

The Ombudsman & Direct Provision: Update for 2018



Ombudsman

A commentary by the Ombudsman

Complaints received 2018 Statistics

Complaints received by the Ombudsman about Direct Provision

| Body Complained Against | No. of complaints | Upheld | Not Upheld | Assistance Provided | Discontinued / Withdrawn / Outside remit | In Progress |
|---|-------------------|--------|------------|---------------------|--|-------------|
| Reception & Integration Agency | | | | | | |
| Transfers | 32 | 2 | 9 | 7 | 11 | 3 |
| Readmission | 13 | 10 | 2 | 1 | 0 | 0 |
| Accommodation | 5 | 1 | 0 | 1 | 2 | 1 |
| Facilities | 2 | 1 | 0 | 0 | 1 | 0 |
| Warning Letter | 3 | 0 | 2 | 0 | 0 | 0 |
| Involuntary Removal | 1 | 0 | 1 | 0 | 0 | 0 |
| Complaint Handling | 1 | 0 | 0 | 0 | 0 | 0 |
| Other | 2 | 0 | 0 | 0 | 2 | 0 |
| Direct Provision Centres | | | | | | |
| Accommodation | 9 | 1 | 2 | 2 | 1 | 2 |
| Facilities | 10 | 0 | 0 | 11 | 2 | 4 |
| Food | 0 | 0 | 0 | 4 | 4 | 1 |
| Department of Employment Affairs & Social Protection | | | | | | |
| Exceptional Needs Payment | 10 | 0 | 1 | 4 | 4 | 0 |
| | 4 | 0 | 0 | 1 | 3 | 0 |



Ombudsman

2019 Office of the Ombudsman

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Ombudsman

*The Ombudsman
& Direct Provision:
Update for 2018*

A commentary by the Ombudsman

March 2019

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Foreword

In my initial commentary, published in February 2018, I set out the background to Ireland's establishment of the Direct Provision system for providing food and shelter for asylum seekers while their applications for asylum are processed. I also explained my Office's remit over the sector. I commented on what I and my staff saw and heard when we engaged with the sector, in particular our experiences in meeting asylum seekers through our programme of visits to the Direct Provision centres. I set out how my Office dealt with the complaints we received following those visits, including our interaction with the various public service providers who most regularly have contact with asylum seekers.

In this commentary I look at how the sector has developed over the calendar year 2018. I comment on the interactions my staff experienced through our continued programme of visits to centres, including where we have observed improvements in the administration of the Direct Provision system and where we believe work remains to be done. My Office and the Office of the Ombudsman for Children remain the only organisations that provide independent oversight of the Direct Provision system.

I comment on my Office's interaction with the agencies within the Department of Justice and Equality responsible for administering the Direct Provision system, namely the Reception and Integration Agency (RIA) and the Irish Refugee Protection Programme (IRPP). The RIA is responsible for accommodating those asylum seekers who present themselves for asylum at points of entry into Ireland, while the IRPP is responsible for accommodating people seeking protection under the EU Relocation Programme and the Resettlement Programme led by the UNHCR. For ease of comparison with my previous commentary, I have followed the same structure of complaint sources used there to present my comments on what we observed and dealt with during 2018.

I hope this commentary provides a useful update on the work of my Office in providing access to independent redress for residents of State-provided accommodation for refugees and asylum seekers.



A handwritten signature in black ink, appearing to read 'Peter Tyndall'.

Peter Tyndall
Ombudsman
March 2019

Chapter One

Developments in the sector

The right to work

In my previous commentary I mentioned the Supreme Court ruling of May 2017, where the Court found that the blanket prohibition which had prevented asylum seekers from working was unconstitutional. I noted the commitment given by the Minister for Justice and Equality to implement the Court ruling early in 2018. I am pleased to confirm that the Minister's commitment has been honoured by his Department. During 2018 the EU Recast Receptions Conditions Directive was put into effect. This is the legal instrument that gives asylum seekers in EU countries the right to work while their applications for asylum are processed. In line with the EU Directive, asylum seekers who have not had a first instance decision on their application within nine months now enjoy the right to seek work through applying for permission to access the labour market.

Initially there appeared to be some confusion among employers about the validity of the documents asylum seekers looking for work were presenting, but this seems to have eased as the year progressed. At the time of writing, 1,845 out of 2,662 asylum seekers who applied have been granted permission to access the labour market. Permission was refused in 780 cases with a decision on a further 37 pending either return of requested documents or because the applicants had not been in Direct Provision for the required nine months. My Office did not get any complaints from those 780 residents whose applications were refused.

My staff reported that, in the course of their visits to accommodation centres during the Autumn of 2018, they received many comments from residents about how liberating they had found the ability to seek employment. Centre staff also commented about how the right to work has led to positive change in the overall atmosphere at many of the centres. My staff also reported a more positive overall atmosphere at some of the more established centres from their Autumn visits compared to previous visits to those same centres, with fewer complaints from residents than before. I will return to this topic when I discuss sources of complaints in Chapter Two.

Charges for accommodation

As 1,845 asylum seekers have been granted work permission to access the labour market, this means a considerable cohort of residents of centres now have access to means other than the current Daily Expenses Allowances (DEA) of €21.60 per resident per week. The DEA, formerly the Direct Provision allowance, is the same for both adults and children and is paid by the Department of Employment Affairs and Social Protection. These weekly rates will be increased to €38.80 per adult and €29.80 per

child with effect from 25 March 2019 in line with Budget 2019. The EU Directive allows for asylum seekers in State-provided accommodation to be charged for the provision of that accommodation according to their means. In light of that, RIA has developed a means tested charging system across the centres. Regulations under the EU Directive also provide for the introduction of means testing of the DEA for residents who are in paid employment for a period of 12 weeks or more to decide whether or not they remain entitled to it. Implementation of RIA's charging system for accommodation and means testing of the DEA was, at the time of writing, under discussion between the Department of Justice and Equality and the Department of Employment Affairs and Social Protection.

Basically, the cost of providing accommodation services is calculated at €238 per week per resident. Residents who are in paid employment will be asked to pay a proportion of that €238 in line with their income. There is no charge for the first €97 earned per week, with an incrementally rising scale of charges from €15 per week for income between €97.01 and €210, to €202.30 per week for income between €535.01 and €600. Residents earning above €600 per week will be asked to pay the full accommodation services cost of €238 per week. RIA has confirmed that the Regulation providing for the charges gives asylum seekers a right of review on any decision relating to the proposed charges. The full schedule of charges that will apply is set out in an Information Booklet - Labour Market Access on the Irish Naturalisation and Immigration Service website.

As Ombudsman, I have no difficulty with the principle of people who are getting the benefit of a State service being asked to make a contribution towards the cost of that service according to their means. Anybody who is subject to charges from a public service provider enjoys the right to complain to my Office if they feel that charges are not being correctly applied in their case, or if paying the charges causes them undue hardship or puts them at risk of falling into poverty. This right will be available to any asylum seeker who has sought a review under the Regulation and is not satisfied with the outcome. As charging for accommodation in centres will be a new part of the Direct Provision process, it is a subject my staff will pay particular attention to in their next round of visits to the centres following implementation of the charges.

Increase in the number of people seeking asylum

There was a significant increase in the number of people seeking asylum during 2018. The number entering Direct Provision grew from 5,687 (5,096 in RIA centres with 591 in the Emergency Reception and Orientation centres run by the IRPP) on 1/1/18 to 6,592 on 1/1/19 (6,148 in the RIA and 442 in the IRPP centres). This has put capacity pressure on the system and led to seven new centres being opened in 2018. RIA had planned to open another two centres in Rooskey, Co. Leitrim and Merville, Co. Donegal, in January 2019, but this has been delayed due to arson attacks at both sites. I want to take this opportunity to add my voice to the many people and groups who have condemned these attacks which are completely unacceptable.

With this capacity pressure, centres have found it logistically more difficult to facilitate residents' requests to move accommodation within centres. As a result, RIA is facing greater challenges in facilitating requests for transfers from one centre to another. I will return to this topic in discussing sources of complaints in the next chapter.

Chapter Two

Sources of complaints

In this Chapter, I comment on the sources of complaints received from residents during 2018, and highlight some of the actions that have arisen from our visits. Overall, my Office received 148 complaints during 2018, compared to 115 for the nine month period April – December 2017. I would ask readers to bear this difference in time periods in mind when looking at any statistical comparisons in this chapter. Allowing for the different time periods, there is proportionally very little difference in the level of complaints received in 2018 compared to 2017.

The approach my staff take on their visits to centres is to talk to the residents about any issues they may have, then meet centre management to discuss those issues relating directly to the centre in question. My Office deals with any issues the residents have with other public service providers through our normal complaint handling process. The team has consistently found that this discussion on the day with centre management is an opportunity to present centre-specific issues, some of which local management may not have been aware of. This has allowed the team to explore possible solutions on the spot with the centre manager. My staff have found that this approach has led to specific actions being taken designed to improve the day-to-day experience of the centre residents. During 2018, my staff continued the practice begun in 2017 of following up on our visits with an open letter to residents, where applicable. These letters specify which centre-specific issues had been raised and detail actions that had been agreed or implemented by centre management following the visit. My staff initiated this approach to ensure residents are aware of what my staff discussed with centre management following the meeting with residents.

Complaints against Direct Provision centres

My staff visited 26 centres over the course of 2018, and I comment on the different issues giving rise to complaints below. Overall, my staff reported a higher level of engagement with, and complaints from, residents at the newer centres than at the more established ones.

The lower engagement and complaint levels at the more established centres appear to be linked to the introduction of the right to work, which is only available to asylum seekers who have been in the system for at least nine months. This view is supported anecdotally by my staff who, from their observations at centres and conversations with residents and centre management, reported lower levels of resident apathy and lethargy than they had come across in previous visits to the same centres. Both residents and staff commented on the positive change the right to work has brought to the lives of the residents and, as a result, the general atmosphere in centres.

While some residents continue to have issues, and avail of their right to complain to my Office about them, the overall impression my staff received was of a generally more positive environment at most centres they visited. There are, however, a small number of established centres where the volume of local complaints from, and critical comment by, residents has not decreased. My staff continue to work with local management on those issues, as our experience has been that direct local engagement has proven to be the most successful mechanism to address centre-specific issues.

As well as a proportionately higher level of complaints, my staff also reported a stronger fear of complainant persecution in the newer centres. This is where residents are reluctant to identify themselves as the source of complaints or to complain at all, usually but not always about issues in their centre, for fear of being punished or in some way singled out for having complained. My staff encountered the same issue in their 2017 programme of visits but, while the fear was real and genuinely held, the team did not come across any evidence of residents being actually disadvantaged as a result of complaining about their centres.

There are a number of possible reasons why this fear was expressed more often at the newer centres. One is that newly arrived asylum seekers can sometimes assume a direct causal link between their interaction with centre staff and their asylum application, and it can take some time before people become aware that there is in fact no such link. Some residents stated explicitly to my staff that they feared a negative decision on their application for asylum if they were identified as a trouble maker for raising issues about their living conditions. While my staff and others involved in the system can do their best to reassure residents that their experience at their centre is in no way linked to their asylum application, assuming there is such a link remains an issue for many residents.

Another reason could be that newly arrived residents have come from an environment where the right to complain, and to have one's complaint dealt with fairly and impartially, is different to what it is in Ireland. This may explain the fear cited by other residents that complaining would lead to their being perceived as a nuisance, with negative consequences on how they were treated by local management. A further reason could be just a settling-in issue, with residents taking some time to adjust to new surroundings and to find their feet on issues such as actively engaging with local management on the day-to-day issues that the living arrangements in those new surroundings will inevitably present. While the evidence would indicate that the fear of complaint persecution diminishes significantly as people become familiar with new surroundings, the fear remains real for many people so it is something my Office remains sensitive to in any of its dealings with the residents.

Complaints about food

During 2018 my Office received nine complaints about food. My staff reported that positive engagement between centre management and residents, including but not confined to establishment of residents' food committees, continued to be the most effective way of dealing with resident dissatisfaction with the food served to them at centres. This view is supported by the reduction in the number of complaints about food from those centres where engagement between management and residents on the issue works best. One example of where this happened was at one of the newer centres where my staff received a number of complaints about food. I am pleased to report that, following the visit, management engaged with the residents and set up a food committee. I will look forward to see what impact this, and other actions taken by local management following the visit, has had on the ground when my staff next visit that centre.

Lack of cooking facilities

In my previous Commentary I said that residents' feedback to my staff was that their ability, or inability, to cook their own meals was the single most important issue for them. Based on the feedback from residents to my staff in 2018, this largely remains the case. My staff heard strong expressions of frustration from residents at some centres where self-cooking facilities are not in place or where the facilities are in the process of being provided but where there have been, and continue to be, delays in the provision process. On the other hand, there are a number of centres which superficially appear to have very limited self-cooking facilities (eight hobs in one centre). However, both management and residents at that centre told my staff that there was enough self-cooking to satisfy residents' needs and there were never any problems with residents accessing the facilities that were there whenever they wanted to.

My Office has engaged with RIA on this point which has confirmed that the Department has started a procurement programme for Direct Provision accommodation which will be rolled out on a regional basis by the end of 2019. As part of the specifications for the competitions, tenderers will be asked to provide cooking facilities for residents. Successful tenderers will have up to 16 weeks to provide those facilities from when they are notified that they have been successful. RIA states that it is not possible at this stage to provide a timetable for when individual centres will have the cooking facilities rolled out. This is because of the roll-out of multiple regional competitions and also because some providers may be able to deliver the required services in less than the full 16 weeks. My staff will continue to engage with RIA on this programme over the course of 2019 and will see for themselves what progress is being made when they visit the relevant centres during the year.

Lack of facilities for children

Residents raised a number of different issues with my staff, some of which were common to a number of centres. One of these common issues is facilities for children. RIA has confirmed that accommodation centres for families are required to provide separate indoor recreation areas for young children, children under 12, and teenagers. An outdoor play area is also required, although if there is a facility such as a local playground nearby, there is no need for the contractor to provide one. One of the requirements in the tendering competition referred to above is the provision of dedicated living areas for families and a dedicated teenagers' room. RIA anticipate that access to recreational/play facilities for teenagers and children should greatly increase once the competitions have been concluded. Progress in this area is something my staff will follow up on during our next series of visits to centres.

In one centre where the lack of indoor play facilities for children was raised, the manager confirmed that a play area had previously been set aside and toys provided for the children. However, some of the toys had been broken or removed from the play area and some of the children had not been supervised while there. In situations such as this, our experience has been that provision of practical facilities works best when residents and centre management work together to make the day-to-day experience of the residents as good as it can be. On this particular example, my staff communicated management's point to the residents, emphasising that they, as well as management, have a role to play to ensure that facilities for children are run as best they can be for all concerned.

Availability of washing machines and dryers

Another issue raised across centres was the availability of properly working washing and drying machines. In each centre in which residents raised that point with my staff, management were aware of the issues and were taking action to address them. Sometimes, however, information about the planned work was not always communicated to the residents. The outcome in those cases was that management agreed to be more proactive in keeping residents up to date when steps were being taken to repair or replace broken washing machines and dryers. In one case management confirmed to my staff that the number of washing machines provided was within RIA guidelines, demonstrating that the centre was properly operating its contract on that point.

Lack of general activities at centres

This is another issue that was raised more often at the newer than at the more established centres. Again, it possibly relates to a settling in period while residents become accustomed to new surroundings and the practical operation of shared accommodation residences. As with some other commonly occurring issues, our experience has been that the general organisation of activities works best when residents work with centre management to communicate their views on what particular activities they would like to be organised. In one of the newer centres, local management had organised a particular activity that was initially well attended but where attendance dropped away after a relatively short time. This made it impractical for management to continue to organise the activity. Following discussion with my staff, management agreed to repeat a consultation exercise it had undertaken where the residents were asked to identify those activities they would like to see organised. This consultation included emphasising that consistent engagement from the residents would be needed for any activities arising from the consultation to be continued.

Lack of access to classes

Residents in one centre raised the lack of English language classes available in their centre. Residents in another centre expressed frustration at being unable to attend classes in the nearest large town as the buses from the centre to that town did not coincide with the class times. The issue on the English classes turned out to be a communication point as management were, at the time of our visit, in the process of confirming that classes were being organised locally. Management updated the residents on arrangements for them to attend the classes the day after my staff's visit. On the point of bus times not coinciding with class times, the centre in question confirmed that it would refund bus fares paid by residents to attend classes that were not covered by the centre's own bus service into the town. My staff also engaged with the Department of Employment Affairs and Social Protection, which is responsible for paying the travel costs of residents to events such as medical or legal appointments under the Exceptional Needs Payments (ENP) scheme. The Department confirmed that the ENP scheme does not cover the cost of travel to classes.

Cleanliness and hygiene

These issues also emerged at a number of centres. As with many other sources of dissatisfaction for residents, gaps in communication were apparent to my staff when they spoke separately with the residents and centre management about these issues. At one centre, residents were not aware that cleaning equipment was available as needed from reception at the centre. When my staff brought the matter to their attention management had no issue in ordering further equipment, the arrival of which

I am pleased to report has since been confirmed. In another centre, residents were not aware that they are responsible for cleaning their own rooms, and that cleaning equipment is provided for that purpose. This was another issue where there were more comments from residents at the newer centres, again possibly due to unfamiliarity with the division of responsibilities between residents and centre management for different aspects of daily living in accommodation centres.

Availability and cost of transport to and from centres

Those centres in rural settings or in smaller towns or villages are obliged under their contracts with RIA to provide transport for residents to the nearest large urban area that meets the reasonable needs of residents. The frequency of buses is usually agreed with residents and can be adjusted following consultation. My staff received a number of complaints, again primarily from the newer centres, that the bus service at their respective centres was either too infrequent or did not coincide with courses or classes the residents wished to attend. Residents also complained that, while they had a service to the local town, they did not have transport access to the nearest bigger town or to Dublin. Following our visits, one centre committed to reviewing the frequency of its service to the local town and to consider running an additional service to Dublin. Another confirmed that it refunds bus fare costs to residents who need to go to the local town outside the times at which that centre's bus normally travels.

One resident complained that one of the local taxi drivers available from her centre did not give receipts so she could not claim back the expenses under the ENP scheme. My staff established that the centre management were happy to directly reimburse any fares paid by residents of that centre for any journeys that would qualify for payment under the scheme. Another issue raised by residents was the cost of the local bus service to the nearest large town. In that case local management told my staff that residents had not asked for an additional bus service for educational purposes but that management were happy to explore with the residents if there was enough demand for such a service. My staff communicated this back to the residents through the open letter we send after our visits.

Installation of shops for residents at centres

This issue was raised by residents at a number of centres. As it is a matter for RIA rather than the centres, I deal with it under the section on RIA.

Complaints against the Reception and Integration Agency (RIA)

Transfers

In my previous commentary I said that the most common type of complaint against RIA was about refusals of requests by residents to transfer from one centre to another. That pattern has continued, with refusals of transfers accounting for 32 of the 59 complaints against RIA in 2018. Over the course of 2017, and following engagement with my Office, RIA initiated a policy of considering inter-centre transfer requests on the basis of exceptional need. This means that, for example, a transfer request to be closer to medical treatment would fall to be approved if the person concerned had to frequently attend a specific hospital away from their centre, but it would fall to be refused if the necessary treatment was available at a more local hospital. While I did not uphold nine complaints about refusals of transfer requests, following engagement with my Office, RIA agreed in one case to transfer a resident

to another centre so that person could reunify with family members, and in another case so that the resident could avail of educational opportunities.

Readmission

Refusal of requests for re-admission to centres was a new subject of complaints against RIA in 2018. While asylum seekers are entitled to avail of Direct Provision accommodation while their applications are processed, they are not obliged either to enter or remain in centres. Furthermore, if an asylum seeker chooses to leave an accommodation centre he or she retains the right to the service should he or she decide to come back to a centre. During 2018 my Office received 13 complaints from people who had left centres and whose requests to return were refused. I am pleased to say that, following engagement with my Office, RIA arranged for re-admission of 10 of the people concerned into the service. With the capacity pressure across the Direct Provision system, I accept as a reality that it can take some time for a vacancy to become available for a person seeking re-admission. For that reason my staff stressed this point to the residents over the course of our programme of visits to the centres.

Warning letters/involuntary removal from centres

RIA has a set of House Rules which set out, amongst other things, the standards of behaviour, and consideration for staff and fellow residents, expected of residents of Direct Provision centres. A copy of these Rules is given to residents when they are first assigned to a centre. The section of the Rules on residents' obligations includes sanctions for inappropriate behaviour, up to and including involuntary removal from centres in cases of persistent unacceptable behaviour. The first stage in cases of alleged breach of this section of the Rules is where centre management inform RIA of an alleged breach. RIA then issues a letter to the resident reminding them of their obligations under the Rules and advising them that any further breach could result in removal from their centre or from the Direct Provision system entirely.

My Office received one complaint in 2018 from a resident who had been removed from Direct Provision for alleged consistent unacceptable behaviour. I did not uphold the complaint as I accepted that it was not unreasonable for RIA to have removed the person concerned from the service as a result of their persistent unacceptable behaviour. While involuntary removal of someone from State provided accommodation is a serious sanction, as Ombudsman I accept that it is not unreasonable for RIA to take that step, provided the scale of unacceptable behaviour justifies the sanction involved. I was satisfied the sanction was justified in this particular case as RIA was fulfilling its obligations to protect the health, safety and security of other residents and staff.

The Rules also allow for the removal of residents from Direct Provision for not notifying centre management of overnight absences from their centre. In these cases, centre management inform RIA of alleged absences. RIA then issues a letter to the resident warning them that further absences could lead to removal from the Direct Provision service. My Office received three complaints during 2018 from people to whom RIA had sent such letters. The residents felt that the letters implied that RIA had concluded, without any investigation having taken place, that they had actually breached the Rules. This was different to informing them that an allegation of such breach had been made against them. I am pleased to report that, following engagement with my Office, RIA has agreed to revise the wording of these letters. The revised wording will make it clear to the person being written to that an allegation of breach of the Rules has been made against them, rather than implying that they had actually breached the Rules.

Delays in rollout of food halls (shops) in centres

During 2017 RIA began a programme of installing food halls in centres in which residents can buy food of their own choice through a points system. This gives residents a much improved level of independent living as they can both buy and prepare their own choice of food. The feedback my staff received from residents is that this service is greatly valued, but equally there is huge frustration in those centres where arrangements to install food halls have either stalled or have yet to begin. RIA confirmed that provision of food halls is part of the public tendering process outlined in the previous chapter. Therefore, work on providing that facility in some centres cannot be completed until the tendering process is finished. It was evident, however, that residents at several centres were not aware of this.

My staff engaged with RIA to address this communication gap. RIA has confirmed that the timeline for the works has not yet been finalised, but also that it is committed to updating management in relevant centres as soon as that timeline is agreed. My staff will observe progress on this point when they visit those centres during the year. I am pleased to report that one centre my staff visited confirmed that a food hall opened in December 2018, while another committed to proactively keeping their residents up to date on the progress in installing one at that centre.

Complaints against the Irish Refugee Protection Programme (IRPP)

During 2018 my staff visited two of the Emergency Reception and Orientation centres for which the IRPP is responsible. As the residents in these centres were accepted through the Relocation and Resettlement Programmes, they have a pre-approved right to reside in Ireland and stay at the centres pending provision of housing. The IRPP has a structured process through which it engages with local authorities and other housing agencies so that the residents are housed as quickly as practicable. Unfortunately, the process of housing the residents is caught up in the wider national pressure on housing which has resulted in delays in housing being provided. My staff reported huge frustration among the residents, both at the delays in providing housing and what the residents reported was a lack of information about their individual cases. Of the 18 complaints my Office received against the IRPP in 2018, 17 related to delays in the provision of housing. I am pleased to report that all of the residents covered by those 17 complaints about delay have either been housed or have been made what I consider to be reasonable offers of housing.

The IRPP had operated a system through which each resident or family group was allocated to a particular local authority, with that authority being responsible for providing the housing. Some local authorities provided housing quicker than others, resulting in some people waiting longer for housing than other people in similar circumstances. This inconsistency in wait times caused huge frustration to those residents who saw others who had spent less time in the centres being housed before them. The IRPP recognised this issue and in late 2018 replaced the process of assignment to particular local authorities with a new process. Under the new process, residents are matched on a first come first served basis with suitable housing in whichever local authority area that housing is available.

I fully accept that the delays in housing the residents are a direct result of the current nationwide pressure on accommodation, and that there is little the IRPP can do to increase the flow of housing. I also welcome its recognition that the previous system of allocation by specified local authority was

causing unfairness, and acknowledge its attempts to address this by introducing a new allocation process. Having said that, the delays were only part of the cause of frustration among the residents, with the contended lack of information another significant source of discontent. In that regard, my staff engaged with IRPP which, I am happy to report, agreed to record more information than previously on the actions it takes in attempting to house individuals and family groups. This means that the people concerned can be kept better informed than before on the position on their own particular cases. Following that engagement, I am now satisfied that, while delays remain, the residents are now kept up to date. This means they can at least see that, allowing for the current national housing situation, reasonable efforts are being made to house them as quickly as can reasonably be expected.

Complaints against the Department of Employment Affairs and Social Protection

Of the 14 complaints against the Department in 2018 (16 in 2017), 10 were about refusals of applications for payments under the Exceptional Needs Payments (ENP) Scheme, compared to nine for such refusals from April to December 2017. Among other things, ENPs can be paid to cover necessary travel costs that a resident cannot afford in order to attend, for example, medical or legal appointments. With these relatively low numbers I am reluctant to draw too many conclusions in comparing complaint outcomes from 2017 to 2018. I would observe that complaints about ENP decisions remains the source of most complaints against the Department from Direct Provision residents. This is not surprising as most interaction between residents and the Department would be on the ENP Scheme. My staff have continued to engage positively with the Department at a national level to address any regional inconsistencies in how applications for ENPs are processed. I would like to acknowledge the proactive action taken by the Department's staff when we brought these issues to their attention.

Complaints against the Health sector

My staff dealt with 11 complaints against public service providers in the health sector, nine of which were about delays in either provision of medical cards or in getting hospital appointments. These complaints are a reflection of endemic delays across the health service, and I fully understand any person's frustration at having to wait what can be a very long time for a medical card or hospital appointment. Having said that, I have not seen any evidence of residents in Direct Provision having to wait longer than any other section of the population for hospital appointments

Chapter Three

What we plan to do next

During 2018 my staff continued the structured engagement we began in 2017 with the different stakeholders involved in the provision of public services to residents of Direct Provision centres, in particular RIA and the IRPP. We also continued our programme of visits to centres which we have found to be of great benefit, both to hear directly from the residents about their issues and to see first-hand how the accommodation centres are run on the ground. Analysis in the previous pages of the outcomes of complaints against a range of public service providers my Office dealt with shows that our input continues to contribute towards improvement in the standard of public services delivered to residents.

I look forward to our continued engagement with the sector, and to sharing what we have seen and done.

Appendices

Appendix One

Definitions

Refugee

A refugee is someone who, according to the 1951 United Nations Convention Relating to the Status of Refugees, has had to leave their country of origin because of “a well-founded fear of persecution because of reasons including their race, religion, nationality, membership of a particular social group or political opinion”. Under the Convention, an officially recognised refugee must be afforded protection, access to services and the right to work in another convention country.

Asylum Seeker

An asylum seeker is a person seeking to be granted protection as a refugee outside their country of origin, and is awaiting the determination of his/her status. While their application is being processed, they have a right to protection but not to the freedoms that refugees have. If granted this status, the person is recognised as a refugee and is no longer an asylum seeker. In Ireland, the international protection process is a legal system which decides who qualifies as a refugee and is then entitled to remain in Ireland and under its protection. Those judged not to be refugees can be deported back to their home countries. Others may be granted permission to remain or subsidiary protection.

The terms asylum-seeker and refugee are often confused: an asylum-seeker is someone who claims he or she is a refugee, but whose claim has not yet been definitively determined.

Appendix Two

2018 Statistics

Complaints received by the Ombudsman about Direct Provision

| Body Complained Against | No. of complaints | Upheld | Not Upheld | Assistance Provided | Discontinued Withdrawn / Outside remit | In Progress |
|---|-------------------|-----------|------------|---------------------|--|-------------|
| Reception & Integration Agency | | | | | | |
| Transfers | 32 | 2 | 9 | 7 | 11 | 3 |
| Readmission | 13 | 10 | 2 | 1 | 0 | 0 |
| Accommodation | 5 | 1 | 0 | 1 | 2 | 1 |
| Facilities | 2 | 1 | 0 | 0 | 1 | 0 |
| Warning Letter | 3 | 0 | 2 | 0 | 1 | 0 |
| Involuntary Removal | 1 | 0 | 1 | 0 | 0 | 0 |
| Complaint Handling | 1 | 0 | 0 | 0 | 0 | 1 |
| Other | 2 | 0 | 0 | 0 | 2 | 0 |
| Direct Provision Centres | | | | | | |
| Accommodation | 9 | 1 | 2 | 3 | 1 | 2 |
| Facilities | 18 | 0 | 0 | 11 | 3 | 4 |
| Food | 9 | 0 | 0 | 4 | 4 | 1 |
| Department of Employment Affairs & Social Protection | | | | | | |
| Exceptional Needs Payment | 10 | 0 | 1 | 4 | 4 | 1 |
| Other | 4 | 0 | 0 | 1 | 3 | 0 |
| Health | | | | | | |
| Hospitals - General | 6 | 0 | 0 | 2 | 4 | 0 |
| Medical Card | 3 | 0 | 0 | 3 | 0 | 0 |
| GP Services | 2 | 0 | 0 | 0 | 2 | 0 |
| Other Bodies | | | | | | |
| Other | 9 | 0 | 1 | 2 | 6 | 0 |
| Irish Refugee Protection Programme | | | | | | |
| Housing Provision | 17 | 0 | 2 | 15 | 0 | 0 |
| Other | 1 | 0 | 0 | 0 | 1 | 0 |
| Emergency Reception & Orientation Centres | | | | | | |
| Complaint against staff member | 1 | 0 | 0 | 0 | 1 | 0 |
| | | | | | | |
| Totals | 148 | 15 | 20 | 54 | 46 | 13 |

Appendix Three

Case Studies

Reception and Integration Agency

Re-admission - refusal

Ref OMB-12230-X1S1S2

Not Upheld

Background

A man complained that he had been removed from his accommodation centre by the manager and two security guards following an incident in the canteen which led to him calling the Gardaí. He also complained that RIA had refused his application to be re-admitted to Direct Provision.

Examination

RIA told the Ombudsman that the man's removal from the accommodation centre was not merely as a result of a once-off incident, but as a result of his pattern of poor behaviour while living in Direct Provision. RIA provided an extensive case file dating back to 2009 to the Ombudsman for examination. The man also had a Deportation Order outstanding against him. Therefore he was no longer considered to be in the protection process and RIA did not intend to readmit him to direct provision accommodation.

Outcome

The Ombudsman was satisfied that the most recent incident was a continuation of an unacceptable pattern of behaviour. RIA confirmed that it would reconsider an application for re-admission to Direct Provision accommodation should he be successful in his application for re-entry into the subsidiary protection appeals process. The Ombudsman told the man that if he was refused re-admission by RIA at that stage it would be open to him to submit a new complaint.

Re-admission - refusal

Ref OMB-12246-V7L4Z8

Upheld

Background

A man complained to the Ombudsman that he had been refused admission to direct provision accommodation by the Reception and Integration Agency (RIA). The man arrived in the country in March 2018 but said that he was not aware that he had to present himself to RIA for accommodation when he applied for international protection.

Examination

RIA viewed the matter as a re-admittance case. It was open to RIA to apply discretion as to whether to offer accommodation to the man.

Information was provided to the Office by the man through his representative (due to his lack of English). The man did not understand the process and he did not realise that by failing to seek direct provision accommodation from RIA immediately upon arrival in the country, it would result in him ending up homeless.

Outcome

The Ombudsman was satisfied that this was effectively a first instance admittance request rather than a re-admittance request. Accordingly, the Ombudsman asked RIA to review its decision to refuse the man's request for admission. RIA reviewed its decision and offered the man a place in direct provision accommodation, which he accepted.

Re-admission - refusal

Ref OMB-10826-H8K4H6

Upheld

Background

A non-governmental organisation (NGO) complained to the Ombudsman on behalf of a man who had been refused re-admission to direct provision accommodation by the Reception and Integration Agency (RIA). According to the NGO, the man's request for re-admission to direct provision accommodation was refused by RIA in April 2018.

The man had previously lived in RIA accommodation after arriving in the State in 2015 and had no preference as to the location of the accommodation centre. At the time of making the complaint, the man was being assisted by a homeless organisation but his accommodation would cease with them on 21 April 2018 leaving the man homeless and with no alternative accommodation.

The NGO said that RIA had breached its obligations to this man, as he was entitled to accommodation given that he was still in the international protection process.

Examination

According to RIA, the man was removed from direct provision accommodation as a result of breaching house rules. RIA's position was that the man made himself homeless through his own actions.

The man had applied for international protection in November 2015 and had been accommodated in four centres since. The man was still in the international protection process and therefore entitled to accommodation. However, due to the constant bad behaviour, RIA was of the view that he should be removed from direct provision accommodation entirely.

Outcome

The Ombudsman asked RIA to review its decision to refuse the man's request for re-admission to direct provision accommodation. The Ombudsman also asked RIA to develop a disciplinary procedure or policy document outlining the different outcomes for breaches of House Rules including the penalties for such breaches. Ideally this would also cover the process around removal for misbehaviour. RIA indicated that it was due to update and amend the House Rules in line with the EU Receptions Conditions Directive including a section on the withdrawal of services.

RIA reviewed its decision in line with the Ombudsman's request and said it was open to the man to submit a request for re-admission into direct provision accommodation.

Transfer

Ref D10/18/1294 (OMB-09687-F1Q6G2)

Assistance Provided

Background

A man complained to the Ombudsman about being transferred by the Reception and Integration Agency (RIA) from the reception centre in Dublin where he and his partner were living. The man complained about the short notice he and his partner were given by RIA about having to move to a regional accommodation centre and raised concerns over how he and his partner would be received as a same-sex couple in a rural accommodation centre.

Examination

The Ombudsman explained RIA's dispersal process to the man and confirmed that the transfer is in line with this dispersal process. The man was assured that he and his partner would not be separated in the transfer.

Outcome

The Ombudsman put the man's mind at ease by explaining he was moving to a new family centre and that staff would be there to assist new residents. If the man was not satisfied with the centre once he arrived there, he could submit a new complaint to the Ombudsman.

Accommodation Centre – Transfer

C15/18/0240 (OMB-06885-Z9N8F1)

Assistance Provided

Background

A man living in a direct provision centre visited the Ombudsman's Office to complain about his treatment by the Reception and Integration Agency (RIA). The man said his partner had moved to the Mosney Accommodation Centre and he had requested a transfer to be with her. The man said that although he had informed his current accommodation centre that he was visiting his partner, it had deemed his bed space to be abandoned. Therefore, the man said he had nowhere to sleep that night while waiting for the decision on his transfer request.

Examination

The Ombudsman immediately contacted the RIA. It responded on the same day to say a letter had issued earlier that day to the man approving his transfer to the Mosney Accommodation Centre.

The Ombudsman contacted the man, who said he had nowhere to sleep that night. The Ombudsman requested a copy of the letter from RIA by email and then sent a copy of the letter to the man's email address. He also advised him to contact the Mosney Accommodation Centre to check whether it would accept this copy before making his way there. The man was admitted to the centre later that evening.

Outcome

The Ombudsman was satisfied that RIA had approved the man's transfer.

Accommodation

C15/18/0635 OMB-08257-K0P8D4

Upheld

Background

A non-governmental organisation (NGO) complained to the Ombudsman on behalf of a man who had been refused re-admission to direct provision accommodation by the Reception and Integration Agency (RIA). According to the NGO, the man presented himself at its offices in February 2018 looking for help with a request for re-admission to direct provision accommodation.

The man informed the NGO that he had previously lived in a RIA accommodation centre, but that he left in November 2017 to live with his partner in Cork. However, the relationship had since broken down and he was no longer living with his ex-partner. The man's living situation was precarious and he was staying with a friend on a temporary basis as he was homeless. The NGO helped the man to submit a request to RIA to be re-admitted to direct provision but RIA refused the request.

A further re-admission request was made to RIA by the NGO but this was also refused. In its letter to the NGO, RIA said: "I note the contents of your letter, particularly [the man's] fears that he may have no alternative than to sleep rough in the coming weeks ... unfortunately we are experiencing an unprecedented shortage in our accommodation at the moment and as a result cannot locate any suitable vacancies for [the man] in our accommodation."

Examination

The man had since become homeless and was sleeping rough. He said the Islamic Centre had allowed him to stay there during the freezing temperatures in late February and early March 2018, but he did not know how much longer it would allow him to stay. At that time, he was living on the streets during the day as he could not find shelter during daylight hours.

Outcome

The Ombudsman requested that RIA review its decision to refuse the man's request for re-admission to direct provision accommodation. RIA reviewed its decision in line with the Ombudsman's request and offered the man a place in direct provision accommodation, which he accepted.

Irish Refugee Protection Programme (IRPP)

Accommodation - Delay

Ref OMB-23046-Q9L8G0

Assistance provided

Background

A woman complained that she and her family had been waiting over six months to be housed. The family were Programme Refugees which means their application to live in Ireland was pre-approved before they came here and they were accommodated in an Emergency Reception and Orientation Centre pending allocation of housing. The woman said she had not heard anything about when or where she and her family were to be housed. This was one of a total of 18 similar complaints made to the Ombudsman.

Examination

Providing housing to Programme Refugees is the responsibility of the Irish Refugee Protection Programme (IRPP) agency within the Department of Justice and Equality. The IRPP told the Ombudsman that it had operated a system through which each resident or family group was allocated to a particular local authority, with that authority being responsible for providing the housing. Some local authorities provided housing quicker than others, resulting in some people waiting longer for housing than other people in similar circumstances. IRPP recognised the position and in late 2018 replaced the process of assignment to particular local authorities with a new process through which residents were matched on a first come first served basis with suitable housing in whichever local authority area that housing was available.

The woman and her family were housed in November 2018. All bar one of the other complainants were also housed by the end of 2018. This complainant was offered an apartment in a provincial town but declined the offer.

Following contact from the Ombudsman, the IRPP agreed to more fully document the actions they take in attempting to house individuals and family groups so that the people concerned can be kept better informed on the position on their own particular cases.

Outcome

The Ombudsman considered the IRPP's actions in introducing its new allocation process to be reasonable, and that its offer of an apartment to the one complainant who has not been housed was also reasonable. He welcomes the IRPP's commitment to more fully document its actions in securing housing for Programme Refugees.

Information Factsheets



Our Information Factsheet on the Ombudsman and direct provision are available in:

- Arabic
- English
- French
- Russian
- Urdu



Ombudsman

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