



**Department of Children, Equality, Disability, Integration and Youth:  
White Paper on international protection accommodation**

**Submission by the Ombudsman for Children's Office  
November 2020**

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## 1. Introduction

The Programme for Government commits to ending Direct Provision and replacing it with a new international protection accommodation policy.<sup>1</sup> The Programme also states that the Government will publish a White Paper by the end of 2020 to set out how the new system will be structured and the steps to achieving it.<sup>2</sup> The Ombudsman for Children's Office (OCO) understands that the White Paper will focus on the system of accommodation and service provision for international protection applicants, and that it will be informed by the recommendations contained in the Report of the Advisory Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Advisory Group).<sup>3</sup>

The OCO welcomes the Government's commitment to end Direct Provision. The OCO has found that Direct Provision, as a form of institutional and communal living, is not in the best interests of children, and considers the State's continued recourse to Direct Provision an unnecessary interference in the private and family life of children residing within the system. Indeed, children living in Direct Provision have told the OCO that they want the system to end.<sup>4</sup>

On invitation from the Department of Children, Equality, Disability, Integration and Youth (DCEDIY), the OCO participated in a consultation meeting with representatives of the DCEDIY in November 2020 to discuss the White Paper and the experiences of children living in Direct Provision. The OCO has prepared this submission to the Minister for Children, Equality, Disability, Integration and Youth ('the Minister') by way of follow up to this meeting with the DCEDIY.

As the DCEDIY is aware, the OCO is an independent statutory body which was established in 2004 under the Ombudsman for Children Act 2002, as amended (2002 Act). Under the 2002 Act, the Ombudsman for Children has two core statutory functions. These functions are:

- to promote the rights and welfare of children under the age of 18 years living in Ireland
- to examine and investigate complaints made by or on behalf of children in relation to the administrative actions of public bodies, schools and voluntary hospitals, which have or may have adversely affected a child.

This submission is being made pursuant to section 7(1)(a) and section 7(4) of the 2002 Act, which respectively provide for the Ombudsman for Children to advise any Minister of the Government on the development and coordination of policy relating to children and on any matter relating to the rights and welfare of children.

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<sup>1</sup> Government of Ireland, [Programme for Government – Our Shared Future](#) (2020), p. 76.

<sup>2</sup> Ibid.

<sup>3</sup> [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020).

<sup>4</sup> Ombudsman for Children's Office, [Direct Division. Children's views and experiences of living in Direct Provision: A report by the Ombudsman for Children's Office 2020](#) (2020), p. 63.

The purpose of this submission is to highlight the areas we believe require further consideration following the OCO's meeting with the DCEDIY, in the interests of ensuring that the proposals contained in the White Paper will strengthen respect for and the protection and fulfilment of the rights of children.

This submission has been framed in light of Ireland's children's rights obligations, in particular under the UN Convention on the Rights of the Child,<sup>5</sup> and the UN Convention on the Rights of Persons with Disabilities,<sup>6</sup> and by issues affecting children and young people in Direct Provision that have been brought to the OCO's attention through our work.

The Government's commitment to ending Direct Provision presents the DCEDIY with a very significant opportunity to re-think Ireland's policy towards accommodating international protection applicants. This re-think should allow the State to put in place a new system that has the rights and best interests of children, and respect for the human rights of all residents, at its core. The introduction of a new system also offers a positive opportunity for the wider population, by promoting an inclusive, intercultural society and enabling the Irish population to enjoy the benefits of diversity and integration. In this regard, the OCO welcomes many aspects of the recommendations made by the Advisory Group, including as regards own-door accommodation, community integration, cross-Government responsibility, and improved application processing times.

The White Paper should set out the actions required to replace Direct Provision with a humane and supportive service for families seeking international protection in Ireland and a detailed timeline for implementing these actions. We strongly encourage the DCEDIY to maintain a clear focus on children and the realisation of their rights in the development of, and transition to, a new international protection accommodation system. To this end, it is important that the DCEDIY consider the views of children in Direct Provision, including the views expressed by children in our recent consultation.<sup>7</sup>

## **2. Move towards non-profit model of accommodation**

The OCO welcomes the commitment in the Programme for Government to move towards a more capital investment approach. We would welcome further clarification being provided in and through the White Paper about the new model of accommodation provision to be provided in each stage of the system.

The OCO echoes the conclusions of the Oireachtas Joint Committee on Justice and Equality,<sup>8</sup> in stating that there must be a move away from the current reliance on commercial companies and for-profit individuals to own-door accommodation provision by Approved Housing Bodies and/or the not-for-profit sector. This may require the State to become

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<sup>5</sup> United Nations, [Convention on the Rights of the Child](#) (1989).

<sup>6</sup> United Nations, [Convention on the Rights of Persons with Disabilities](#) (2006).

<sup>7</sup> Ombudsman for Children's Office, [Direct Division. Children's views and experiences of living in Direct Provision: A report by the Ombudsman for Children's Office 2020](#) (2020).

<sup>8</sup> [Oireachtas Joint Committee on Justice and Equality Report on Direct Provision and the International Protection Application Process](#) (2019), p. 47.

directly involved in building fit-for-purpose, self-contained housing units in locations that maximise families' opportunities for integration with local communities and provide good access to transport links, services, amenities and employment opportunities. At a minimum, families should be accommodated in private units, which are suitable for their children's physical, mental, spiritual, moral and social development.

### **3. Oversight of the new system and inspection of existing centres**

#### ***Oversight of new system***

The OCO recognises the efforts made by the International Protection Accommodation Services (IPAS) to keep residents safe in Direct Provision, Emergency Reception and Orientation Centres, emergency accommodation centres, and other emergency accommodations, despite the practical difficulties of bringing in safety measures in congregated settings. However, the Covid-19 pandemic has also brought into sharp relief how unsuitable and unsustainable the system of Direct Provision is and, in particular, how the actions of the State in persisting with this system have placed an already vulnerable group at risk of even greater harm.

The OCO urges the DCEDIY to ensure the White Paper provides for a permanently resourced, whole of Government approach to the proposed protection system, with accountability at the highest level. We believe that any new model of service provision must have a detailed framework of responsibility and accountability, with associated performance benchmarks and indicators. The OCO encourages the DCEDIY to consider the recommendations of the Advisory Group with regard to systemic oversight and independent monitoring, including the creation of a Cabinet Committee to report in respect of deadlines and act on early warnings, and an independent body to monitor, evaluate and identify blockages in the system.

#### ***Independent inspections of current centres***

The OCO welcomes the Government's commitment to introducing independent inspections of current Direct Provision centres in the interim period, and the indications given by the DCEIDY that these may be carried out by the Health Information and Quality Authority (HIQA). The OCO encourages the DCEDIY to give strong consideration to the recommendation by the Advisory Group that HIQA be charged with the necessary authority to conduct independent inspections of existing accommodation centres and to enforce the *National Standards for accommodation offered to people in the protection process* from January 2021.<sup>9</sup>

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<sup>9</sup> [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020), p. 12.

#### 4. Ending the use of emergency accommodation

The OCO welcomes the Minister's comments in relation to moving away from the use of emergency accommodation in efforts to improve the quality of accommodation provided to international protection applicants.<sup>10</sup> The OCO has previously highlighted the unsuitability of hotels and B&Bs as emergency accommodation for families with children, and the experiences of children living in alternative 'family hubs'.<sup>11</sup> We are strongly of the view that, in accordance with the best interests of the child principle, children should be accommodated in a safe environment where their welfare is protected, and their development is nurtured.

The OCO has already called on IPAS to end the use of commercial hotels, which are not designated under the Children First Act 2015, to address Direct Provision capacity issues. We urge the DCEDIY to halt the use of emergency accommodation as soon as possible and develop a contingency planning framework with a view to effectively responding to capacity pressures.

#### 5. Vulnerability assessments

##### ***Introduction of vulnerability assessments without delay***

The European Communities (Reception Conditions) Regulations 2018 (the 2018 Regulations), which incorporate EU Directive 2013/33/EC (the Reception Conditions Directive) into Irish law,<sup>12</sup> provide that the Minister must conduct an assessment of all international protection applicants to determine whether they are vulnerable and have special reception needs, and the nature of those needs.<sup>13</sup> The Minister is required to conduct such assessments within 30 days of an application for protection being made and may also conduct such assessments after 30 days, where it is considered necessary to do so.<sup>14</sup> The assessment assists the Minister in implementing the State's obligation to take into account an applicant's vulnerability in the provision of material reception conditions, particularly in relation to accommodation,<sup>15</sup> and access to mental health care.<sup>16</sup>

The OCO welcomes the Minister's recent comments in relation to the introduction of vulnerability assessments by the end of the year<sup>17</sup> and urges the DCEDIY to ensure that plans to introduce vulnerability assessments proceed without delay, in line with Irish and EU law.

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<sup>10</sup> Dáil Éireann Debate, 12 November 2020, Parliamentary Question 35934/20, available at [https://www.oireachtas.ie/en/debates/question/2020-11-12/291/#pq\\_291](https://www.oireachtas.ie/en/debates/question/2020-11-12/291/#pq_291).

<sup>11</sup> Ombudsman for Children's Office, [No Place Like Home. Children's views and experiences of living in Family Hubs: A report by the Ombudsman for Children's Office 2019](#) (2019).

<sup>12</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast).

<sup>13</sup> European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230/2018), Regulation 8.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid., Regulation 7(4).

<sup>16</sup> Ibid., Regulation 18(d).

<sup>17</sup> Government of Ireland, [Minister O'Gorman and Minister McEntee publish the report by the Advisory Group on Direct Provision and announce a reduction in the waiting period for international protection applicants to](#)

### ***Consideration of the best interests of the child in assessing reception needs***

The 2018 Regulations provide that the best interests of the child must be a primary consideration in assessing a child's special reception needs.<sup>18</sup> In assessing the best interests of the child, due account must be taken of family unity, the child's well-being and social development, safety and security considerations, and the views of the child.<sup>19</sup>

In the context of its work to identify and implement measures for conducting vulnerability assessments the OCO encourages the DCEDIY to have due regard to guidance issued by the UN Committee on the Rights of the Child on the child-friendly procedural safeguards to be taken into account when assessing the child's best interests. In particular, the Committee notes that children may be in a situation of 'double vulnerability' as children and children affected by migration, and that additional vulnerabilities may arise, such as in relation to their national, ethnic, or social origin, gender, sexual orientation or gender identity, disability, or other status.<sup>20</sup> The Committee recommends that, as the best interests of the child in a situation of vulnerability will not be the same as those of all children in the same situation, an individualised assessment should be carried out with each child.<sup>21</sup> In addition, the Committee recommends that the best interests assessment should be multi-disciplinary, independent of the migration authorities, and include the meaningful participation of authorities responsible for child protection and welfare and other relevant actors, such as parents, guardians or legal representatives, as well as the child.<sup>22</sup>

### ***Continuity of vulnerability assessments***

The recommendation in the report of the Advisory Group that particular attention should be paid to the needs of children in conducting vulnerability assessments is welcome. However, the OCO believes such assessments should not be limited to the initial reception stage of the future accommodation system.

Many of the children in Direct Provision that the OCO has engaged with have expressed feeling safe and grateful following their arrival in Ireland,<sup>23</sup> and the full extent of their needs may only become evident over time. Some children also expressed feeling exposed to new threats because of their race or asylum status, as well as safety issues relating to their

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[access work](#), Press release, 21 October 2020; Dáil Éireann Debate, 17 November 2020, Parliamentary Question 36969/20, available at [https://www.oireachtas.ie/en/debates/question/2020-11-17/631/#pq\\_631](https://www.oireachtas.ie/en/debates/question/2020-11-17/631/#pq_631).

<sup>18</sup> European Communities (Reception Conditions) Regulations 2018 (S.I. No. 230/2018), Regulation 9(1).

<sup>19</sup> Ibid., Regulation 9(2).

<sup>20</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Committee on the Rights of the Child, [Joint general comment No. 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 \(2017\) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration](#), para. 3.

<sup>21</sup> UN Committee on the Rights of the Child, [General Comment No. 14 \(2013\) on the right of the child to have his or her best interests taken as a primary consideration \(art. 3, para. 1\)](#) (2013), paras. 75-76.

<sup>22</sup> Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families Committee on the Rights of the Child, [Joint general comment No. 3 \(2017\) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 \(2017\) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration](#), para. 32(c).

<sup>23</sup> Ombudsman for Children's Office, [Direct Division. Children's views and experiences of living in Direct Provision: A report by the Ombudsman for Children's Office 2020](#) (2020), p. 38.

accommodation.<sup>24</sup> This clearly indicates that additional vulnerabilities may arise during the time a child spends in international protection accommodation in Ireland.

Indeed, the Reception Conditions Directive states that supports provided to persons with special reception needs must take into account special reception needs that become apparent at a later stage of the protection process and appropriate monitoring of the situation of such persons must be provided for the duration of the process.<sup>25</sup>

The OCO recommends that the White Paper sets out measures to ensure that all children living in international protection accommodation have an individualised vulnerability assessment within 30 days of their presentation in the State in line with the child's best interests. The OCO further recommends that a mechanism for regularly identifying and responding to ongoing and new vulnerabilities experienced by children is put in place throughout the international protection process. We would welcome further clarification being provided in and through the White Paper on the format of vulnerability assessments and the actors that will be responsible for conducting such assessments, including with regard to children.

## **6. Integration supports**

Through our consultation with children living in Direct Provision, children highlighted integration challenges faced by their families in Direct Provision, such as a lack of access to information on local services or activities.<sup>26</sup> The OCO encourages the DCEDIY to consider the recommendations of the Advisory Group to adopt a multi-service approach to provision of supports both in the initial stage of reception as well as during subsequent stages.<sup>27</sup> We recommend that provision of English language training and provision of information on local services, including in a language that applicants understand, is ensured throughout the period during which families await a decision on their application.

Due to the difficulties experienced by families moving out of Direct Provision, the OCO also supports an all government interdepartmental approach to assisting children and parents' integration into their chosen community, following their time in an IPAS accommodation centre. The OCO recommends that the Office for the Promotion of Migrant Integration (OPMI) should be resourced appropriately in order to provide both programme refugees, and those exiting Direct Provision, with the necessary supports to ease the challenges of transition and integration.

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<sup>24</sup> Ibid.

<sup>25</sup> Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 22.

<sup>26</sup> Ombudsman for Children's Office, [Direct Division. Children's views and experiences of living in Direct Provision: A report by the Ombudsman for Children's Office 2020](#) (2020), p. 39.

<sup>27</sup> Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (2020), p. 61.



The OCO supports the Advisory Group's recommendation that specific supports should follow people for a period of time after they receive protection status or leave to remain, and encourages the DCEDIY to consider the following additional proposals to support this transition and integration process:

- While living in IPAS accommodation centres, cultural integration should be supported by designated, well-resourced organisations with local knowledge and an understanding of the complexities of inter-culturalism.
- Funding should be provided to these local organisations to employ resettlement workers or keyworkers to provide outreach, advocacy and support to assist people through this transition period.
- Outreach workers or key workers, whether State employed or working for NGOs, should endeavour to be proactive in offering support to individuals in IPAS accommodation centres, who may be unlikely to seek out services by themselves, due to reasons of vulnerability, ill health, lack of confidence or lack of motivation.
- Customised educational and preparation for employment programmes need to be made available to families leaving IPAS accommodation centres.
- In support of the Advisory Group's recommendations concerning access to third-level education,<sup>28</sup> time spent in IPAS accommodation centres should count towards residency requirements for access to third level education grants.
- Once granted international protection status or leave to remain, families should be provided with a realistic timeframe of at least three months for exiting Direct Provision during which time they will have access to housing support workers as required.
- In line with the Advisory Group's proposals,<sup>29</sup> as soon as families receive protection status or leave to remain, they should be entitled to apply for Jobseekers Allowance, One Parent Family Payment, Disability Allowance, Basic Supplementary Welfare Allowance, Child Benefit, the Back to School Clothing and Footwear Allowance, and the Back to Education Allowance, instead of the Direct Provision payment.
- OPMI should provide a standard reference, and assistance in obtaining identification, to those exiting Direct Provision in order to help them obtain rental accommodation, and ensure that the IPAS accommodation centre address is acceptable for the purposes of obtaining social welfare payments and rent supplement.
- OPMI should provide a resettlement grant to support families to move into their chosen community, including for rent deposits and items needed when setting up home. A requirement to apply for an Exceptional Needs Payment, under the Supplementary Welfare Allowance scheme, is not considered equivalent to a resettlement grant, and instead represents another administrative obstacle for families to overcome.

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<sup>28</sup> Ibid., pp. 79-80.

<sup>29</sup> Ibid., p. 150.

## 7. Addressing stigmatisation and discrimination

The OCO notes the recommendation contained in the Advisory Group's report that specific training opportunities should be provided for teachers working in schools receiving children in Direct Provision.<sup>30</sup> Notwithstanding positive developments in relation to raising awareness among teachers and schools about the experiences of children residing in Direct Provision and providing professional training on inclusive education, serious concerns remain about discrimination and stigmatisation experienced by children and a lack of understanding among wider society, teachers and peers of their situation.

Through the OCO's recent consultation with children living in Direct Provision, some children identified racism, bullying and discrimination as issues they faced.<sup>31</sup> They also expressed fear of being judged and discriminated against on the basis of their status and where there they live.<sup>32</sup> This experience was summed up by one participant, who stated: *"I am not ashamed to be an asylum seeker because I know what I have been through. I am not really ashamed but I am scared they will not treat us so well."*<sup>33</sup> Many children felt that removing the taboo of the centre could help the local community to understand how they live and what it feels like to be them.<sup>18</sup>

Key to the effective operation of the new reception and integration arrangement is public opinion favourable to asylum-seekers and refugees. Therefore, in tandem with any alternative model of service provision, the OCO urges the DCEDIY to take appropriate measures to combat acts of racism, racial discrimination, xenophobia, and related intolerance directed against asylum-seekers and to enhance harmonious relationships with the local communities by promoting respect for asylum-seekers and refugees, and by creating awareness of their needs.

The vast majority of changes recommended to the OCO by children related to their experiences in school, and particularly focused on their teachers. The OCO therefore encourages the DCEDIY to work closely with the Department of Education to provide for additional support through mandatory training and information to teachers, Principals and Boards of Management, to increase knowledge and understanding of the international protection system, the impact of trauma and the promotion of multi-racial, religious and ethnic integration amongst pupils.<sup>34</sup>

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<sup>30</sup> Ibid., p. 80.

<sup>31</sup> Ombudsman for Children's Office, [Direct Division. Children's views and experiences of living in Direct Provision: A report by the Ombudsman for Children's Office 2020](#) (2020), p. 54.

<sup>32</sup> Ibid., pp. 51-53,

<sup>33</sup> Ibid., p. 53.

<sup>18</sup> Ibid., p. 68.

<sup>34</sup> Ibid., p. 32.

## 8. Unaccompanied children

### ***Transition to Direct Provision on turning 18***

As the DCEDIY is aware, the OCO has previously expressed concerns in respect of the difficulties children face when transitioning from the care of Tusla to Direct Provision on turning 18 years of age where a decision has not been made on their immigration status.<sup>35</sup> The OCO expects that the DCEDIY will give serious consideration to the Advisory Group's recommendation that unaccompanied children turning 18 should remain in the care of Tusla and be provided with the same standard of aftercare planning and supports as other children leaving care.

It is the OCO's understanding following our recent meeting with the DCEDIY that a limit is being placed on the number of unaccompanied children for which Tusla may provide care and aftercare at any given time. It is also our understanding that this may be informing current Government policy of placing unaccompanied children in Direct Provision when they turn 18. The OCO would welcome additional clarification from the DCEDIY concerning the rationale behind any limit placed on the number of unaccompanied children in the care of Tusla or receiving aftercare services at a given time and any impact this has on decisions to place unaccompanied children in Direct Provision on turning 18.

The OCO suggests that consideration be given by the DCEDIY to ensuring the appropriate allocation of care and aftercare placements for unaccompanied children so as to extend the application of the equity of care principle to unaccompanied children leaving care.

### ***Timely submission of applications for international protection or appropriate residence permission***

Considering the interplay between an unaccompanied child's residence status and their placement in Direct Provision on turning 18 years of age, the OCO is of the view that unaccompanied children should be supported in making timely applications for international protection or residence permission while in the care of Tusla. As previously acknowledged by the DCEDIY, there is a lack of clarity and guidance in relation to applications for residence status made by unaccompanied children.<sup>36</sup> In this regard, the OCO supports the recommendation made in report of the Advisory Group that social workers "*should be legally obliged to seek prior legal advice on a protection application as soon as possible after the minor becomes the responsibility of Tusla, and before completing and lodging the application.*"<sup>37</sup> This is in line with the recommendation made to Ireland by the UN Committee on the Rights of the Child in 2016 that children in irregular migration situations

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<sup>35</sup> Ombudsman for Children's Office, [Submission to Tusla on the Review of the National Leaving and Aftercare Policy 2011](#) (2016), p. 8.

<sup>36</sup> Department of Children, Equality, Disability, Integration and Youth, [Review of the Child Care Act 1991: July 2020 Consultation Paper](#) (2020); Arnold, S., [Pathways to Irish Citizenship: Separated, Stateless, Asylum-Seeking and Undocumented Children](#) (2020), p. 23.

<sup>37</sup> [Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process](#) (2020), p. 70.

be provided with independent legal advice and timely clarifications on their migration status.<sup>38</sup>

The OCO recommends that unaccompanied children are supported in making timely applications for international protection or appropriate residence permissions, and in registering with Immigration Service Delivery once they turn 16 years of age,<sup>39</sup> including through the provision of best interests guidelines for allocated social workers and access to early, free legal advice for children.

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<sup>38</sup> UN Committee on the Rights of the Child, [Concluding observations on the combined third and fourth periodic reports of Ireland](#) (2016), paras. 67-68.

<sup>39</sup> In accordance with section 9 of the Immigration Act 2004, as amended.