in Ireland is at its lowest since 1996 but the number of people who remain in direct provision has not correlated to this decrease. 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 other forms of protection, lies with the Department of Justice and Law Reform. The Reception and Integration Agency or RIA, is set up within the Department 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. FLAC's analysis is that 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 tailored to 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 in turn contracts out the provision of these services to private businesses who tender for the contracts, but it is not known how much each company gets paid, as this information is deemed to be too commercially sensitive to make public. It is known however, that in 2008 four out of the five highest paid contractors to the Department of Justice, Equality and Law Reform, were direct provision accommodation providers. Of course the purpose of a business is to make money but there is a duty on the Department of Justice, Equality and Law Reform to ensure that this is not done at the expense of the residents.

According to the latest RIA statistics available for April 2010, there are currently 50 centres in total consisting of 1 reception centre, 45 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, is not sufficiently adapted for the use of longer-term residents.

People living in direct provision hear about different 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 may lead to further isolation or deterioration of the person's condition.

It is of course a matter for the Government to decide whether to contract out the provision of these services, or provide them directly. However, given that the residents of direct provision hostels are in the direct care of the State, it is essential that proper safeguards are put in place and that the system is supervised by the Department as it is ultimately responsible for the care of asylum seekers. The inspection process specifies that at least three inspections a year should be conducted on each facility: one by the independent inspection company hired for this purpose and two by RIA itself. In 2009, 90 per cent of the requisite number of inspections set by the Department itself was carried out, a marked improvement on 79

per cent in 2008 and 55 per cent in 2007. The inspections currently consist of an examination of the physical conditions of each building; the inspectors do not consult residents as to their views. 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 except in Mosney where clinics take place every four weeks. In 2009, only 72 clinics were held in other centres. Unlike the inspection reports, written records are not kept of the issues raised at these information clinics 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.

Complaints Procedure

Following on from this, the complaint mechanism which is currently in place has been the subject of some debate due to the 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. 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. Safeguards should be set up and enforced within the Department to make certain that information cannot be transferred from one section to another.

Both the Constitution and European Convention on Human Rights lay down a right to fair procedures. At the moment, according to the complaints procedure a person can be evicted from direct provision and left destitute on the streets without any right of appeal as RIA's decision is binding. 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 new House Rules were issued in April this year but do not contain any substantive changes.

The Ombudsman has issued guidelines on the right to internal complaints procedures so we would recommend that the direct provision complaints procedure be reformulated using these guidelines.

Ireland's Human Rights Obligations in relation to Direct Provision and Dispersal

The final chapter of our report examines the State's compliance with both domestic sources of human rights law as well as international human rights instruments. The Irish Constitution has been cited as 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 the convention 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 a 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. These instruments include the Universal Declaration of Human Rights, the Refugee

Convention, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. Special protection is afforded to particularly vulnerable groups through the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities which Ireland has yet to ratify.

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”.

Ireland has issued its third and fourth reports on the UN CERD and is due to be examined under this Convention in the coming months or early next year. The Committee noted in its last report that it was concerned “at the possible implications of the policy of dispersal and direct provision for asylum seekers” under Article 3 of the Convention as it could amount to segregation of asylum seekers and people seeking other forms of protection from the general population.

As demonstrated in our report, direct provision and dispersal may have a negative impact on a number of specific human rights enshrined in both domestic and international law.

For example, the right to health is not just the right to live a healthy life but is “a state of complete physical, mental and social well being”. It also encompasses availability of healthcare in sufficient quantity to all people within the State’s jurisdiction. It must also account of “medical ethics” and be “culturally appropriate” while being of sufficient high quality. Evidence shows the negative impact direct provision can have on a person’s mental and physical health although the long-term implications, particularly in relation to more vulnerable people, is not yet known. The Health Service Executive in its own *National Intercultural Health Strategy 2007 – 2012* recognised the negative impact that direct provision may have the right to health of residents.

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. There is no evidence to support this claim which seems to be solely based on the intuition of the

Government despite the fact that research from elsewhere indicates that people seek asylum in a particular country for reasons other than economic considerations¹.

In addition to not being allowed to work 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. They may also receive a number of limited payments such as Exceptional Needs Payments or Back to School Clothing and Footwear Allowance but these are discretionary rather than automatic payments.

The right to food is about more than being given three meals a day at set times with limited choice; it is about having “physical and economic access at all times to adequate food or means for its procurement” as set out in General Comment number 12 of the UN Committee on Economic, Social and Cultural Rights. Furthermore, there should be no “discrimination in access to food” based on the grounds of “race... religion, national or social origin, birth or other status”. The fact that direct provision residents in most cases, are not allowed to cater for themselves does not fit with this definition of the right to food. In fact the number of self-catering centres has decreased in the past year despite demand for such accommodation.

So in effect, direct provision residents cannot provide 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 system of direct provision is not conducive to the enjoyment of the right to privacy and family life as enshrined in international human rights law. Entire families often share one bedroom or in some cases two single mothers and their children have to share one room. The lack of autonomy coupled with the lack of privacy, adds to the sense of helplessness felt by many direct provision residents. As already mentioned, it was not intended that anyone would spend protracted periods of time in such living conditions.

Conclusion and Recommendations

FLAC has 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 to make it a fairer and suitable system, adapted to the needs of residents rather than civil servants.

¹ *Understanding the decision-making of asylum seekers*, British Home Office [2002]. Evidence submitted by an Inter-Agency Partnership of NGOs working with asylum seekers in Britain to the Parliamentary Joint Committee on Human Rights.

Chance or Choice? Understanding why asylum seekers come from the UK? Crawley, H., [2010] available at <http://www.refugeecouncil.org.uk/Resources/Refugee%20Council/downloads/chancechoice.pdf>

FLAC calls on the Government to:

- 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 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.