The Ombudsman & Direct Provision: The story so far

Ombudsman

A commentary by the Ombudsman





Ombudsman

2018 Office of the Ombudsman

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January 2018

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Foreword

Conflict and persecution continue to be an unfortunate reality in our modern world. Conflict almost invariably leads to displacement, which in turn leads to people seeking refuge in other countries. This presents destination countries with challenges on how to deal with people seeking refuge, including the issue of right of residence.

Ireland is no different to many other destination countries in that respect, with each country having to make decisions on who we should admit, and how and where we accommodate people while those decisions are being made.

Many European countries, including Ireland, provide State accommodation for asylum seekers. While it is up to each country to have its own policy, any State system should recognise the trauma that has caused people to present themselves to a strange land, and respect the dignity of people who have taken the huge step of fleeing their homeland.

In this commentary I look at how we in Ireland deal with people who present themselves here to seek refuge, how we accommodate them and how we respond when they raise issues about that accommodation. I comment on what I and my staff have seen and heard, on what we have done with that and what I think remains to be done.

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





Peter Tyndall
Ombudsman
January 2018

Chapter One

Background

As a party to the 1951 UN Geneva Convention relating to the Status of Refugees, Ireland introduced the core principles of the Convention into domestic Irish law by means of the 1996 Refugee Act. This includes the provision to process applications from anyone who presents at an entry point to the State and seeks international protection. People who apply for protection in this way are offered the choice to cater for themselves while their application is processed or to enter into the State's Direct Provision system. The Department of Justice and Equality has responsibility for the international protection process in Ireland and in 2001 set up an internal agency called the Reception and Integration Agency (RIA) to administer the Direct Provision system.

Ireland also accepts persons seeking protection under the EU Relocation and Resettlement Programmes. Refugees who are accepted through these Programmes are entitled in principle to permanent settlement in Ireland and are accommodated in one of three Emergency Reception and Orientation Centres (EROCs) until their applications are fully processed. The Department of Justice and Equality also has responsibility for these Programmes in Ireland and set up another internal agency in 2015 called the Irish Refugee Protection Programme to administer them.

In Direct Provision, asylum seekers are assigned to one of 34 centres where they are provided with full board accommodation while their applications for international protection are being processed. Residents of Direct Provision centres have free movement within the State but must inform the centre to which they have been assigned of any overnight absences. Up to November 2017, residents did not have the right to work and were paid a weekly allowance of €21.60 per person. In May 2017, the Supreme Court ruled that the blanket prohibition on allowing asylum seekers to work is unconstitutional. The Court order was postponed for six months to provide the State time to address the situation. The Minister for Justice has committed to implement the Court ruling in early 2018.

When the Direct Provision system was introduced in 2000, it was expected that applications would be finalised in a number of months so that asylum seekers would not have to stay in the centres for any longer than that. The Direct Provision accommodation centres are dispersed across the State, some in city centre locations, others in isolated rural areas. Many are former hostels or disused hotels that have been re-opened under a contract framework with RIA. Families, including single parents with children, are accommodated together. Single people normally share rooms, often with two or more other people of the same gender but whom they would not have known before arriving at their designated centre. Some centres cater exclusively for single males and single females respectively, others for families, with a number of centres housing a mixture of families and single people.

Delays in the Process

Up until 31 December 2016, asylum seekers could seek permission to live legally in Ireland through applying for either category of international protection, namely refugee status or subsidiary protection. Those who did not qualify for protection status had, at the Minister's discretion, the possibility of being granted permission to remain in the State on other grounds including humanitarian considerations. If a person's initial application for refugee status was refused, they had the right to appeal to the Refugee Appeals Tribunal and following this, to seek judicial review of the decision. If this did not lead to a change in the decision to refuse their application, they could then apply for subsidiary protection, with the same review rights. Finally, if they did not qualify for refugee or protection status they could make representations to the Minister of Justice to explain why they should be allowed to stay in Ireland. With two possible appeals on each ground and a lengthy time frame in order to obtain permission to apply for judicial review, many applications took between three and five years, and sometimes longer, to finalise.

In 2014, the Working Group on the Protection Process including Direct Provision and Supports for Asylum Seekers was established under the chair of Justice McMahon. Its terms of reference were directed towards the identification of improvements to the existing system rather than the identification of alternatives. Also of particular note was the Government's commitment to legislate for a single application procedure to reduce the length of time that applicants must wait for a final decision.

Arising from recommendations in the Working Group Report (McMahon Report) of 2015, the Department reviewed the asylum application process. With effect from 1 January 2017, it replaced the previous multi-layered and sequential procedure with a streamlined process through which asylum seekers would have their applications for refugee status, subsidiary protection and permission to remain assessed at the same time, with a single right of appeal of any refusals. This is very much welcomed and I look forward to seeing this process being implemented efficiently. The Department envisaged that the new process would result in a final decision on the application process being made in a year or less in almost all cases. It has confirmed it received 2,930 applications for international protection in 2017 and that 1,700 first instance decisions were made by the International Protection Office in that year. I intend keeping in touch with the Department on this point.

My remit

Arising from Justice McMahon's recommendation that the Ombudsman should have the remit to examine complaints about the experience of residents of Direct Provision centres, the Department agreed that my Office would formally accept such complaints from 3 April 2017. While both my predecessor and I have consistently argued that my Office has always had this remit, I nevertheless welcome the Department's confirmation which removes any doubt about the issue. My remit covers any interaction residents of Direct Provision have with public service providers, including their experience within the centres themselves, but does not cover their applications for the right to live legally in Ireland. My Office has produced a Factsheet for people living in Direct Provision explaining my remit. The Factsheet is available on my Office's website (Ombudsman.ie) in the five most common languages of residents of the centres, namely English, Arabic, Urdu, Russian and French.

Engagement with RIA and IRPP

Following confirmation on my remit, my staff met with the heads of RIA and IRPP and agreed to periodically meet formally to discuss any issues arising. To maximise the effectiveness of this contact, my staff raise any issues in advance of the formal meetings to give RIA and IRPP the opportunity to deal with them so the meetings can focus on progress made rather than on discussing issues for the first time.

As part of its role in managing the asylum process, RIA established and chairs an Inter-Agency forum through which the various agencies responsible for providing services to asylum seekers meet to discuss any issues involved in providing those services. The agencies include RIA, the Direct Provision centres, the HSE, Tusla, local community Gardaí, local schools and a range of charities and NGOs who work with asylum seekers. The Inter-Agency meetings are held twice each year at a number of regional centres around the country which between them cover all the Direct Provision centres. My staff attended these meetings between Autumn 2016 and Spring 2017 to introduce themselves to the people involved with Direct Provision residents and to familiarise themselves with the issues arising through that service.

Programme of visits to Direct Provision and EROC centres

Since April my staff have undertaken a programme of visits to all Direct Provision centres and EROCs. The first group of visits were to the regional centres which hosted the Inter-Agency meetings where my staff took the opportunity to meet directly with residents to hear first-hand about any issues the residents had. My staff then systematically visited all the remaining regional centres through a series of trips where teams of two from my Office visited either two or three centres in the same region over a two-day period, depending on the distances involved. Those centres in or near to Dublin were visited on a same-day basis. In order to maximise awareness of our visits among residents, my staff arrange for publicity about the visits to be distributed at the centres a week in advance and contact local charities and/or NGOs who work with asylum seekers at the relevant centres. I have also highlighted my role in Direct Provision through my website and twitter account.

Engagement with the Ombudsman for Children's Office (OCO)

There are many families with children in Direct Provision which means the centres come under the remit of the OCO as well as mine. My staff work collaboratively with their counterparts in OCO, initially through a joint briefing for Direct Provision centre managers hosted by OCO and at which both I and Dr Niall Muldoon (Ombudsman for Children) explained our respective roles to the managers and took the opportunity to meet directly with them. My staff also briefed the managers on best practice in complaint handling. The staff of both our Offices also discuss our approach to the various issues we have noticed in our visits to the centres (OCO has also undertaken a programme of visiting the centres). To maximise our reach, each Office has taken complaints from residents relevant to the other's remit and transferred them for action so that the residents don't need to wait for a visit from my staff to make a complaint to my Office and vice versa.

Engagement with NGOs

There has been and continues to be significant engagement by NGOs and local charities with the residents of Direct Provision centres. In recognition of this avenue of contact with the residents, we hosted a briefing for residents' representatives at my Office to discuss how we might best work together for the residents' benefit. This includes giving advance notice of our visits to the centres to the local voluntary groups or NGOs so that they can raise awareness of the visits among the residents.

Chapter Two

What we found and what we are doing about it

Complaints against the Direct Provision centres

We have found that the most effective way to deal with complaints about the centres themselves is to meet firstly with the residents, then immediately afterwards with the centre manager to discuss any issues raised by the residents. This approach has resulted in some issues being resolved on the day of our visit, some being clarified by the manager and others being left with the manager to consider further.

From their visits my staff have seen that the type of accommodation and provision of food varies between the different centres. Some have fully self-catering accommodation, where residents cook their own meals within self-contained residential units. Others have more limited cooking facilities, where residents can cook on hobs in communal cooking areas. The remainder provide canteen style food directly over food counters. Most of the centres also provide snack facilities, usually tea or coffee stations, sometimes along with fruit and ingredients for making sandwiches. Centres housing schoolchildren provide school lunches, either pre-packed or through providing parents with sandwich ingredients.

Complaints about food

Many of the complaints we get have been about food, both food quality and the way it is prepared or presented. There have also been complaints about the attitude of centre canteen staff, particularly where residents have specific dietary needs or ask for more food, the opening hours of canteens and the lack or absence of self-cooking facilities at many centres.

We have found that some complaints about food can have a cultural dimension. For example, in one centre a resident complained that the food was too spicy, while another at the same centre complained that it was not spicy enough. The residents involved were from different cultural backgrounds with different preferences regarding the spiciness of food. In that case the manager agreed to label the spice level of the various main dishes so residents could be aware of how spicy a dish was before they chose it.

We have found varying levels of practical engagement between centre management and residents at the different centres. With regard to food, some centres engage directly with residents on food preparation. This includes catering staff taking direct instruction from residents on preparation of particular ethnic food dishes. Other centres provide specific ethnic food dishes on a regular cycle, with the ethnic origin of most dishes varying in line with the ethnic composition of the resident population. We have engaged with the managers at those centres where there is less well established practical involvement of residents on food issues to inform them of the benefits we have seen follow from such practical involvement, both for catering staff as well as the residents. While engaging practically with residents seems to offer a way forward, we continue to get complaints about food on our visits.

Complaints about the attitude of centre staff to residents

We have found that some of these complaints can have a cultural or communication dimension. For example, we got a complaint from a resident who was deeply reluctant to ask for more food as doing so would be regarded as begging in her culture. Centre staff were unaware that the woman was not getting enough food, or of her reasons for not asking for more. We agreed with the centre that, when serving her food, staff would proactively ask her if she wanted more which would mean she would get enough food without her having to face the cultural difficulty of asking for more.

Complaints about staff rudeness or inappropriate communication can often be challenging to seek to resolve. Some have arisen over cultural differences between staff and residents over what is regarded as shouting by one person and normal assertive communication by another. Other complaints have been about once-off verbal altercations where there were neither witnesses nor contemporary records that would assist with objective examination of the complaints. Sometimes it can be a case of a centre manager reminding a staff member just to be aware of a resident's particular cultural background when dealing with them.

Lack of cooking facilities

RIA is currently in the process of providing cooking facilities for residents at a number of centres. My staff have seen installation of cooking facilities at several centres, where it has been overwhelmingly positively received by residents. There is variation between the centres on the practical issues, with some providing uncooked food for the residents to prepare, while others provide the facilities but not the food. The view of my staff, based on feedback they have got, is that this is the single most important issue for residents.

Lack of other facilities, including childcare

Direct Provision centres are run on the basis of contracts agreed between the centres and RIA which do not require centres to provide childcare facilities, such as crèches or play areas. However, what we have seen is that some centres, either through the involvement of local groups or particularly proactive centre management, do provide crèches and play areas while not being specifically obliged to do so under their contracts. This means that the facilities available to residents can vary from centre to centre, much to the frustration of the residents of centres at which the facilities are not provided. While I fully understand the residents' frustration, I can equally understand the position of a centre which fully complies with its contractual obligations.

There is similar centre to centre variation in the provision of communication facilities, with my staff getting complaints about inconsistency in the quality of television and Wi-Fi signals. Poor signal strength is often unavoidable for simple infrastructural reasons such as the physical location of a centre or the thickness of its walls, etc. This is nevertheless another source of frustration for those residents who are aware that their peers in other centres get a much better television and Wi-Fi service than they do. As with childcare facilities, given that the centres provide facilities as per contract, I can understand the limitations on their ability to resolve this type of complaint.

Communication issues between residents and staff

My staff have found that complaints often arise due to communication issues rather than an underlying problem per se. In several centres residents complained about issues that the managers were not aware of when my staff spoke to them. For example, a resident complained about the lack of hand wash at their centre. It turned out that a staff member was available at a designated time each week to talk to residents about such specific housekeeping issues, but the resident was not aware of this. The contracts with RIA provide for regular meetings between centre staff and residents to discuss day to day issues that arise in centres. My staff have found that these structured regular meetings take place at a number of centres, and generally work very well when they do. Managers in other centres have reported that they used to convene meetings with residents but, over time, attendance rates dropped, eventually leading to the meetings lapsing due a lack of ongoing engagement by the residents.

In some of these cases the managers have found that informal, ad hoc engagement with the residents on day to day issues can work just as well as the structured meetings as a source of dialogue. One manager makes a point of taking her afternoon coffee from the machine in the residents' common room which she has found very useful as a mechanism for hearing about residents' issues. Some residents have made similar comments to my staff.

My staff have observed that this lack of engagement by residents appears to be more pronounced at the male only centres than it is at the female only or family centres. Managers have cited cases where agreed arrangements were made in response to complaints from residents only for there to be a very limited uptake of those arrangements. This has happened at a number of centres for trips or events for which transport would have been booked but where only a handful of residents turned up at the designated time. In another case the residents complained to the centre manager about their lack of opportunity to participate in sport, specifically to play football. The manager used her local contacts to get access to a pitch but only two residents turned up at the designated time.

Perhaps this trend of limited engagement may be linked to a sense of institutional lethargy among residents who have been living in Direct Provision for, in many cases, several years. As Ombudsman what I look at is how reasonably people have been treated. In this context, while I understand the frustration of those residents who do turn up for agreed events, I am also mindful of the efforts that the centres are making to provide outlets for the residents in their centres.

Fear of complaint persecution

Many residents have told my staff that they were reluctant to complain about issues at their centres for fear of being singled out as troublemakers or persecuted in some other way for having complained. Similar fears were expressed about complaining to RIA, including a perception that complaining could lead to a person being involuntarily transferred to another centre. I deal with this point below in the context of my staff's discussions with RIA on how requests for transfers are dealt with. While my staff did not see any evidence of such persecution, the issue remains a matter of concern for some residents. However, my staff have reported that the frequency of residents expressing this fear of persecution seems to have declined as our programme of visiting all the centres has continued. Perhaps residents are becoming more assured on this point and therefore feel more confident in making complaints.

Complaints against the Reception and Integration Agency (RIA)

The most common type of complaint against RIA is about refusals of requests from residents to transfer from one Direct Provision centre to another. Most refusals are because there is no suitable capacity at the centre to which the resident has asked to transfer. I accept that refusal of a request to transfer on capacity grounds is reasonable. However, I also think it is reasonable to hold applications from a person or family refused a transfer for capacity reasons so that they can be accommodated at their preferred centre if and when a suitable vacancy arises. My staff engaged with RIA on this and I am pleased to report that RIA have started to take this approach. We are continuing to engage with RIA on the issue of involuntary transfers where residents can now ask RIA to explain to those individuals who are being moved for breaching House Rules, why it is that they are being moved from their centre.

My staff have dealt with complaints about refusal of transfer requests for reasons other than centre capacity. RIA has told my staff that its policy is to keep families together and to accommodate people close to education and training opportunities where practicable. We have dealt with a number of complaints where requests for transfers to improve access to medical treatment, to reunite with family, or to avail of education or training opportunities have been refused. RIA's position on these cases is that the residents have not demonstrated that there were exceptional circumstances in their situations that would justify a transfer. In a number of cases we have accepted that transfers were not necessary as appropriate medical services or access to training and education opportunities were available locally. In other cases we were satisfied that the residents had made reasonable cases to justify a transfer and got RIA to agree to overturn its initial refusal of their requests. One of these cases involved a young asylum seeker whose request to be transferred to Dublin to reunite with family and continue her education was refused as RIA was not satisfied her circumstances were exceptional. Following contact from my Office, RIA agreed to grant the request on humanitarian grounds.

I visited a Direct Provision centre in Waterford City as part of my Office's regional visit there on 14 and 15 September 2017. A resident showed me a letter RIA had sent him giving him six weeks to vacate the centre on the grounds that there was a Deportation Order outstanding against him. The resident had been getting instructions on a monthly basis from the Gardaí to present himself for deportation at a specified Garda station, instructions he had complied with. Each month he presented himself, he was given another letter acknowledging his compliance with the instruction and told to present himself again the following month.

The letter from RIA had upset the man greatly as he felt he had done everything asked of him but was now facing destitution as, with a Deportation Order outstanding against him, he had no legal entitlement to live in Ireland and therefore was not entitled to avail of State housing or homelessness services. Other residents in that centre had also got similar letters from RIA. My staff engaged with RIA on these letters who confirmed that it had issued 23 in total to residents across different centres. I am happy to report that RIA has confirmed that, while it does write to residents who have Deportation Orders outstanding against them, this is to encourage them to agree to voluntary deportation and it will not forcibly remove any of the 23 residents concerned from Direct Provision. It has issued further letters to a number of those residents but I am satisfied that these letters are an effort to facilitate voluntary deportation and are not an attempt by RIA to forcibly remove anyone from Direct Provision. I can also confirm that the man I spoke to was happy to move back to his native country through voluntary deportation and, following contact with my staff, was provided with the details of the relevant unit in the Irish Naturalisation and Immigration Service to arrange his repatriation.

Complaints against the Department of Employment Affairs and Social Protection

Most complaints against the Department come from refusals to approve Exceptional Needs Payments (ENP) for, most commonly, transport costs to attend medical or legal appointments or to attend education or training courses. Exceptional Needs Payments are designed to cover unforeseen or exceptional situations where once-off expenses that cannot reasonably be predicted arise. The Direct Provision weekly allowance of €21.60 is not enough to cover the cost of transport, so residents apply to their local Designated Person (formerly the Community Welfare Officer) when the need arises.

My staff have found the way ENP applications from Direct Provision residents are handled varies, with several Designated Persons basing themselves in centres, others dealing with residents directly at their local offices or over the phone, while some deal exclusively with written applications. Some Designated Persons approve applications in advance while others approve retrospectively on production of bus ticket receipts etc. but most ENP applications to attend medical or legal appointments or to attend education or training courses are approved. However, my staff have noticed some exceptions to this, with a small number of Designated Persons in specific places habitually refusing applications that are normally granted elsewhere. This is a huge source of frustration for the residents concerned who are aware that their peers in most (almost all) other centres regularly get approval for applications that are equally regularly denied to them. We have engaged with the Department at a national level on this point which has addressed this issue and I am happy to report that my staff have succeeded in getting cases of this type resolved.

We have also dealt with a number of cases where applications for ENPs were refused on the grounds that the residents had access to their own transport and therefore did not meet the conditions needed for ENPs to be granted. While the allowance of €21.60 is not enough to cover transport costs, I accept that any residents who have enough means to source their own transport do not need support from the State to pay their travel costs so I am satisfied that the Department's decisions to refuse ENP applications in these circumstances are reasonable.

Complaints against the HSE

Most complaints against the HSE come from requests to access medical services, or from delays in awarding or refusals to approve applications for medical cards. As the HSE has been under my Office's remit since its foundation, we have well established lines of communication that are working well to help our examination of complaints against the HSE.

One type of complaint arises from the limited amount of dental treatment covered by the medical card, for example two fillings per person etc. Many residents of the EROCs in particular need dental treatment much in excess of what is covered by the medical card. My staff have put these residents, and others in the Direct Provision centres who complained to us, in touch with the Office of the Principal Dental Surgeon who has the discretion to consider applications for dental treatment not covered by the medical card. At the time of writing my staff are not aware of any residents who have engaged with that Office and are not satisfied with the outcome.

Another source of complaints has been about clinical decisions made by local GPs, most commonly about contended inadequate prescriptions. Unfortunately I do not have the remit to examine the clinical judgement exercised by medical professionals, but my staff have been assured by the HSE that it would investigate should a pattern of consistent complaints about professional standards of any particular GMS doctor(s) arise.

Emergency Reception and Orientation Centres

In 2015, the Irish Government approved the establishment of the Irish Refugee Protection Programme (IRPP) and pledged that Ireland would accept up to 4,000 persons seeking protection under the EU Relocation and United Nations High Commission for Refugees (UNHCR) Resettlement Programmes. Under the UN Programme, people arriving in Ireland from Lebanon have already been granted refugee status. Under the EU Programme, people arrive in Ireland from Greece and Italy before their status is determined. It is up to the International Protection Office in the Department of Justice and Equality to process claims for international protection. People arriving in Ireland under these Programmes are provided with shelter and full board accommodation in the EROCs.

My staff have visited all three EROCs and came across similar issues to those that arose in Direct Provision centres. There were complaints about food, standard of accommodation, access to healthcare and dental care. As with the issues raised in the Direct Provision centres in relation to the provision of dental care, we have referred these people to the Office of the Principal Dental Surgeon. Also, in one EROC in particular, there was a feeling amongst residents of social exclusion and segregation from the local community.

The issues causing most concern to me are what the residents told my staff regarding the unrealistic expectations they say they were given before they arrived in Ireland, namely that they would be housed in local communities within a matter of weeks and have all their health issues addressed. My staff noticed that one centre appears to run more smoothly than the others with my staff being told that many of the residents assigned to this centre are housed in the local community, in the main, within three months of arriving in Ireland. We put these points to the IRPP which strongly challenges the accuracy of the position as presented to us. My staff also reported that the residents in that centre are incredibly satisfied with the service, support and care they are receiving there. We observed a huge effort from centre management, staff and the local authority to support the recently arrived refugees and to help them integrate into the community.

We have met with the IRPP to discuss our concerns regarding the differences in the running of the EROCs and the issues that my staff have identified. The IRPP acknowledged our concerns and confirmed that they are taking steps to address those issues. We have agreed to meet again following our next round of visits to the EROCs. I welcome the positive interaction with the IRPP to date and the action it is taking on these issues.

Chapter 3

What we plan to do next

As I have already said, given the unique set of issues that dealing with Direct Provision has presented us with, we have tailored the approach we take to dealing with complaints from residents. We will continue to do that and to further adapt our approach in light of our experience in the sector going forward.

Following up on our centre visits by issuing a communal response to residents on communal issues is an adaptation we intend to continue. We also intend to undertake a series of follow-up visits to centres, focussing on those at which the greatest number of complaints or issues have come to our attention. As we will again be a physical presence in the centres, this will allow us to see first-hand what impact implementation of the Supreme Court decision giving asylum seekers the right to work will have on people in Direct Provision. We will also continue our collaboration with OCO, and our structured engagement with RIA, the IRPP, the Department of Employment Affairs and Social Protection and the HSE.

I look forward to further fruitful engagement on this unique aspect of my remit.

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

Statistics

Complaints about Direct Provision

April - December 2017

Body Complained Against	No. of complaints	Upheld	Not Upheld	Assistance Provided	Discontinued or Withdrawn	In progress
Reception & Integration Agency						
Transfers	30	2	15	7	3	3
Letters re. Deportation Orders	3	3	0	0	0	0
Other	4	1	0	1	2	0
Direct Provision Centres						
Accommodation	12	0	1	6	4	1
Food	8	1	2	2	1	2
Facilities	3	0	1	0	1	1
Complaint about a Staff Member	4	0	0	0	3	1
Other	4	0	0	2	1	1
Department of Employment Affairs and Social Protection						
Exceptional Needs Payment	9	1	3	2	3	0
Other	7	1	3	1	1	1
Health						
Various	10	1	1	6	2	0
Legal Aid Board	3	0	0	1	2	0
Total	**97**	**10**	**26**	**28**	**23**	**10**

Appendix Three
Case Studies

Reception and Integration Agency

Deportation Order

Ref C15/17/3379

 # Case Outcome: Upheld

Background

A man living in a Direct Provision accommodation centre complained to the Ombudsman about the decision by the Reception and Integration Agency (RIA) to issue him with a letter asking him to vacate the centre. The man was issued with a Deportation Order in 2011 but he had not been removed from the State.

Examination

The man told the Ombudsman that he believed that this action by RIA was as a result of him complaining about the accommodation centre where he lives. He also told the Ombudsman that he wanted to return to his home country and that he had told RIA this, but it had failed to enforce the Deportation Order. He said that if RIA evicted him from the accommodation centre then he would have nowhere else to go in Ireland.

Following contact from the Ombudsman, RIA told him that in order to create capacity for new people in the direct provision system, letters had been issued to those people living in direct provision who no longer qualify for RIA accommodation as they are no longer considered to be in the protection process. RIA explained that it is working on assisting persons to comply with Deportation Orders and the letter in this instance was in no way connected to the man's other complaint about the centre. RIA did provide an assurance to the Ombudsman that it will not remove anyone from direct provision centres against their will. The Ombudsman passed on this assurance to the man and put him in contact with Irish Naturalisation and Immigration Service (INIS). INIS can arrange for voluntary deportation of people whose application for asylum have failed and are willing to return home but do not have the means to do so.

Outcome

The Ombudsman was satisfied that RIA's assurance that it will not remove anyone from direct provision centres against their will was reasonable.

Transfer

Ref C15/17/2011

 # Case Outcome: Upheld

Background

A young woman arrived in Ireland alone, applied for asylum as a minor and started in Fifth Year in school in Dublin in 2016. Her only family member in Ireland was her aunt who also lived near the young woman's school. She initially lived with her aunt but this situation became unsustainable after a few months so she went into Direct Provision in April 2017 and was assigned to a regional Direct Provision centre. The Manager of that centre facilitated the young woman travelling to Dublin for school during the week then back to the regional centre for the weekend until she completed Fifth Year in May 2017. As she was absent from her designated centre on weekdays for several weeks the Reception and Integration Agency issued her with a warning letter about those absences. During the school holidays the young woman complained to the Ombudsman about the warning letter and confirmed that she wished to transfer to a centre in Dublin to continue her education.

Examination

RIA disputed that it had issued a warning letter and told the Ombudsman that it had not received a transfer request from the young woman. The young woman was able to provide the Ombudsman with a copy of the warning letter issued by RIA. On hearing that she needed to submit a transfer request, she did so, but it was rejected by RIA on the basis that exceptional circumstances did not exist in her case.

RIA's decision appeared to the Ombudsman to be inconsistent with its policy of keeping residents of Direct Provision close to other family members in the country, as far as possible, and facilitating continuity of education.

The Ombudsman was of the view that in order to prevent a break in the continuity of her education she should be given the opportunity to remain in the same school that she had attended the previous academic year. RIA told the Ombudsman that there was limited capacity in the one Dublin Direct Provision Centre most suitable and accessible for commuting to the complainant's school.

The Ombudsman was satisfied that the complainant's circumstances were exceptional and that everything should be done to allow her to complete her Leaving Certificate in a school she was familiar with and close to family support in the form of her aunt. For this reason the Ombudsman asked RIA to review its decision.

Outcome

RIA agreed to review its decision on humanitarian grounds and granted the complainant a transfer to a Dublin accommodation centre within commuting distance of her school and her aunt.

Transfer

Ref C15/17/2706

 # Case Outcome: Assistance provided

Background

The Ombudsman received a complaint from a woman concerning the decision of the Reception & Integration Agency (RIA) to refuse her transfer request. The woman sought a transfer to self-catering accommodation in Dublin as she was receiving regular medical treatment there. She said that the food in the current centre was unsuitable.

Examination

RIA told the Ombudsman that it was reviewing a further transfer request from the woman, which was made on medical grounds and that the woman had not raised any issue about the food in the current centre. RIA stated that her file had been referred to the Independent Medical Referee (IMR) for review who was satisfied that the woman needed to be closer to Dublin as she will be attending hospital there indefinitely. The woman and her husband were subsequently moved to a Dublin centre.

Outcome

The Ombudsman was satisfied that the woman's medical circumstances had been considered when reviewing her transfer request and welcomed the decision to move the family to Dublin to allow easier access to medical services there.

Transfer

Ref C15/17/3091

 # Case Outcome: Assistance provided

Background

A woman complained about the suitability of her accommodation in a Direct Provision centre. She said that she had a chronic medical condition and that her third floor room was unsuitable for her physical needs. The woman sought a transfer to a ground floor unit in her current centre or a move to suitable accommodation in another centre.

Examination

The Reception & Integration Agency (RIA) confirmed that it believed her request for medical reasons was warranted. However, it advised that there were no ground floor rooms available in the centre and it currently had no suitable vacancy for her in its other centres. The Ombudsman noted that RIA wrote to the woman in early October 2017 to inform her that it will contact her when a suitable vacancy arises. It confirmed to the Ombudsman that it was actively trying to identify suitable accommodation for her.

Outcome

The Ombudsman was satisfied that RIA had accepted the woman's transfer request and acknowledged its commitment to source suitable accommodation for her.

Transfer

Ref C15/17/1037

 # Case Outcome: Not Upheld

Background

A man complained to the Ombudsman about the Reception & Integrations Agency's (RIA) decision to refuse his request to transfer from his current centre to Dublin. He stated that he had a severe medical condition and that he was attending a Dublin hospital every week for treatment. The man also stated that he had been accepted onto an educational course in Dublin.

Examination

RIA stated that as the transfer was requested for medical reasons the matter was referred to the Independent Medical Referee (IMR) for review. Following a review of the medical evidence, the IMR was of the opinion that there was no need to transfer to Dublin as the health services he required were available at the man's local hospital. The Ombudsman noted that RIA had refused the man's previous transfer request and that it recommended that he ask his Consultant in Dublin to transfer his medical file to his local hospital. However, the man did not do so.

With regard to the educational element to the request, RIA stated that there are educational courses available in the man's local area so a transfer is not justified on those grounds. For this reason, and as the man accepted the place on the course before requesting a transfer to Dublin, did not consider he had a basis to ask RIA to reconsider its decision.

Outcome

In examining complaints where the decision is based on medical evidence, and differing medical opinion, the Ombudsman is effectively limited to examining whether all evidence and relevant information was taken fully into consideration in arriving at a decision. It was clear from the man's file that the IMR took all medical evidence into account when deciding on his request to transfer to Dublin. In such circumstances, the Ombudsman did not consider he had a basis on which he could seek a further review of RIA's decision.

Transfer

Ref C15/17/1745

 # Case outcome: Assistance provided

Background

A woman complained about the decision of the Reception & Integration Agency (RIA) to refuse her request to transfer to alternative accommodation in Cork city. The woman, who had very little English, was the only Somalian national in her current accommodation. She sought a transfer to be with other Somalis.

Examination

The RIA told the Ombudsman that it could not grant the woman's transfer as there were no suitable spaces in the centre she had sought a transfer to. However, it was aware the woman had a friend in the centre in Cork city and offered to transfer them to the woman's centre so that they could live close together.

Outcome

The Ombudsman was aware that centres in the direct provision system are at near full capacity and that transfers can only be facilitated in exceptional circumstances. He was satisfied that the solution put forward by the RIA in this case was reasonable.

Department of Employment Affairs & Social Protection

Direct Provision Allowance

Ref C22/17/2104

 # Case Outcome: Upheld

Background

A woman complained that she did not receive her weekly Direct Provision Allowance (DPA) while she was resident in direct provision in Dublin from October 2016 to January 2017. She stated that her name was misspelt on her ID card so she had no identification in her correct name. According to the woman, she subsequently moved from Dublin to Kerry in January 2017 and was awarded the allowance.

Examination

The Department stated that the woman did not appear to have presented to the Community Welfare Service while in Dublin and it had no record of an application for the allowance or a PPSN prior to March 2017. Its records indicated that she first applied for the allowance when she received her PPSN at the end of March 2017. The Department agreed to review the woman's entitlement to the DPA for the period in question and arrears of €223.75 were paid.

Outcome

The Ombudsman was satisfied that the woman had received her correct entitlement.

Exceptional Needs Payment

Ref C22/17/2079

 # Case Outcome: Not Upheld

Background

A woman living in a Direct Provision centre complained about the decision of the Department of Social Protection to refuse her application under the Exceptional Needs Payments scheme for assistance towards the cost of a bus pass so that she could take her children to school and collect them.

Examination

Under the rules governing the payment of ENP, a single payment may be made to help meet essential once-off, unforeseen, exceptional expenditure, which a person could not reasonably be expected to meet out of their weekly income. ENPs are not intended to cater for expenses which are of a predictable and recurring nature. The scheme does not cover an ongoing expense, such as assistance towards the cost of a weekly or monthly bus pass. In addition, travel costs associated with school transport for a parent would not be considered unforeseen or exceptional expenditure.

The woman stated that her children did not attend the local school because it was full and as a result they were attending a school outside the catchment area. She said that her children are on a waiting list for the local school. The issue of access to local schools was discussed with the Centre Manage. He said that he would contact the local school on the woman's behalf if she still wanted her children to move there (subject to there being available places).

Outcome

The Ombudsman was satisfied that the Department's decision to refuse the application was in accordance with the rules governing the scheme.

Health Service Executive

Dental Services

Ref HB9/17/2082

 # Case Outcome: Assistance provided

Background

A woman complained that the extensive dental treatment she needed was not covered by her medical card. The woman could not afford to pay for private dental treatment as her only source of income was her direct provision allowance of €21.60.

Examination

The Dental Treatment Services Scheme (DTSS) allows medical card holders to attend Private Dentists holding a DTSS contract for treatment. According to the HSE, the DTSS generally covers dental examinations, fillings (maximum of two), extractions and prescriptions. However, the HSE stated that other treatments are available, such as root treatments, periodontal treatment, dentures and further fillings (2+), but these need the prior approval of the Principal Dental Surgeon (PDS) as normally these additional treatments are provided in high risk / exceptional cases. The information provided to dentists indicated that 'exceptional' refers to patients who may not strictly be classified as high risk, but for whom there is sufficient information available to the Principal Dental Surgeon as to justify a decision to approve funding for additional care.

The HSE suggested that the woman return to her dentist and request that they apply to the local PDS for the additional treatment she requires. The PDS will then consider her case and inform the dentist of their decision.

Outcome

The Ombudsman advised the woman to contact her dentist and request additional funding for treatment through the PDS.

Direct Provision Centre

Ref D15/17/2081

 # Case Outcome: Discontinued Premature

Background

A woman complained to the Ombudsman about the Direct Provision accommodation centre where she is living. She complained about toilet paper supplies and the cleanliness of the centre.

Examination

The Ombudsman asked the woman if she had raised these issues locally with the centre manager. As she had not, the Ombudsman suggested that she do so to give the centre the opportunity to resolve the issues quickly. The woman said that she was fearful to raise the issues directly with the centre manager. The Ombudsman was aware that there is a biweekly residents' meeting that takes place in the centre where any issues with the facilities or services can be raised with a representative of centre staff. The Ombudsman suggested to the woman that this residents' meeting would be the correct forum to raise these matters so that centre management are made aware of the issues and have the opportunity to address them quickly.

The Ombudsman contacted the centre manager to ask him to remind residents about the residents' meeting that takes place on a regular basis and to highlight that the residents' meeting is the ideal forum for residents to raise these sort of complaints about the facilities and services in the centre.

Outcome

The Ombudsman considered that the centre should be given the opportunity to resolve the woman's issues first before he would examine them.



Ombudsman

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