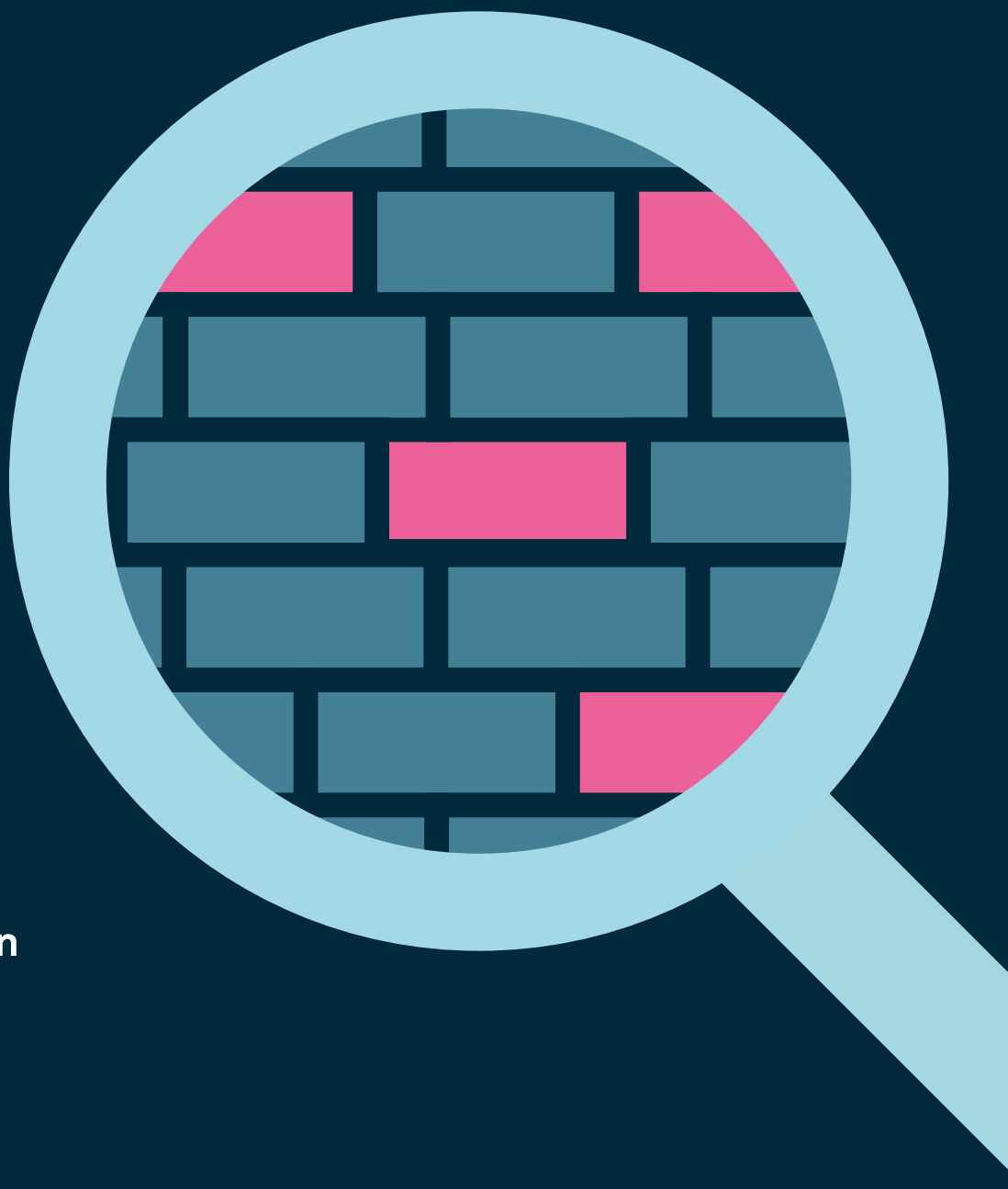


# Safety & Welfare of Children in Direct Provision

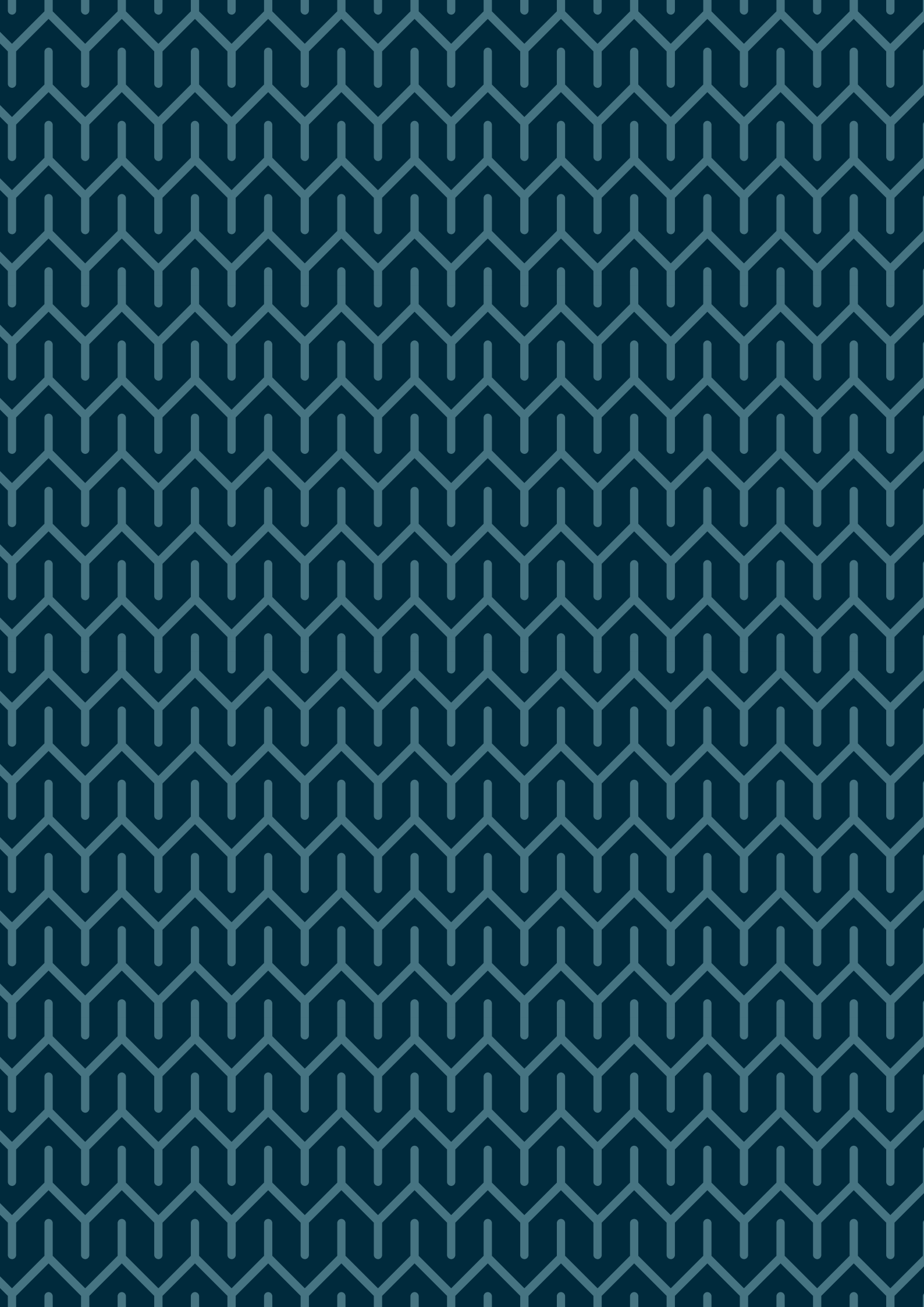
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An investigation by the Ombudsman  
for Children's Office

April 2021



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do leanaí  
for children



# Safety & Welfare of Children in Direct Provision

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An investigation by the Ombudsman  
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## The Issue:

The Ombudsman for Children's Office (OCO) began accepting complaints from children, or on behalf of children, living in DP in April 2017. Since that time, the OCO has made regular visits to children and families living in State provided accommodation all across the country.

During one of these visits, a parent raised concerns about overcrowding, inconsistent heating supply to bedrooms, the nutritional content of the food, the poor level of facilities, including the lack of safe play areas for children, and poor communication by centre management to residents about in-house facilities, access to mainstream services, and how to make a complaint.

The parent involved was worried about progressing the complaint. Since we have started accepting complaints from people living in DP, we have found a general reluctance to complain and a fear, on behalf of residents, that highlighting issues may impact on their status or their treatment while seeking asylum in Ireland.

Therefore, in February 2018, the OCO initiated an own volition investigation of centre management and RIA (now IPAS). An own volition investigation means that we do not need a complaint to begin examining an issue. This is a power the OCO has under our Act. Fewer than 10 own volition investigations have been carried out since the OCO was established in 2004.

Our initial examination highlighted real concerns in relation to RIA's monitoring and oversight of the centre's obligations, including Children First. We discovered that, as interpretation services were not available, parents could not advocate on their children's behalf. Parents had no way to talk to centre management about child protection and welfare concerns, even though the centres are contractually obliged to have these mechanisms in place.

RIA also informed us that they themselves had become aware of child safeguarding issues, including:

- Evidence that staff members who were not vetted were working in the centre, even though RIA had been assured this was not the case;
- A particular child protection concern was not reported to the statutory agencies;
- A misleading notice was issued to parents which implied that child protection and welfare services may remove children as a result of a lack of parental supervision in the centre; and
- The local Tusla area manager had other general concerns about the centre.

We expanded our investigation to include all accommodation centres with a specific focus on child protection as we could not assume that these issues were isolated to one centre. We were also concerned that residents didn't have confidence in the complaints procedures.

## **Our Findings:**

### **IPAS**

#### **1: The Direct Provision Model**

The DP of State provided accommodation to families seeking international protection does not have the best interests of children, or the protection and promotion of the human rights of child refugees at its core.

#### **2: Independent Inspectorate**

IPAS has failed to establish or identify an inspectorate independent of IPAS, as recommended by the McMahon report.

#### **3: Current Inspections**

The current inspection regime does not take into account the supports needed to meet children's physical, mental, spiritual, moral and social development.

#### **4: Frequency of Current Inspections under IPAS**

Pre Covid-19, IPAS failed to meet its own benchmark of three inspections per centre per year and did not inspect Emergency Accommodation Centres (EACs) where children were residing at all.

#### **5: Independent Complaints Procedure**

IPAS has not appointed an independent designated officer to handle complaints, as recommended by the McMahon report. There is no evidence of a review of the complaints procedure for its accessibility to children and young people, or efforts to build confidence or trust in the process and an open culture. The opposite has been found, with residents instructed to make complaints to the centre manager in the first instance except in 'very exceptional and serious circumstances'.

#### **6: Service User Clinics**

Pre Covid-19, IPAS failed to meet its own benchmark of two in-house clinics per centre per year. This is one of the only ways residents can communicate with IPAS staff members face to face. IPAS also failed to provide consistent, or in many cases, any interpretation services.

#### **7: Special Reception Needs**

IPAS has not delivered on its commitment under the McMahon report to undertake a multi-disciplinary assessment of all protection applicants within 30 days of the lodging of an application. This assessment would identify and appropriately assist vulnerable applicants.

#### **8: Child and Family Services Unit**

IPAS has failed to follow its own child protection and welfare policy. The oversight in

place does not reflect the recognised vulnerability of minors. There is no evidence that IPAS's Child and Family Services Unit (CFSU), records and monitors child protection and welfare files for any patterns or concerns emerging, or attends case conferences and review meetings arising from child protection referrals, as per its own policy. According to IPAS, the CFSU is only entitled to know whether a referred case is open or closed with Tusla, and does not collate data in respect of concerns and referrals.

### **9: Children First Act 2015**

IPAS has failed to put in place the necessary safeguards to ensure that children residing in DP, EROCs and EACs are safe from harm. There is no evidence whether all accommodation centres comply with Children First.

## **Tusla**

### **10: Recognition of Inherent Vulnerability**

Tusla did not recognise the inherent vulnerability of minors in the international protection process and failed to make reasonable adjustments, which would give the children in DP an equal opportunity to reach their full potential. Tusla also failed to coordinate services to meet the needs of children in DP.

### **11: Data Collection and Analysis**

Tusla has no effective mechanism to gather data about children living in DP accommodation which might identify risks and inform planning at a strategic level.

### **12: Specialised Resources**

Tusla has failed to identify a named social worker for a DP centre in their area or to provide cultural diversity training and interpreting services for staff working with residents in DP. These were recommendations contained in the McMahon report.

## **IPAS & Tusla**

### **13: Interagency Protocol**

IPAS and Tusla have failed to establish effective interagency protocols to ensure that all decisions concerning children residing in State provided accommodation have the children's best interests as their primary consideration. A lack of integrated data means that children lack visibility, and are not being recognised and planned for by the two agencies responsible for their protection and welfare. According to IPAS files, there were approximately 162 referrals to Tusla from DP, EROCs, EACs and other emergency accommodations between 3rd April 2017 and the 31st July 2020. According to Tusla, there were 510 referrals to their services over a similar period (3rd April 2017 to 8th June 2020).

### **14: On Site Cooperation**

Tusla, HSE and IPAS have failed to collaborate to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services. This was a recommendation of the McMahon report.

## Our Recommendations:

### IPAS

#### **1: Recognise the Vulnerability of Children**

IPAS should make an unequivocal statement declaring that children within the international protection process are vulnerable and regard must be had to their vulnerability in the planning and provision of their accommodation needs.<sup>1</sup>

#### **2: Cease the use of Commercial Hotels**

IPAS should immediately end the use of non-designated commercial hotels for emergency provision and should develop a contingency plan to respond to capacity pressures.

#### **3: Robust Quality Assurance Mechanism**

IPAS should immediately put in place a quality assurance mechanism that is adequately resourced to monitor complaints, child protection and welfare concerns and any other adverse incidents that indicate that a centre may not be providing quality services to families.

#### **4: Monitoring of Children First Act 2015**

IPAS should put in place robust mechanisms for monitoring designated accommodation centre's compliance with the Children First Act 2015.

#### **5: Child and Family Services Unit**

IPAS should ensure that the CFSU is resourced appropriately to ensure the full implementation of all OCO recommendations and that all accommodation centre staff receive extensive cultural sensitivity training, as well as training in gender, equality, human and children's rights.

#### **6: Functional Complaints Mechanism**

IPAS should put in place functional and accessible feedback and complaints mechanisms for all residents so that any concerns, including those relating to the protection and welfare of children within the centres, are brought to the attention of IPAS at the earliest opportunity. It is the responsibility of all adults to be alert to the possibility that children with whom they are in contact may be being abused or at risk of being abused.

#### **7: Special Reception Needs**

IPAS should put in place a procedure to identify children with special reception needs,

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<sup>1</sup> According to EASO guidance on reception conditions: operational standards and indicators (September 2016) page 28 'The experiences of the applicant either in their home country, during the journey or in the country of asylum can have a strong influence on the vulnerability. For example, the language barrier or the feeling of social exclusion they experience can lead them into a situation of increased vulnerability.'



this includes a vulnerability assessment within 30 days of the lodging of an application for international protection on their behalf.

## **Tusla**

### **8: Recognise the Vulnerability of Children**

Tusla should make an unequivocal statement declaring that children within the international protection process are vulnerable and regard must be had to their vulnerability in the planning and provision of child and family services.<sup>2</sup>

### **9: Review of Child Protection and Welfare Referrals**

Tusla should conduct a review of child protection and welfare referrals from 3rd April 2017 (when the OCO began to accept complaints on behalf of children in DP) to ensure that no child residing in State provided accommodation is at an enduring risk of harm as a result of the issues identified in this investigation.

### **10: Intercultural Strategy and DP Policy**

Tusla should to develop an intercultural strategy to inform the provision of social services to ethnic minority children and families, and a specific policy to guide social work teams in their work with children and families in accommodation centres.

## **Tusla & IPAS**

### **11: Interagency Protocol**

Tusla and IPAS should develop an interagency protocol to inform how Tusla, IPAS and accommodation centre management work together, liaise and share information.

### **12: On-site co-operation**

IPAS, Tusla and accommodation centre management should collaborate to provide on-site preventative and early intervention services locally. They should also capture data to identify national trends and inform strategic planning for children living in State provided accommodation.

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2 According to EASO guidance on reception conditions: operational standards and indicators (September 2016) page 28 'The experiences of the applicant either in their home country, during the journey or in the country of asylum can have a strong influence on the vulnerability. For example, the language barrier or the feeling of social exclusion they experience can lead them into a situation of increased vulnerability.'

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# Abbreviations

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<b>OCO</b>	Ombudsman for Children's Office
<b>IPAS</b>	International Protection Accommodation Service
<b>RIA</b>	Reception and Integration Agency
<b>Tusla</b>	Tusla - the Child and Family Agency
<b>DP</b>	Direct Provision
<b>EROC</b>	Emergency Reception and Orientation Centre
<b>EAC</b>	Emergency Accommodation Centre
<b>2002 Act</b>	Ombudsman for Children Act 2002
<b>PE</b>	Preliminary Examination
<b>IRPP</b>	Irish Refugee Protection Programme
<b>DLP</b>	Designated Liaison Person
<b>NGO</b>	Non-Governmental Organisation
<b>CFSU</b>	IPAS Child and Family Services Unit
<b>IPPS</b>	IPAS International Protection Procurement Services
<b>PO</b>	Civil Service Principal Officer
<b>AP</b>	Civil Service Assistant Principal
<b>EO</b>	Civil Service Executive Officer
<b>CO</b>	Civil Service Clerical Officer
<b>HIQA</b>	Health Information and Quality Authority
<b>DCEDIY</b>	Department of Children, Equality, Disability, Integration and Youth
<b>CYPSC</b>	DCEDIY's Children and Young People Services Committees
<b>PPFS</b>	Tusla's Prevention, Partnership and Family Support Programme
<b>FRC</b>	Tusla's Family Resource Centres
<b>NPOC</b>	Tusla's National Policy Oversight Committee
<b>NCCIS</b>	Tusla's National Childcare Information System
<b>TESS</b>	Tusla Education Support Service
<b>CFSN</b>	Tusla's Child and Family Support Network
<b>CPW</b>	Child Protection and Welfare
<b>CSS</b>	Child Safeguarding Statement
<b>PSW</b>	Principal Social Worker
<b>ECHR</b>	European Convention on Human Rights
<b>2003 Act</b>	European Convention on Human Rights Act 2003
<b>ECRI</b>	European Commission against Racism and Intolerance
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>CERD</b>	International Convention on the Elimination of All Forms of Racial Discrimination
<b>UNCERD</b>	United Nations Committee on the Elimination of Racial Discrimination
<b>UNCRC</b>	United Nations Convention on the Rights of the Child
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>IHREC</b>	Irish Human Rights and Equality Commission
<b>1991 Act</b>	Child Care Act 1991
<b>2013 Act</b>	Child and Family Agency Act 2013
<b>2015 Act</b>	Children First Act 2015

# 1. The Complaint

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- 1.1** On the 3rd April 2017 the OCO began accepting complaints from children, or on behalf of children, living in DP and EROCs. Since that time, the OCO has conducted outreach to families residing in all of these centres throughout the country.
- 1.2** During one of these visits, a parent raised concerns about the management and operation of the centre. The majority of families living in EROCs are Syrian programme refugees arriving from refugee camps in Greece and the Lebanon. The EROC was this family's home while they awaited the outcome of their international protection applications.
- 1.3** The parent raised concerns around overcrowding, inconsistent heating supply to bedrooms, the nutritional content of the food, the poor level of facilities, including the lack of safe play areas for children, and poor communication by centre management to residents with respect to in-house facilities, access to mainstream services, and how to make a complaint.
- 1.4** In February 2018, due to fears expressed by this parent of being identified as the complainant, the OCO decided to launch an own volition examination of centre management and RIA. This means that our work was not based on a single complaint and that we used our powers under the Act to begin this process. RIA [now IPAS] is the agency charged with providing full board accommodation to Irish Refugee Protection Programme ('IRPP') recipients in EROCs, including the families residing at the EROC.
- 1.5** We reviewed relevant policies and contracts, conducted a visit to the EROC, and met with the centre manager. Following our visit, we had real concerns regarding what appeared to be RIA's 'one size fits all' approach to monitoring and oversight of the centre's contractual obligations, including Children First. In addition, due to the absence of interpretation services, children's primary advocates, their parents, were prevented from advocating on their behalf at a very basic level. This is despite the centre being contractually obliged to provide interpretation services.<sup>3</sup>
- 1.6** RIA later told us that they had themselves recently become aware of matters of concern relating to child safeguarding at the EROC, including:
  - Evidence that non-vetted staff members were working in the centre despite assurances to RIA that this was not the case;
  - A particular child protection concern was not reported to the statutory agencies;

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<sup>3</sup> Clause 6.6 of RIA's contract with the accommodation service provider stated that 'The Contractor must employ a communications officer to be employed at the Centre and to be available on call outside of hours for emergencies. This officer must be fluent in (Arabic)'

- A notice was issued by centre management to parents which implied that child protection and welfare services may remove children as a result of a lack of parental supervision in the centre; and
  - The local Tusla area manager had other general concerns about the centre.
- 1.7** As a result of this communication, it became clear that not only had staff at the EROC not undergone appropriate child protection vetting and training as claimed by the centre manager during our visit, but RIA was unaware that this was the case until it was brought to their attention by Tusla.
- 1.8** While RIA assured us that immediate actions were taken to remedy the statutory breaches of Children First locally<sup>4</sup>, RIA also informed us that RIA and IRPP staff had been asked to be vigilant on these matters when visiting the EROC, and indeed when visiting all centres.<sup>5</sup> The OCO could not, therefore, assume that these issues only occurred at the EROC.
- 1.9** A decision was made to expand our work to include all accommodation centres as RIA is responsible for all of the DP, EROC and EACs around the country and is understood to use the same model of oversight in all of them.
- 1.10** The OCO had observed a lack of confidence in complaints procedures by accommodation centres residents, as identified by *the Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers* ('the Working Group') in its June 2015 report ('the McMahon Report'). At the time of publication, the Working Group recommended that RIA engage in specific measures intended to increase confidence in their complaints procedure, which the High Court had previously found to be unlawful.<sup>6</sup> This included the appointment of a designated officer, who is not involved in the operation of centres to handle complaints.<sup>7</sup> RIA had previously said that this recommendation had not been progressed.
- 1.11** In November 2018, we took our investigation to the next stage. Having examined the issues, we remained concerned that RIA's level of oversight of all accommodation centres may not be as robust and effective as it could be. We were also concerned that insufficient reasons had been provided as to why no interpretation services were in place at the EROC, and as to why the current internal complaint procedure, which lacks accessibility and an independent designated officer, is still in place.
- 1.12** RIA acknowledged that 'the current inspection regime requires changes, particularly with regard to feedback from residents, and the implementation of the new Standards for Accommodation Centres will also include a change of inspection model'. RIA's response did not state specifically how residents can

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4 The Children First Act 2015 places a number of statutory obligations on specific groups of professionals and organisations including: a requirement on organisations providing services to children to keep children safe and to produce a Child Safeguarding Statement; a requirement on defined categories of persons (mandated persons) to report child protection concerns over a defined threshold to Tusla; and a requirement on mandated persons to assist Tusla and 'to give to the Agency such information and assistance as it may reasonably require' in the assessment of a child protection risk.

5 Emphasis added.

6 C.A & anor. v Minister for Justice and Equality & Ors. [2014] IEHC 532

7 Recommendation No: 4.135 of the McMahon Report.

make complaints and the availability of an independent designated officer to deal with complaints. We asked for more information about this.

**1.13 RIA said:**

‘The final draft version of the Standards has now been prepared and is due to be presented to the Minister of State for his approval in the coming weeks. Once approved, an implementation mechanism will be put in place including the full consideration of the McMahon requirement for an external inspectorate function’;

‘[RIA] Inspections focus on service delivery issues such as food, food hygiene, cleanliness, upkeep and physical appearance of premises as well as health and safety issues. All inspections are unannounced. All rooms are examined during the inspection process and all residents may bring issues to the attention of the inspector. Any decline in standards discovered are treated very seriously and has led in the past to the issue of 30-day notices of intent to terminate the contract’;

RIA received 58 complaints directly in 2018 regarding the provision of accommodation and additional services. In addition, 66 complaints were raised with RIA by the Office of the Ombudsman in 2018. The complaints referred directly to RIA were mostly in relation to accommodation issues or the behaviour of other residents. Of the 66 complaints referred to RIA from the Office of the Ombudsman, the most common complaints related to RIA refusal to grant transfer requests or accommodation issues.’;

‘The HSE has commissioned a specific report examining how a more comprehensive model could be established, specifically focusing on vulnerability’;<sup>8</sup>

‘Within RIA’s current occupancy of 5970 residents seeking international protection, there are 716 people (adults and children) with status or permission to remain residing in accommodation centres provided by RIA... A joint statutory Working Group under the CCMA Housing Sub Committee is preparing a proposal for consideration by the full CCMA in April’;

‘Due to the considerable pressure being placed on RIA it has been necessary to accommodate applicants in emergency accommodation on a short-term basis’; and

‘The Department of Justice and Equality is undergoing a significant transformation exercise...Effectively, the Department will be reconfigured under sections with responsibilities including Policy, Legislation, Operations, Transparency and Governance. RIA will be impacted upon by this transformation process, but the outcome has yet to be decided’.

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8 In an attached document on Special Reception Needs, IPAS recognises that accommodation centre staff are among the people most likely to observe signs of an emerging vulnerability, or a vulnerability not previously identified.

**1.14** Despite RIA's response we were still concerned that:

- The inspection regime did not include any checks of how centres were complying with Children First other than recording whether there is a notice about the name of the Designated Liaison Person (DLP)<sup>9</sup>, and whether visitors were made aware of the child protection policy. The only evidence of checks in relation to the child protection policy were observation of posters and visitor sign in sheets. The EROC had been the subject of multiple inspections, but all had failed to detect the breaches in child safeguarding;
- The CFSU manager role, normally fulfilled by a social worker seconded from Tusla at team leader level, to oversee child protection had been vacant since the end of 2018;<sup>10</sup>
- Inspection regimes were not checking how centres were promoting a positive culture regarding complaints, recording complaints, or taking action to address complaints;
- There were 37 families living in emergency accommodation including 58 children, where child safeguarding obligations are less robust than that within DP and EROCs.

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9 The DLP is responsible for ensuring that child safeguarding reporting procedures are followed, so that child welfare and protection concerns are referred promptly to Tusla. While a DLP is considered best practice, the role is separate to that of 'mandated persons' under the Children First Act 2015, who have a legal obligation to report child protection and welfare concerns to Tusla, and to help Tusla, if requested, in assessing a reported concern.

10 This post was subsequently filled in November 2019.

## 2. The Investigation

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- 2.1** As we still had significant concerns, the OCO proceed to a statutory investigation in August 2019.
- 2.2** In accordance with the 2002 Act, the investigation would address whether:
- 1.** The actions of IPAS had or may have had an adverse effect on a child; and whether
  - 2.** The actions were or may have been:
    - i.** Taken without proper authority;
    - ii.** Taken on irrelevant grounds;
    - iii.** The result of negligence or carelessness;
    - iv.** Based on erroneous or incomplete information;
    - v.** Improperly discriminatory;
    - vi.** Based on an undesirable administrative practice; or
    - vii.** Otherwise contrary to fair or sound administration.
- 2.3** Our investigation with respect to IPAS contained the following terms of reference:
- to investigate the administrative actions or inactions of IPAS in being assured as to the quality of State provided accommodation to families seeking international protection with a focus on:
    - the effectiveness of the current inspection mechanisms to be assured of the safety and welfare of children;
    - the accessibility and effectiveness of the internal complaints' mechanism.
- 2.4** Following a review of the information provided by IPAS, we decided to examine Tusla's role in being assured of the safety and welfare of children living with their families in State provided accommodation.
- 2.5** As Tusla is integral to IPAS's mechanisms for assuring itself of the safety and welfare of children in their accommodation centres, we could not determine whether these mechanisms were adequate or effective without also examining Tusla.
- 2.6** In June 2020, Tusla was included in the investigation. Our investigation with respect to Tusla contained the following terms of reference:



- The process through which Tusla may:
  - assure itself of the safety and welfare of children living with their families in State provided accommodation seeking international protection, including emergency accommodation;
  - identifies children who are not receiving adequate care and protection in State provided accommodation to families seeking international protection, including emergency accommodation, and the coordination of information, in relation to this cohort of children; and
  - The engagement by Tusla with IPAS, and any other relevant and applicable agency, in progressing its obligations with respect to its duty under section 3(a) of the Child Care Act 1991 (1991 Act).<sup>11</sup>

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11 i.e. to take such steps as it considers requisite to identify children who are not receiving adequate care and protection and to co-ordinate information from all relevant sources relating to children in its area.

## 3. Law and Policy

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### IPAS - Quality of Accommodation

**3.1** IPAS is charged with monitoring the operation of accommodation centres, monitoring the implementation of contracts for services, and providing training and support to proprietors and management of centres. IPAS states that it makes every effort to inspect accommodation centres approximately three times annually. In its documentation to residents, IPAS has acknowledged that the accommodation centre is their home.

In the context of the recommendations contained in the McMahon Report (June 2015), the Government committed to:

- The Minister for Justice and Equality establishing an inspectorate (or identifying an existing body), independent of IPAS, to carry out inspections in DP centres against the newly approved standards established by the standard-setting committee; and
- The Inspectorate, based on its overall findings, should separately make regular reports to the Minister on general matters relating to the welfare of residents in DP centres.

The current Programme for Government (June 2020) commits to ending the DP system and replacing it with a new International Protection accommodation policy, centred on a not-for-profit approach. In the short term, the Government committed to acting on interim recommendations of the *Expert Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Asylum Seekers)*, including an independent inspection process, and the training of managers of DP Centres. The Government has committed to implementing the measures identified by the Expert Group in their final report. The Government published the White Paper on Ending DP in February 2021.

### International, European, and Irish Law

**3.2** A public authority may only interfere with a person's right to respect for his private and family life, and his home under Article 8 of the European Convention on Human Rights (ECHR), where that interference is in accordance with the law and is necessary in a democratic society. The European Court of Human Rights has clarified that 'necessary' in this context implies the existence of a 'pressing social need'.

In July 2014, the UN Human Rights Committee stated that DP centres are not conducive to family life, and recommended that the State ensure that the duration of residents' stay in DP is as short as possible.

In December 2014, Irish Human Rights and Equality Commission (IHREC) concluded that the system of DP was not in the best interests of children, has a significant impact on the right to family life, and has failed to adequately protect the rights of those seeking protection, including vulnerable persons. It recommended that existing families are moved out of DP centres and enabled to access self-catering accommodation, at the earliest possible opportunity, and that any new families are not accommodated in DP centres. IHREC also recommended that an independent appeals mechanism, to include resident representation and independent members, be established to judge on complaints in relation to conditions, food, accommodation and other matters, and that the IPAS 'House Rules and Procedures' document be revised as a matter of priority.

In January 2016, the United Nations Convention on the Rights of the Child (UNCRC) Committee urged the State to ensure independent inspections of all refugee accommodation centres.

In June 2019, European Commission against Racism and Intolerance (ECRI) noted resident's inability to conduct normal family life in DP, with lengthy institutionalised living being detrimental to the welfare of children. It recommended that the State conduct an in-depth systematic review of the policy of DP, with a view to allowing asylum seekers greater control of their everyday life, and recommended that the State consider creating an alternative system that would promote independence, ensure adequate living conditions and address the cultural, economic, health, legal and social needs of asylum seekers.

In December 2019, the United Nation's Committee on the Elimination of All Forms of Racial Discrimination (UNCERD) stated that it was concerned by the State's continuous failure to provide adequate accommodation for asylum seekers, given DP's significant impact on the mental health and family life of asylum seekers. It was also concerned that DP was operated by private actors on a for-profit basis without proper regulation or accountability mechanisms. It urged the State to regulate and inspect the operation of DP centres, and to hold those responsible accountable in case of breach of standards. The UNCERD was also concerned by the extensive use of emergency accommodation for lengthy periods due to the capacity limit of DP centres and the housing crisis, the substandard living conditions of emergency accommodation, and the lack of necessary services and support provided therein. It urged the State 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.

In his 2018 and 2019 reports, the former Special Rapporteur on Child Protection stated that DP is an unnatural family environment and parents are unable to promote the rules and customs of their family in the upbringing of their children due to the restrictions of living in DP centres. According to the Special Rapporteur, DP is in direct conflict with a child's right to an adequate standard of living, and has been shown to be detrimental to children's well-being and development. He referred to the loss of autonomy, institutionalisation, accounts of harassment and sexual violence experienced by women living in DP, the length of stay, and the fact that accommodation centres are almost completely privately run and do not have set performance measures to ensure quality accommodation.

## Applicable Children's Rights

**3.3** The International Covenant on Civil and Political Rights ('ICCPR') states that no one should be subjected to arbitrary or unlawful interference with privacy and family, or discrimination with respect to measures of protection required by status as a minor.

In accordance with the UNCRC:

- Refugee children accompanied by their parents should receive appropriate protection and humanitarian assistance in the enjoyment of their rights;
- Children should be protected against all forms of discrimination or punishment on the basis of the status;
- The State recognises the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development;
- No child should be subjected to arbitrary or unlawful interference with his or her privacy and family life;
- The State should respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity; and
- In all actions concerning children, the best interests of the child shall be a primary consideration.

The United Nations High Commissioner for Refugees (UNHCR) Executive Committee has also commented that children's needs must be addressed in the context of family and community, and that a child's welfare is closely linked to the health and security of the primary care-giver, who is usually the mother.

## Information made available to the OCO during the investigation

**3.4** Upon analysis:

- We have not seen any empirical evidence that the DP system addresses a 'pressing social need' so as to constitute a 'necessary interference' in the private and family life of children residing within the system. The State's historical policy of DP and dispersal, employed to deter asylum applicants, represents a failure to protect children subject to this policy against all forms of discrimination or punishment on the basis of the status;
- The OCO concurs with IHREC, ECRI, UNCERD and the Special Rapporteur on Child Protection in concluding that DP is not conducive to family life, is not in the best interests of children, and is detrimental to the welfare and development of children exposed to this institutionalised living. Indeed, the Government acknowledges that the DP system does not have the protection and promotion of the human rights of asylum seekers at its core, that it needs to change, and has committed to acting on the recommendations of the *Expert Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Asylum Seekers)*, including the establishment of an independent inspection process.

- Despite the recommendations contained in the McMahon report (June 2015), that the Minister establish or identify an inspectorate independent of IPAS to carry out inspections in DP centres against newly approved standards and that the independent Inspectorate make regular reports to the Minister on general matters relating to the welfare of residents in DP centres, there have been no changes to the inspection regime to date.
- IPAS stated that the Health Information and Quality Authority (HIQA) have agreed to undertake inspections subject to the final agreement of their parent Department of Health and of the Department of Children, Equality, Disability, and Integration. The issue of a legislative amendment to the HIQA parent Act also needs to be explored. Preliminary work on preparing for the inspections process is being undertaken by HIQA, Department of Justice and DCYA [now DCEDIY].
- The new National Standards for Accommodation Centres were due to come into force in January 2021. However, as IPAS's function is due to move from the Department of Justice to the new Department of Children, Equality, Disability, Integration and Youth, IPAS stated that it cannot commit to a timeline for their implementation.
- At present, inspections focus on service delivery issues such as food, food hygiene, cleanliness, upkeep and physical appearance of premises as well as health and safety issues. In their most recently published Annual Report, IPAS state that the primary purpose of these inspections is to record a 'snapshot' of the physical conditions of the centre on the day of the inspection and to ensure that the services contracted by IPAS are being delivered by the contractor. However, IPAS have acknowledged to the OCO that the current inspection regime requires change.
- While IPAS states that it makes every effort to conduct inspections three times annually, there was one (rather than two) external inspections of accommodation centres in 2019. The OCO was informed that formal 'internal' IPAS inspections did not take place during that time due to a lack of capacity. EACs were not subject to any inspections.
- The external inspections of accommodation centres were stood down during the Covid-19 restrictions.

## **IPAS - Independent Internal Complaints' Procedure**

### **Policies and Commitments**

- 3.5** IPAS's internal complaints procedure states that in very exceptional and serious circumstances residents may submit their complaint directly to IPAS, bypassing the centre manager, however, IPAS may send the complaint to the accommodation centre manager if they think it should have been dealt with locally first.

IPAS state that they endeavour to conduct clinics at all accommodation centres on at least a bi-annual basis, and that the primary objective of the clinics is not only to make IPAS staff available to discuss issues on a one-to-one basis, but also to review and examine the centres and their general operation. The IPAS policy states that clinics allow residents to address any issues of concern, complaints, queries

and information requests in person, and that IPAS staff seek to address concerns as appropriate, investigate issues raised, and provide information and referral details where necessary. The residents are assured that any issues raised will be addressed confidentially and will only be discussed with relevant personnel with their agreement.

In the context of the recommendations contained in the McMahon Report (June 2015), the Government committed to:

- appointing a designated officer, who is not involved in operational matters, to handle complaints that are referred to it or are submitted to it directly;
- reviewing the complaints procedure to ensure that it is accessible to residents including children and young people;
- engaging in renewed efforts to build confidence and trust in the complaints procedures, including by ensuring that residents understand the House Rules, are aware of the complaints procedures and how to use it, and understand that it is impartial and that they will not be adversely affected by making a complaint; and
- engaging in efforts to ensure that centre management buy into the importance of ensuring an open culture that is conducive to residents making complaints.

### **International, European, and Irish Law**

**3.6** In 2014, the Irish High Court found that it was not acceptable that IPAS should be the final arbitrator in disputes between the residents and accommodation providers, saying that applicants are entitled to have an independent complaints handling procedure.

In July 2014, the UN Human Rights Committee stated that it regretted the lack of an accessible and independent complaints mechanism in DP centres, and recommended that the State remedy this.

### **Applicable Children's Rights**

**3.7** The UNHCR Executive Committee has recommended that States establish confidential, accessible and child and gender-friendly complaints and referral systems with clear roles for receiving, referring and addressing complaints from or about a child while ensuring the safety of the child. Children also should be adequately informed about the availability of complaint and remedial mechanisms.

## Information made available to the OCO during the investigation

### 3.8 Upon analysis:

- The OCO has not been provided with any evidence of the implementation of the recommendations pertaining to IPAS's internal complaints procedure contained in the McMahon report (June 2015). It was recommended that the Government appoint an independent designated officer to handle complaints, that the complaints procedure be reviewed for its accessibility to children and young people, that the Government engage in renewed efforts to build confidence and trust in the complaints procedures, and the Government ensure buy in by centre management to ensure an open culture that is conducive to residents making complaints.
- We were informed that there is no 'Independent Designated Officer' for complaint handing envisaged by IPAS at present.
- The January 2019 House Rules state that residents must make their complaint to the centre manager in the first instance except in 'very exceptional and serious circumstances'. The section on how to make a complaint in the House Rules is followed directly by a section on how centre managers can make a complaint against a resident for a breach of the House rules and refers to the Minister's power to 'reduce or withdraw or re-designate (transfer) reception conditions (accommodation and related services) to another centre' as a sanction for a breach of the same.
- IPAS held approximately one clinic (rather than two) in each DP centre in 2019 (i.e. 40 clinics in 38 centres). There were no interpretation services provided for these clinics or for the making of complaints.
- Since the Covid-19 restrictions, IPAS stated that it has not been possible to carry out on-site clinics. However, approximately 10 Zoom calls have taken place with individuals, with interpretation available upon request.
- IPAS stated that when on-site clinics resume, interpretation facilities will be made available to the residents. However, the OCO has not seen any plan for the implementation of the same.
- IPAS stated a new customer service software system was put in place during Covid-19 restrictions but that the temporary staff who manned this 'customer service unit' have been reassigned.
- Up until July 2019 there were no clinics in EACs. In August 2019 the NGO, JRS Ireland, was commissioned to host fortnightly 'cultural liaison' in EACs in the Dublin area. In October 2019, JRS Ireland, was commissioned to host fortnightly 'cultural liaison' in EACs in Cavan, Louth, Meath, and Monaghan. There is no JRS Ireland fortnightly in-reach 'cultural liaison' in the EACs outside of Dublin and the North East where approximately half of residents of EACs reside.
- A National Resident Support Helpline, funded by the Department of Justice and run by JRS Ireland was put in place, as a method for residents to communicate any issues they may have during the Covid-19 restrictions. According to IPAS, this is still in operation and over 200 calls were made to the service between July and August 2020.



## IPAS - Child Protection and Welfare

### Policies and Commitments

**3.9** IPAS states that it takes the issue of child protection and welfare very seriously, the safety and protection of children living in the centres is of paramount concern, and the best interests of the child should be a primary consideration in planning and service delivery. In addition, all staff and management receive training in IPAS's child protection policy and Children's First training.

IPAS states that the role of its CFSU is to manage, deliver, co-ordinate, monitor and plan all matters relating to child and family services for all persons residing in IPAS accommodation centres, to act as a conduit between IPAS and Tusla, and to facilitate and chair regional interagency meetings. IPAS states that the CFSU monitors all incidents, particularly those not referred to Tusla's Social Work Team, in order to offer support and to build parenting capacity. According to IPAS, the CFSU maintains a record and monitors Child Protection and Welfare (CPW) files for any patterns or concerns emerging, and attends case conferences and review meetings arising from child protection referrals.

In the context of the recommendations contained in the McMahon Report (June 2015), the Government committed to:

- Tusla, HSE and IPAS collaborating to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services;
- A multi-disciplinary assessment of all protection applicants within 30 days of the lodging of an application for protection to identify and appropriately assist vulnerable applicants; and
- Follow-up and monitoring of persons who fall into the category of 'vulnerable' on an on-going and regular basis until such time as the applicant exits the protection system.

The current Programme for Government (June 2020) commits to ending the DP system, and to acting on the recommendations of the *Expert Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Asylum Seekers)*, September 2020.

### International, European, and Irish Law

**3.10** In December 2014, IHREC concluded that the system of DP is not in the best interests of children, has a significant impact on the right to family life and has failed to adequately protect the rights of those seeking protection, including vulnerable persons.

In June 2019, ECRI noted the inability to conduct normal family life in DP, with lengthy institutionalised living being detrimental to the welfare of children.

In December 2019, the UNCERD stated that it is concerned by the State's lack of quantitative and qualitative data on, and absence of adequate mechanisms for, the identification of asylum seekers with special reception needs.



In accordance with the Children First Act 2015, as a 'provider of relevant services' each designated DP, EROC or EAC must ensure, as far as practicable, that each child availing of their service is safe from harm. Each accommodation centre must undertake a risk assessment and prepare a Child Safeguarding Statement to be displayed in a public area where it can be easily viewed and read. The accommodation centre must also appoint a 'relevant person' under the Children First Act 2015 ('2015 Act') to act as the coordinator with outside agencies, and as a resource person for residents and staff members who have child protection concerns. The name and contact details for the relevant person should be prominently displayed and the relevant person is responsible for reporting allegations or suspicions of abuse and neglect to Tusla and/or An Garda Síochána. In addition, accommodation centre managers are classified as mandated persons and, as such, are responsible for mandatory reporting under the 2015 Act. A DLP is a non-statutory role. The Children First Guidance advises that providers of services to children should consider appointing a DLP as 'the resource person for any staff member or volunteer who has child protection concerns and will liaise with outside agencies' in keeping with best practice in child safeguarding.

Under the Children First Act 2015, there are no criminal sanctions for the failure of a mandated person to report a child protection concern. It is envisaged that non-compliance with statutory obligations should be addressed by individual organisations or professions through fitness to practice or disciplinary procedures. A failure to produce a Child Safeguarding Statement (CSS) may lead to inclusion on the non-compliance register, which will be made available for inspection by service users and members of the public.

The Children First Act 2015 places an obligation on each Government Minister to ensure that their department prepares a sectoral implementation plan. These plans set out the programme of measures that are either in place or planned to ensure compliance with the provisions of the Guidance and the Act. The sectoral implementation plans apply not only to the Government department but also to any organisation which provides a relevant service to children and receives funding from the relevant department in that regard. Government departments should satisfy themselves that all mandated persons and providers of relevant services under their remit are aware of and comply with their specific statutory child welfare and protection obligations.

Under the Reception Directive, the State shall ensure that material reception conditions provide an adequate standard of living for international protection applicants, which guarantees their subsistence and protects their physical and mental health. The State shall ensure that this standard of living is met in the specific situation of vulnerable persons, such as minors. It is incumbent on the State to assess whether the applicant is an applicant with special reception needs and indicate the nature of such needs. That assessment shall be initiated within a reasonable period of time after an application for international protection is made. The State shall also ensure that those special reception needs are addressed and ensure the support provided to applicants with special reception needs is monitored. Finally, the State shall also ensure a standard of living adequate for a

minor's physical, mental, spiritual, moral and social development, including access to play and recreational activities appropriate to their age within accommodation centres, and to open-air activities.

With respect to the Reception Directive, the European Asylum Support Office (EASO) has commented that special needs are transversal to the provision of reception conditions as some applicants will require further special support to enable them to benefit on an equal footing to the rights and benefits contained in the Reception Directive. Furthermore, reception officers in contact with applicants for international protection and everyone involved throughout the process should be aware of and able to identify special needs. Indicators and special needs should be recorded as soon as possible after they are detected, and this information should be communicated to the relevant stakeholders in order to provide the necessary guarantees and support.

The Regulations stipulate that, in the designation of an accommodation centre, the Minister shall take account of the need for the accommodation centre to be suitable to meet all of the minor's needs and to allow the minor to avail of the benefits to which he or she is entitled under the Regulations. This includes the Minister's obligation to assess within 30 working days whether an applicant is an applicant with special reception needs, and, if so, the nature of his or her special reception needs.

The *Report on the Assessment of Vulnerability of International Protection Applicants in the Irish Context* prepared for the HSE's National Social Inclusion Office (November 2019) recommended:

- Overall responsibility for the implementation of a vulnerability assessment to rest with the Minister for Justice;
- [IPAS] to assume responsibility for coordinating the multi-disciplinary, interdepartmental and interagency approach to the development and implementation of the vulnerability assessment process; and
- HSE to resource the implementation of the vulnerability assessment process the HSE will seconde two members of staff to [IPAS]. The seconded HSE staff will play a leadership role in the development and implementation of the vulnerability assessment process within the multi-disciplinary team in addition to the specific responsibilities the HSE will have for the health components of the vulnerability assessment and implementation process.

## **Applicable Children's Rights**

**3.11** The UNHCR Executive Committee has stressed the importance of according special attention to the protection needs of vulnerable refugees, including children, stating that reception arrangements should address the educational, psychological, recreational and other special needs of children.

In accordance with the UNCRC:

- The State shall ensure the survival and development of the child to the maximum extent possible;

- The State shall render appropriate assistance to parents in the performance of their child-rearing responsibilities;
- The State shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent, including protective measures in the form of effective procedures for prevention and for identification, reporting, referral, investigation, treatment, and follow-up; and
- In all actions concerning children, the best interests of the child shall be a primary consideration.

## Information made available to the OCO during the investigation

### 3.12 Upon analysis:

- IPAS informed the OCO that it does not have any concerns regarding the impact of children growing up in DP and asserts that the vast majority of State provided accommodation works well.
- While IPAS states that it takes the issue of child protection and welfare very seriously, this was not reflected in its commitment of resources to the CFSU, its oversight mechanisms, or its use of EACs. Notably:
  - There was no CFSU manager/Tusla secondee in IPAS between December 2018 - November 2019. IPAS informed Tusla that it was concerned that, in the absence of a CFSU manager (i) immediate support and intervention could not be provided to families in centres, (ii) there had been an apparent drop in the rate of referrals from centres, and (iii) IPAS had been unable to respond to the need for training in new centres or for new staff in existing centres. At that time, the CFSU was comprised of one Executive Office (EO) and one Clerical Officer (CO) grade employee, who only followed up on CPW referrals or concerns where a transfer was proposed.
  - The OCO has not seen any evidence that the inspection regime undertook any checks of how centres were complying with Children First other than recording whether there is a notice about the name of the DLP and whether visitors were made aware of the child protection policy. In relation to the latter, the only evidence checks were observation of posters and visitor sign in sheets.
  - Up until February 2020, EACs were not designated centres under the Children First Act 2015, and as of May 2020, there were five emergency accommodations, not designated EACs, being used by IPAS. For this reason, IPAS stated that it is working on moving children out of the large commercial hotels to EACs covered by child protection compliance.
- The OCO has not been provided with any evidence that the CFSU facilitates and chairs regional interagency meetings, monitors all incidents - particularly those not referred to Tusla's Social Work Team - in order to

offer support and to build parenting capacity, records and monitors CPW files for any patterns or concerns emerging, or attends case conferences and review meetings arising from child protection referrals, as per its own policy.

- According to IPAS, the CFSU is only entitled to know whether a referred case is open or closed with Tusla. The CFSU Manager informed the OCO that they accept phone calls from centre managers and offers general referral advice but does not generally record these contacts.
- The current CFSU Manager stated that they intend to meet with Tusla's Prevention, Partnership and Family Support Programme (PPFS) managers throughout the country, and organise in-reach within centres to understand how Tusla can best respond to concerns that are being raised.
- Under Children First, Government Departments should satisfy themselves that all mandated persons and providers of relevant services under their remit are aware of and comply with their specific statutory child welfare and protection obligations. It is unclear how the IPAS's CFSU monitors accommodation centre compliance with Children First. The CFSU Manager stated that they had hoped to be able to put each accommodation centre's CSS through the Tusla Compliance Unit, however, due to the number of statements, the Tusla Compliance Unit declined to review these because of resource considerations.
- The CFSU Manager stated that they have requested that all newly designated EACs submit staff for Garda vetting, draw up a CSS, designate DLPs and deem all Managers to be Mandated Persons. As stated, it is unclear how the CFSU monitors EACs compliance with these requests.
- The OCO has not been provided with any evidence with respect to the implementation of the recommendations pertaining to vulnerable persons contained in the McMahon report (June 2015). It was recommended that Tusla, the HSE and IPAS collaborate to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services; undertake a multi-disciplinary assessment of all protection applicants within 30 days of the lodging of an application for protection to identify and appropriately assist vulnerable applicants; and follow-up and monitor persons who fall into the category of 'vulnerable' on an ongoing basis until such time as the applicant exits the protection system.
- There is no procedure in place for the identification of children with special reception needs under the Regulations. The Government has committed to ensuring vulnerability assessments take place in the short term.
- According to IPAS policy, all staff and management receive training in IPAS's child protection policy and Children's First training. In March 2020, there were approximately 500 staff across the DP and EROC system that needed Children First introduction training. At that time it was envisaged that it would take until the end of the year to clear this backlog. IPAS was unsure of how many staff in EACs required training.
- The OCO was informed that in-person training was paused in March 2020 but that all staff in IPAS, IPPS, IRPP, DP, EROCs and EACs have now been asked to complete the Tusla Introduction to Children First E-Learning

Programme. IPAS stated that it has one trainer who is due to recommence in person Children First training the week commencing 5th October 2020 for those who have not completed it already. It is not clear how IPAS intends to address the Children First training backlog identified earlier in the year.

- IPAS stated that it has sent an expression of interest for training to be provided to both IPAS staff and accommodation centre staff in Q4 2020 on Understanding Child Development through a Trauma Informed Lens.
- The OCO has not been informed of any intention to provide 'cultural diversity' training to accommodation centre staff.

## Tusla - Child Protection and Welfare

### Policies and Commitments

**3.13** In Better Outcomes Brighter Futures (April 2014), the Government committed to focussing on the 20% of children that need additional support as a consequence of disadvantage and damage that can cripple their capacity to learn, grow, have a healthy life and productive relationships, stating that it needs to identify these children and intervene early. A cross-Government goal of Better Outcomes Brighter Futures is to adopt an effective interagency approach in relation to cases of child welfare and protection and to establish information and coordinating protocols between agencies serving children and young people.

Following the *HIQA Report on child protection and welfare services provided to children living in direct provision accommodation (May 2015)*, Tusla committed to implementing the following recommendations:

- To develop an inter-cultural strategy to inform the provision of social services to ethnic minority children and families;
- To complete an audit to ensure there are no children at risk of harm because of outstanding or incomplete assessments due to the movement of families between accommodation centres;
- To ensure effective interagency and inter-professional cooperation with key stakeholders to ensure decisions consider the best interests of children; and
- To gather information on referrals to their services about children in DP accommodation to inform strategic planning.

In the context of the recommendations contained in the McMahon Report (June 2015), the Government committed to:

- Tusla, HSE and IPAS collaborating to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services;
- Tusla and HSE identifying a named social worker on their respective child protection, mental health and primary care teams to be the identified lead social worker for a DP centre in their area; and
- Access to cultural diversity training and interpreting services for professional staff with the HSE and Tusla working with residents in DP, where not already available.

Tusla's 'Seen and Heard' strategy (2017) echoes Better Outcomes Brighter Futures in emphasising the need to ensure that children and their parents living in State provided accommodation are included in 'universal' service provision, targeted in-reach and communication strategies across all public services. It states that early intervention requires linking in with children and parents in a manner that recognises barriers to participation created by cultural and language differences.

Following a March 2019 review entitled *A review of the operation of Tusla's child protection service in the context of referrals received regarding children resident in [IPAS] accommodation centres* by Tusla's National Quality Assurance and Monitoring Team, Tusla committed to the following measures:

- All relevant documents should evidence that children's ethnicity was considered as part of the social work assessment of the child.
- All Areas should ensure that when required translators are used and correspondence with families living in DP centres is provided in the families own language.
- Tusla should develop a national guidance protocol in order to support effective communication between RIA and Social Work Child Protection Services.
- Tusla should develop an intercultural strategy to inform the provision of social services to ethnic minority children and families.
- Interagency work between Tusla Social Work departments, The Child and Family Services Unit in [IPAS] and [IPAS] accommodation centre staff should be improved in order to enhance outcomes for children living in the [IPAS] accommodation centres.
- Access to PPFS services should be available to social workers if preliminary screening indicates that families would benefit from early intervention support in their communities.
- Further analysis of the total number of referrals received by Tusla in relation to children resident in [IPAS] accommodation centres in all Tusla Area's is necessary to draw a more definitive conclusion on the comparative rates of child protection and welfare concerns.
- Staff training on asylum process and cultural diversity should be made available to social work staff.
- Data entry into Tusla's National Childcare Information System (NCCIS) system needs to be accurate.
- Tusla PPFS information to be made available in the accommodation centre.

## **International, European, and Irish Law**

**3.14** Under the Child Care Act 1991, Tusla is obliged to identify and coordinate information in respect of a child who may not be receiving adequate care and protection and, if it is found that a child is not receiving adequate care and protection, Tusla has a duty to take appropriate action to promote the welfare of the child. This may include supporting families in need of assistance in providing care and protection to their children.



The Child and Family Agency Act 2013 ('2013 Act') establishing Tusla, states that the Agency is to:

- Support and promote the development, welfare and protection of children;
- Support and encourage the effective functioning of families;
- Maintain and develop support services, including support services in local communities;
- Engage in preventative family support services aimed at promoting the welfare of children;
- Collaborate with any person that the Agency considers appropriate in relation to any matter connected to the Agency's functions; and to
- Facilitate and promote enhanced inter-agency cooperation to ensure that services for children are co-ordinated and provide an integrated response to the needs of children and their families.

Children First Guidance 2017 recognises that many reports to Tusla will not relate to a child protection risk to the child but will indicate that the parents/guardians are in need of help because a child's needs are not being adequately met. Tusla ensure that children have a stable environment to live in and provide support for parents who are finding it hard to cope. Where the reported concern falls below the threshold for child protection intervention by Tusla, but the family may benefit from other services, a Child Welfare Plan/Family Support Plan may be made.

## Applicable Children's Rights

### 3.15 In accordance with the UNCRC:

- The State shall ensure the survival and development of the child to the maximum extent possible;
- The State shall render appropriate assistance to parents in the performance of their child-rearing responsibilities;
- The State shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent, including protective measures in the form of effective procedures for prevention and for identification, reporting, referral, investigation, treatment, and follow-up; and
- In all actions concerning children, the best interests of the child shall be a primary consideration.

## Information made available to the OCO during the investigation

### 3.16 Upon analysis:

- Recommendations contained in the *HIQA Report on child protection and welfare services provided to children living in direct provision accommodation (May 2015)* have not been implemented. At that time, Tusla committed to:

- Developing an inter-cultural strategy to inform the provision of social services to ethnic minority children and families;
  - Completing an audit to ensure there are no children at risk of harm because of outstanding or incomplete assessments due to the movement of families between accommodation centres;
  - Ensuring effective interagency and inter-professional co-operation with key stakeholders to ensure decisions consider the best interests of children; and
  - Gathering information on referrals to their services about children in DP accommodation to inform strategic planning.
- Equally, we have not been provided with any evidence with respect to the implementation of the recommendations pertaining to child protection and welfare contained in the McMahon report (June 2015). It was recommended that:
    - Tusla, HSE and IPAS collaborate to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services;
    - Tusla and HSE identify a named social worker on their respective child protection, mental health and primary care teams to be the identified lead social worker for a DP centre in their area; and
    - Professional staff with the HSE and Tusla working with residents in DP have access to cultural diversity training and interpreting services for, where not already available.
  - Children residing in State provided accommodation are not recognised by Tusla to be a vulnerable cohort. While recognising that DP, as a model of service provision designed for short periods, can impact on the welfare of children over time, the Tusla Senior Manager and the Principal Social Worker (PSW) of Separated Children Seeking Asylum Team stated that they did not see any need for Tusla to adopt a more strategic approach with respect to children residing in DP. During the information gathering process, Tusla was unable to identify any material or communication regarding any concerns raised by Tusla to IPAS about DP and/or EACs. This reflected a prior finding of the HIQA report (May 2015) which stated that Tusla senior managers did not always identify these children as a vulnerable group and there was no strategic plan in place to identify and meet the needs of this population.<sup>12</sup>
  - There are no specific policies to guide social work teams in their work with children and families in accommodation centres. There is a section dealing with Children from Abroad needing Protection in the Tusla Child Protection and Welfare: Practice Handbook 2, which references particular sensitivities that may be present for a child from abroad, but not the specific

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<sup>12</sup> Tusla maintains the position that there may be children in IPAS accommodation that are vulnerable but that they are not vulnerable by virtue of living in IPAS accommodation and to categorise them as such, is to disregard many factors including their parents' ability to nurture, protect and raise their children to be resilient and confident children who are active in school and community life. Tusla states that where parents need to be supported in this role, Tusla is available to provide this support, and there needs to be recognition of universal versus targeted interventions for the children in IPAS accommodation, as with all children.



implications of accompanied children growing up in DP.

- At present, there is no inter-cultural strategy to inform the provision of social services to ethnic minority children and families.
- Tusla stated that it does not collect data on children in DP, has not assessed the impact on children growing up in DP, and does not see a role for Tusla beyond individual referrals from centres. The OCO was informed by the Tusla Senior Manager that Tusla adopts the same approach for children growing up in DP as for the general population, which she states is appropriate as Tusla does not wish to discriminate against families residing in DP. She said that Tusla only have the right to get involved when significant concerns arise and that this is the same for homeless families.<sup>13</sup>
- The OCO has not been provided with any evidence of Tusla and/or IPAS gathering data on national trends of referrals to CPW services from DP. Tusla's data and statistics are collated on individual children within families and within NCCIS there is no capacity to conduct a search by a category such as 'DP'. The OCO was informed that each Tusla Regional Director was contacted for the details of meetings related to children in DP, but few responses were received because children and families are dealt with on a case by case basis, based on the presenting needs.
- The HIQA report found that approximately 14% of the population of children living in DP were referred to Tusla in one year, a significantly higher referral rate than that for the general child population (1.6%). In addition, of the 209 DP referrals, 178 (85%) reached the threshold for an initial assessment. This is considerably higher than the average threshold of 50% of all referrals in 2013 that required an initial assessment. In spite of the higher than average rate of referrals for this group of children, the OCO has not seen evidence of any Tusla analysis or audit of the comparative rate of CPW concerns and referrals received from IPAS during 2019.<sup>14</sup>
- Tusla requested a six-week extension in order to collate information on the number and type of referrals received regarding children living in DP, EROCs and EACs from 3rd April 2017 to 31st July 2020. Despite the extension, Tusla initially provided figures which included children living in EACs who had

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13 In May 2019, the Minister for Children and Youth Affairs stated that Tusla provides the following supports to children whose parents are homeless: 'Tusla supports homeless families experiencing problems with school attendance, through the School Completion Programme. Children whose families are homeless are prioritised for services such as homework clubs and breakfast clubs. Tusla and the Dublin Regional Homeless Executive (DRHE) have agreed a joint protocol to facilitate an inter-agency response to the many challenges posed by homelessness. As part of the protocol, Tusla provides support to the DRHE 'one-stop-shop' assessment centres. Here Tusla staff deal with matters of child protection and welfare, educational welfare and Domestic, Sexual and Gender-based Violence (DSGBV) services. Tusla's Homelessness Liaison Officer supports these centres. Family Resource Centres, funded by Tusla, provide facilities where homeless children and families can avail of a safe, warm environment for homework, relaxation and nutritious food. Tusla is engaging with the Centres to offer further, enhanced services across the greater Dublin area in 2019:(Dáil Éireann Debate, 28/05/19)

14 According to Tusla, an initial analysis of referrals received in 2019 was completed the National Manager for Performance and Reporting in October 2020, and the overall finding was that 'An analysis of the total number of referrals received by Tusla in relation to children resident in IPAS accommodation centres was completed. Although there was some evidence to suggest that the rate of referrals for children resident in accommodation provided by IPAS was higher than the general population, a definitive conclusion could not be drawn, due to limitations of the data available for analysis. Any future comparative analysis of referral rates is likely to be complex and requiring further research. Systemic issues and local knowledge would need to be included:'

been placed there by the Dublin Regional Homeless Executive and not IPAS. This reflected a prior finding of the HIQA report (May 2015) which stated that there was no effective mechanism to gather data about these children and there was no process to identify risks to them at a strategic level. As a result, all of the areas struggled to provide the information requested by HIQA about referrals of children in DP accommodation.

- Tusla was unable to provide the OCO with any information on the number of children received into care from DP, even though this is an issue previously highlighted by the Child Care Law Reporting Project.<sup>15</sup>
- At present, there is no standardised protocol to inform how Tusla and the providers of accommodation should work together, liaise and share information at a local, operational level, regional or national level.
- Tusla has stated that the PPFS pillar is the most appropriate service to be linking in with children and families in DP. The National Coordinator for PPFS provided evidence of interventions at 39 of the 62 DP, EROCs, and EACs where children are residing. However, at present, there is no Standard Operating Procedure between PPFS and IPAS. The OCO was informed of a number of instances where PPFS Managers were unaware of families living in accommodation centres in their area, and an instance where the manager of one commercial hotel refused to give the PPFS Coordinator contact details for data protection reasons. Tusla stated that it has sought a commitment from IPAS that they will be notified of centre openings going forward.
- In the absence of any information sharing protocol between IPAS and Tusla, the movement of families between centres and/or emergency locations has impeded some CPW assessments in the past.<sup>16</sup>
- The OCO was informed that there is agreement between the Department of Justice and Tusla that there is scope to improve some of the interagency communication and inter-professional working in order to ensure the best outcomes for children referred to Tusla from IPAS. Tusla stated that they are working on information sharing protocols to be agreed with the DCEDIY's Children and Young People Services Committees (CYPSC) steering group to ensure that the needs of young people in international protection accommodation are included in the children and young people's plan for each relevant area. However, the CYPSC National Lead informed the OCO that the local CYPSC coordinators draft the three year plan for their county and, while these plans are submitted to her, there is no coordination at a national level. She said that the National CYPSC steering group has not

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15 Final Report, Child Care Law Reporting Project by Dr Carol Coulter November 2015, page 45: 'There is a particular issue in Ireland related to the DP system, to which we referred in previous reports. We have reported on cases where mothers in DP suffered from severe episodes of mental illness, leading to their children being taken into care. We are aware of children who were born in 2007 in DP, are still living there and the only time period they have spent outside it was when they were in foster care while their mother received treatment for mental illness.'

16 The Report of the Inter-Departmental Group on Direct Provision, 6th December 2019, identified this as an issue and recommended that the CFSU Manager 'coordinate matters around children's welfare both in relation to moving families from emergency accommodation to Department of Justice centres (or between centres) and when they are granted status and move out of Department of Justice accommodation' (at pages 11-12).

met since September 2019, and that the National CYPSC Office does not have any plans to review or revise the CYPSC Planning and Reporting Framework.<sup>17</sup>

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17 The Report of the Inter-Departmental Group on Direct Provision, 6th December 2019, identified this as an issue and recommended that the CFSU Manager 'review current information sharing pathways to ensure all children, in emergency and State provided accommodation, are aware of and receive timely services' and 'make arrangements for sharing of information between DJE and the National Children and Young People's Services Committees Steering Group to be put in place to ensure that the needs of residents in DJE accommodation are included in the Children and Young People's Plan for each area' (at pages 11-12).

# 4. Findings

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## IPAS

### 1: The Direct Provision Model

The DP of State provided accommodation to families seeking international protection does not have the best interests of children, or the protection and promotion of the human rights of child refugees at its core. While the current Government has acknowledged this in the Programme for Government, IPAS – the unit of the Department of Children, Equality, Disability, Integration and Youth responsible for the accommodation of international protection applicants – informed the OCO that it does not have any concerns regarding the impact of children growing up in DP. The OCO finds that the prevailing administrative policy and practice of DP, in light of extensive evidence of the detrimental impact of lengthy institutionalised living on the welfare of children and their ability to enjoy normal family life, is contrary to fair and sound administration.

### 2: Independent Inspectorate

IPAS has failed to implement the recommendations contained in the McMahon report (June 2015) to establish or identify an inspectorate independent of IPAS to carry out inspections in accommodation centres and to make regular reports to the Minister on general matters relating to the welfare of residents, including children, in accommodation centres. While IPAS has stated that HIQA has agreed to undertake inspections, subject to the agreement of the relevant Government departments, this may require legislative change which could take years to implement and is complicated by the fact that the DP system itself was introduced on an administrative, rather than a legislative, basis. If HIQA is tasked with an oversight role, in the absence of a regulatory framework, we are concerned that HIQA would have no power of enforcement. Further, IPAS has stated that new National Standards for Accommodation Centres were due to come into force in January 2021, but it cannot commit to a timeline for their implementation. These standards do not have any statutory underpinning but rather are part of contractual obligations.

The OCO finds that the failure to progress the recommendation to establish or identify an independent inspectorate, and the recommendation to ensure reliable and contemporaneous reporting on the welfare of residents, particularly children, is contrary to fair and sound administration.

### 3: Deficiencies in Current Inspections

The current inspection regime focusses on food, food hygiene, cleanliness, upkeep and physical appearance, and health and safety. It does not take account ensuring the physical accommodation space and supports are adequate to meet children's physical, mental, spiritual, moral and social development, or ensure that accommodation centre

contractors are accountable. The OCO finds that IPAS's failure to ensure that the substantive needs of children are met and monitored within accommodation centres constitutes undesirable administrative practice.

#### **4: Frequency of Current Inspections**

Inspections represent IPAS's primary means of oversight of services delivered by the accommodation centre contractors. Despite this, pre Covid-19, IPAS failed to meet its own benchmark of three inspections per centre per annum and did not inspect EACs where children were residing at all. The OCO finds that IPAS's failure to meet this minimum level of oversight of accommodation centres, including EACs, constitutes undesirable administrative practice.

#### **5: Independent Complaints Procedure**

The Minister has failed to implement the recommendations contained in the McMahon report (June 2015) that the Government appoint an independent designated officer to handle complaints, that the complaints procedure be reviewed for its accessibility to children and young people, that the Government engage in renewed efforts to build confidence and trust in the complaints procedures, and that the Government ensure buy in by centre management to ensure an open culture that is conducive to residents making complaints. The OCO was informed that there is no 'Independent Designated Officer' for complaint handling envisaged by IPAS at present. We have seen no evidence of a review of the complaints procedure for its accessibility to children and young people, or efforts to build confidence or trust in the process and an open culture. Contrary to this, the January 2019 IPAS House Rules state that residents must make their complaint to the centre manager in the first instance except in 'very exceptional and serious circumstances'. This is followed directly by a section on sanctions against residents for breaches of House Rules as notified to the Minister by centre managers. The failure, after five years, to progress the recommendations in respect of the independent handling of complaints and the fostering of an open culture of complaint within accommodation centres, impedes parents from making complaints and is contrary to fair and sound administration.

#### **6: Service User Clinics**

In-house clinics represent one of the only ways in which residents can communicate with IPAS directly regarding their experience of DP, including any child protection and welfare concerns they may have. Despite this, pre Covid-19, IPAS failed to meet its own benchmark of two clinics per centre per annum and failed to provide any, or any consistent, interpretation services for these clinics or for the making of complaints. Prior to August 2019, there were no in-house clinics in EACs where children were residing. IPAS stated that it put a new customer service software system in place during Covid-19 restrictions but has already reassigned the temporary staff who manned this 'customer service unit'. In addition, IPAS stated that when on-site clinics resume, interpretation facilities will be made available to the residents, however, the OCO has not seen any plan for the implementation of this. The OCO finds that the failure of IPAS to meet this minimum level of engagement with residents in accommodation centres, including EACs, constitutes undesirable administrative practice.

## **7: Special Reception Needs**

IPAS has failed to implement the recommendations contained in the McMahon report (June 2015) that it undertakes a multi-disciplinary assessment of all protection applicants within 30 days of the lodging of an application for protection to identify and appropriately assist vulnerable applicants; and that it follow-up and monitor persons who fall into the category of 'vulnerable' on an on-going and regular basis until such time as the applicant exits the protection system. In fact, there is no procedure in place for the identification of children with special reception needs under the Reception Directive and Regulations. The OCO finds that the failure, after five years, to progress the recommendations in respect of the assessment and monitoring of the special reception needs of children, where 'minors' are recognised as inherently vulnerable under the Reception Directive and Regulations, is contrary to fair and sound administration.

## **8: Child and Family Services Unit**

IPAS's current level of oversight of accommodation centres does not reflect the recognised vulnerability of minors with respect to child protection and welfare. While IPAS has set up a Child and Family Services Unit ('CFSU'), there was no CFSU manager between December 2018 - November 2019, at which time, the CFSU was comprised two members of staff, who only followed up on child protection and welfare referrals or concerns where a transfer was proposed. We have not seen any evidence that the CFSU facilitates and chairs regional interagency meetings or monitors all incidents, particularly those not referred to Social Work Team, Tusla. They therefore cannot offer support, build parenting capacity or monitor for patterns or concerns emerging. The CFSU does now attend case conferences and review meetings arising from child protection referrals, as per its own policy. According to IPAS, the CFSU is only entitled to know whether a referred case is open or closed with Tusla, and does not collate data in respect of concerns and referrals. The CFSU Manager informed the OCO that they accept phone calls from centre managers and offers general referral advice but does not generally record these contacts. The OCO finds that IPAS's failure to follow its own policy in respect of child protection and welfare constitutes undesirable administrative practice.

## **9: Children First Act 2015**

IPAS has failed to put in place the necessary safeguards to ensure that children residing in DP, EROCs and EACs are safe from harm. There are no criminal sanctions for breaches of the Children First Act 2015. However, the 2015 Act places an obligation on any organisation which provides a relevant service to children and receives funding to prepare and publish measures that are either in place or planned to ensure compliance with Children First Guidance and Act. We have not seen evidence of an IPAS system for monitoring accommodation centre compliance with Children First.

In particular: IPAS inspection regime did not check how centres were complying with Children First other than recording whether there is a notice about the name of the DLP, and whether visitors were made aware of the child protection policy. In relation to the latter, the only evidence checks were observation of posters and visitor sign in sheets.

According to IPAS policy, all staff and management receive training in IPAS's child protection policy and Children's First training. The OCO was informed that in-



person Children First introduction training was paused in March 2020. At that time approximately 500 IPAS, IPPS, IRPP, DP, and EROC staff and an unknown number of EAC staff required the training. All have now been asked to complete the Tusla Introduction to Children First E-Learning Programme. IPAS stated that it has one trainer who is due to recommence in person Children First training the week commencing 5th October 2020 for those who have not completed it already. It is not clear how IPAS intends to address the Children First training backlog identified within its allocated resources.

Up until February 2020, EACs were not designated 'Reception or accommodation centres' under Schedule 1 of Children First Act 2015, and as of May 2020, there were five emergency accommodations, not designated EACs, being used by IPAS which are not covered by child protection compliance.

The OCO finds that the failure to effectively monitor accommodation centre compliance with Children First Act 2015 in line with its own policy and statutory obligations constitutes undesirable administrative practice.

## **Tusla**

### **10: Recognition of Inherent Vulnerability**

Children residing in State provided accommodation are not recognised by Tusla to be a vulnerable cohort who require strategic planning to identify and meet their needs. There are no specific Tusla policies to guide social work teams in their work with children and families in accommodation centres, nor are any envisaged. Tusla stated that it does not collect data on children in DP, has not assessed the impact on children growing up in DP, and does not see a role for Tusla beyond individual referrals from centres. The OCO was informed by the Tusla Senior Manager that Tusla adopts the same approach for children growing up in DP as for the general population, which she states is appropriate as Tusla does not wish to discriminate against families in DP. Tusla's failure to recognise the inherent vulnerability of minors in the international protection process and to make reasonable adjustments from standard procedures, which would give the children in DP an equal opportunity to reach their full potential, is improperly discriminatory. In addition, Tusla's failure to coordinate services to meet the needs of children in DP is based on undesirable administrative practice.

### **11. Data Collection and Analysis**

Tusla has no effective mechanism to gather data about children living in DP accommodation, within NCCIS or otherwise, which might identify risks and inform planning at a strategic level. In spite of the higher than average rate of referrals for this group of children, we have not seen evidence of any Tusla analysis or audit of the comparative rate of child protection and welfare concerns and referrals received from IPAS.

At present, there is no inter-cultural strategy to inform the provision of social services to ethnic minority children and families, or standardised interagency or interprofessional protocol to inform how Tusla, IPAS and accommodation centre contractors should work together, liaise and share information at a local, operational level, regional or national level.

The OCO finds that Tusla's failure to collect and analyse data which would inform strategic planning with respect to CPW services provided to children living in DP accommodation, is contrary to fair and sound administration and is based on undesirable administrative practice.

## **12: Specialised Resources**

Tusla has failed to implement the recommendations contained in the McMahon report (June 2015) that:

- Tusla and HSE identify a named social worker on their respective child protection, mental health and primary care teams to be the identified lead social worker for a DP centre in their area; and
- Cultural diversity training and interpreting services be made available for professional staff with the HSE and Tusla working with residents in DP.

The OCO finds that the failure to implement these recommendations, aimed at ensuring that there are specialised resources to identify and meet the needs of children living in DP accommodation locally, after five years, is contrary to fair and sound administration and based on undesirable administrative practice.

## **IPAS & Tusla**

### **13: Interagency Protocol**

Tusla has acknowledged that the secondment of a senior social worker to manage IPAS's CFSU is not sufficient to respond strategically to the needs of children in DP. The lack of operational guidance between the agencies has resulted in families being transferred between accommodation centres mid-assessment without the knowledge of social workers, instances where PPFS Managers were unaware of families living in accommodation centres in their area, and an instance where the manager of one commercial hotel refused to give the PPFS Coordinator details of who to contact about the families living there for data protection reasons.

According to IPAS files, there were approximately 162 referrals from DP, EROCs, EACs and other emergency accommodations to Tusla between 3rd April 2017 and the 31st July 2020. According to Tusla, there were 510 referrals to their services from DP, EROCs, EACs and other emergency accommodations over a similar period (3rd April 2017 to 8th June 2020). A lack of integrated data within the system means that these children lack visibility, and are not being recognised and planned for by the two agencies responsible for their protection and welfare.

The OCO finds that the failure of IPAS and Tusla, at its inception, to establish effective interagency and inter-professional protocols in order to ensure that all decisions concerning children residing in State provided accommodation have the children's best interests as their primary consideration, is contrary to fair and sound administration and undesirable administrative practice.

### **14: On Site Cooperation**



IPAS and Tusla have failed to implement the recommendation contained in the McMahon report (June 2015) that:

- Tusla, HSE and IPAS collaborate to provide on-site preventative and early intervention services and to gather data on national trends of referrals to services.

The failure to implement this recommendation aimed at ensuring that the needs of children living in DP accommodation are identified and met at the earliest opportunity, and that there is strategic planning for this cohort, is contrary to fair and sound administration and based on undesirable administrative practice.

## 5. Recommendations

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**5.1** The OCO has considered the proposals contained within the final report of the *Expert Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Asylum Seekers), September 2020*. The OCO notes that the Expert Group's final report states that the proposed new permanent system to replace the current DP model, and deliver a more humane service to extremely vulnerable people, should be fully in place by mid-2023. The Government previously committed to implementing the measures identified by the Expert Group in their final report and published its White Paper on Ending Direct Provision in February 2021. While, the OCO has referred to those proposals, where relevant, it is important to note that the recommendations made by the OCO are distinct measures, which should be taken as a matter of priority.

### IPAS

**5.2** While these recommendations may have resource implications for IPAS, the unit expanded from 33 to 95 staff during the course of this investigation, in order to ensure that residents were kept safe during the Covid-19 pandemic. We consider the measures outlined below necessary to keep children residing in State provided accommodation safe while the DP system persists.

#### **1: Recognise the Vulnerability of Children**

IPAS should make an unequivocal statement declaring that children within the international protection process are vulnerable<sup>18</sup> and regard must be had to their vulnerability in the planning and provision of their accommodation needs. IPAS must also consider these children's inherent vulnerability in the context of the evidence of the detrimental impact of lengthy institutionalised living on children's welfare and their enjoyment of family life<sup>19</sup> and ensure that where children continue to reside with their parents/guardians in DP, EROCs, EACs, and other emergency accommodation centres, targeted welfare interventions are put in place for the realisation of their full potential.

#### **2: Cease the use of Commercial Hotels**

IPAS should immediately end the use of non-designated commercial hotels for the emergency provision of families seeking international protection, and should develop a contingency planning framework with a view to effectively responding to capacity pressures.

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18 According to EASO guidance on reception conditions: operational standards and indicators (September 2016) page 28 'The experiences of the applicant either in their home country, during the journey or in the country of asylum can have a strong influence on the vulnerability. For example, the language barrier or the feeling of social exclusion they experience can lead them into a situation of increased vulnerability.'

19 See section [3.2] above.

### **3: Robust Quality Assurance Mechanism**

IPAS should immediately put in place a quality assurance mechanism that is adequately resourced to monitor the quality of services including complaints, child protection and welfare concerns and any other adverse incidents that indicate that a centre may not be providing quality services to families.

There must be robust mechanisms for the oversight of services to residents in DP, EROCs, EACs, and other emergency accommodation centres to ensure that the substantive needs of residents, in particular children, are being met, including:

- The full implementation of the 'National Standards for accommodation offered to people in the protection process as a matter of urgency. The OCO considers the implementation of the National Standards for measuring the quality of accommodation services to be the very minimum of what is required in terms of oversight, while the current system of DP exists;
- An obligation for centre managers to notify IPAS of all significant events in a manner similar to other regulated congregated settings and IPAS to take action on monitoring same pending establishment or identification of an independent inspectorate;
- All new agreements with commercial contractors to include a requirement to meet certain qualitative criteria that support children's physical, mental, spiritual, moral and social development. This may be achieved by linking the Children First Guidance 2017, the National Standards, or more robust indicators as yet to be devised, to performance measures under the contracts for services;
- The establishment or identification of an independent inspectorate with no direct reporting relationship with the Department of Justice or any branch of that Department, to carry out, at a minimum, quarterly unannounced inspections of designated and non-designated centres contracted by IPAS, against specific indicators under Children First, the National Standards, or more robust indicators as yet to be devised. Children and families must be met with directly as part of this inspection process;
- A mechanism for residents, including children to be able to engage with independent inspectorate privately, in confidence, and in a child-friendly manner, where appropriate;
- Any failure on the part of commercial contractors to meet the indicators, as determined, should invite the same level of accountability as a failure to meet health and safety standards at present i.e., the commercial contractor must outline the steps it has taken, or intends to take, to remedy the issue highlighted by the inspectorate within a set period of time and to IPAS's satisfaction, in order to avoid a 30-day notice of intent to terminate the contract; and
- The independent inspectorate to make, at a minimum, quarterly reports to the Minister on general matters relating to the welfare of residents, in particular children, in DP, EROCs, EACs, and other emergency accommodation centres.

#### **4: Monitoring of Children First Act 2015**

IPAS should put in place robust mechanisms for monitoring designated accommodation centre's compliance with the Children First Act 2015 in order to assure itself that all mandated persons and providers of relevant services under their remit are aware of and comply with their specific statutory child welfare and protection obligations. Including:

- Ensuring that, within three months, designated centres carry out a risk assessment to identify whether a child could be harmed while using their service, and develop a Child Safeguarding Statement to:
  - Manage any risk identified;
  - Investigate an allegation against any staff member about any act, omission or circumstance in respect of a child availing of the service;
  - Select and recruit staff who are suitable to work with children;
  - Provide information and training to staff on child protection and safeguarding issues;
  - Enable staff members, whether mandated persons or otherwise, to make a report to Tusla in accordance with the Act or any guidelines issued by the Minister for Children and Youth Affairs;
  - Maintain a list of persons in the organisation who are mandated persons under the Act; and
  - Appoint a DLP in the organisation as is best practice under Children First Guidance.
- Ensuring that designated centres display their Child Safeguarding Statements, the name of the centre's DLP and its notice to visitors in a prominent place and in a language that residents/visitors understand.
- Ensuring that designated centres undertake a review of their Child Safeguarding Statement every 24 months.
- Ensuring that all staff, especially centre managers as mandated persons, understand their obligations under Children First, through the provision of in-person training and other methods.

#### **5: Child and Family Services Unit**

IPAS should ensure that the Child and Family Services Unit is resourced appropriately to ensure the full implementation of OCO recommendations and any learnings, and to fulfil its functions to facilitate and chair regional interagency meetings, monitor all incidents - particularly those not referred to Tusla. This will ensure that CFSUs are in a position to offer support and build parenting capacity, record and monitor child protection and welfare files for any patterns or concerns emerging, and attend case conferences and review meetings arising from child protection referrals. The CFSU should be supported in ensuring that all accommodation centre staff receive extensive cultural sensitivity training, as well as training in gender, equality, human and children's rights.

## 6: Functional Complaints Mechanism

While parents and guardians have the primary responsibility for the care and protection of their children, under Children First Guidance 2017, it is the responsibility of all adults to be alert to the possibility that children with whom they are in contact may be being abused or at risk of being abused.

For this reason, IPAS should put in place functional and accessible feedback and complaints mechanisms for all residents in DP, EROCs, EACs, and other emergency accommodation centres. This will ensure that any concerns, including those relating to the protection and welfare of children within the centres, are brought to the attention of IPAS at the earliest opportunity.

In order to realise this recommendation, IPAS itself must be visible and accessible to all residents. IPAS should ensure the immediate provision of fortnightly in-house clinics, with interpretation facilities, to residents in all DP, EROCs, EACs, and other emergency accommodation centres. These clinics may be held remotely, if Covid-19 restrictions so require. However, the ongoing Covid-19 pandemic does not justify the indefinite suspension of essential services to vulnerable groups. These clinics may also be fulfilled by competent third-party providers under contract with IPAS, so long as residents are made aware of this, and of the provider's delegated responsibilities.

In the short term, IPAS should:

- Amend its House Rules to allow residents to complain directly to IPAS, if the complaint involves centre management, and encourage residents to do so, if a fear of complaint persecution exists;
- Resource its 'customer service unit' with permanent staff to ensure that issues highlighted by residents are recorded and inform IPAS planning and oversight;
- Ensure the continued operation of an independent helpline for residents post-Covid-19, and encourage its use as a resource for residents; and
- Designate an independent officer to determine complaints against centre management and IPAS itself, and communicate this transfer of functions, and its significance in terms of how complaints are handled, to all residents.

In the medium term, IPAS should engage an independent body to:

- Undertake a consultation with residents, including children, in order to understand the reasons behind the fear of complaint persecution and propose how IPAS may address those fears in a proactive manner;
- Review IPAS's complaints procedure for its accessibility to residents and, in particular, children and young people, and propose how IPAS may facilitate the making of complaints and encourage feedback from residents in respect of services being provided within the accommodation centres and within the community;<sup>20</sup>

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20 See also 'Direct Division: Children's views and experiences of living in Direct Provision' A report by the Ombudsman for Children's Office 2020, page 62: 'Some of the children felt like they did not have a say in how their centre was run, with their issues and requests being ignored. This caused frustration and a sense that complaints were not acknowledged at all or only if they created a fuss.'

- Analyse any prior efforts to build confidence and trust in the complaints procedures and propose how IPAS may foster an open culture within accommodation centres that is conducive to residents making complaints; and
- Propose any necessary changes to IPAS’s reporting structure, procedures and House Rules in support of an open complaints’ culture.

## **7: Special Reception Needs**

IPAS should put in place a procedure for the identification of children with special reception needs under the Reception Directive and Regulations, including:

- Ensuring a multi-disciplinary assessment of all children takes place within 30 days of the lodging of an application for international protection on their behalf, in order to identify and meet any presenting special reception needs;
- Ensuring that these assessments are conducted by qualified professionals and in a child-friendly manner;
- Ensuring that special reception needs identified are addressed in a sensitive and timely manner;
- Ensuring that accommodation centre staff are trained to identify emerging vulnerability; and
- Ensuring that all children are monitored on an ongoing basis in relation to any special reception needs until such time as they exit the international protection system.

The Expert Group’s final report has made the following relevant proposal with respect to ‘Supports while in the reception process’:

- In line with EU and Irish legislation, a vulnerability assessment to identify special reception and/or procedural needs should be carried out for all applicants within 30 working days of making an application for protection. Particular attention should be paid to the needs of children as well as vulnerable adults. Arrangements for their particular needs should be initiated in line with the vulnerability assessment while they are in the reception centre.<sup>21</sup>

## **Tusla**

### **8: Recognise the Vulnerability of Children**

Tusla should make an unequivocal statement declaring that children within the international protection process are vulnerable<sup>22</sup> and regard must be had to their vulnerability in the planning and provision of child and family services. Tusla must also

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21 Expert Group on the Provision of Support, including Accommodation, to Persons in the International Protection Process (Asylum Seekers), September 2020, page 62

22 According to EASO guidance on reception conditions: operational standards and indicators (September 2016) page 28 ‘The experiences of the applicant either in their home country, during the journey or in the country of asylum can have a strong influence on the vulnerability. For example, the language barrier or the feeling of social exclusion they experience can lead them into a situation of increased vulnerability.’

consider these children's inherent vulnerability in the context of the evidence of the detrimental impact of lengthy institutionalised living on children's welfare and their enjoyment of family life<sup>23</sup> and ensure that where children continue to reside with their parents/guardians in DP, EROCs, EACs, and other emergency accommodation centres, targeted welfare interventions are put in place for the realisation of their full potential.

### **9: Review of Child Protection and Welfare Referrals**

Tusla should conduct a review of child protection and welfare referrals on or after the 3rd April 2017 (when the OCO began accepting complaints), which emanated from DP, EROCs, EACs, and other emergency accommodation centres, in order to satisfy itself that no child residing in State provided accommodation is at an enduring risk of harm as a result of the maladministration identified in this investigation. This review would also consider the impact of DP on child welfare and parental capacity. It should instruct Tusla's Intercultural Strategy and DP Policy [see Recommendation 10] and lead to dedicated resources being put in place to support families in State provided accommodation.

### **10: Intercultural Strategy and DP Policy**

Tusla should develop an intercultural strategy to inform the provision of social services to ethnic minority children and families, and a specific policy to guide social work teams in their work with children and families in accommodation centres. It is recommended that this policy include a requirement that:

- Tusla put in place a systematic mechanism for the collection and analysis of information on referrals and related concerns to their services from accommodation centres so that the experiences and perspectives of children directly affected by the system are used to inform strategic planning at both Agency and Government level;
- Each area identifies a lead social worker, who has completed intercultural awareness training, to coordinate Tusla services to DP, EROCs, EACs, and other emergency accommodation centres in their area;
- Annual Children First awareness raising campaigns take place within all accommodation centres;
- Families in all accommodation centres are supported locally in understanding and accessing child protection and welfare, PPFs, and FWC supports;
- Specialised welfare interventions for families living in congregated settings, and response pathways for complex welfare referrals are identified; and
- Tusla, which has a National and local coordination role and chairs the majority of CYPSCs, ensures that the needs of children in State provided accommodation are included in the children and young people's plan for each county under the National Outcome related to 'Safe & Protected from Harm'.

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23 See section [4.4] above.

## Tusla & IPAS

### 11: Interagency Protocol

Tusla and IPAS should develop an interagency protocol to inform how Tusla, IPAS and accommodation centre management should work together, and liaise and share information at a local, operational level, regional and national level. Tusla and IPAS to ensure that all IPAS, IPPS, IRPP, DP, ERO, and EAC staff receive training with respect to the operation of the interagency protocol.

In addition to supporting effective communication between social work departments and accommodation centre management locally, the protocol should ensure that:

- Local Tusla Area Managers are notified when a new accommodation centre is to open in their area, and a lead social worker is identified for the new centre; and
- Tusla is notified of family movement between accommodation centres.

### 12: On Site Cooperation

IPAS, Tusla and accommodation centre management should collaborate to provide on-site preventative and early intervention services locally and assist the CFSU to capture data on referrals and related concerns to their services from accommodation centres, in order to identify national trends and inform strategic planning for children living in State provided accommodation.<sup>24</sup>

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24 This was a recommendation of the McMahon report (June 2015)



## 6. Public Bodies' Response to the Recommendations

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### IPAS/DCEDIY

- 6.1** IPAS/DCEDIY accepts the findings and recommendations contained in the investigation statement with the exception of Recommendation 8 as addressed to Tusla on the basis that *'consideration [of vulnerability] would be best based on assessed risk directly informed by presenting or identified issues, be they current or historic [that] would ensure that vulnerability is more contextualised and individualised, and counter a situation whereby through universal applicability it becomes undifferentiated and consequently deprioritised'*. It should be noted that Tusla has accepted this recommendation. IPAS/DCEDIY further states that it *'is fully committed to working with Tusla and the OCO to clarify a shared understanding of children's vulnerability in such settings and to strive to ensure a targeted and responsive approach to the identification of need, assessment and quality service provision.'*
- 6.2** Referencing the White Paper on Ending Direct Provision, IPAS/DCEDIY states that *'The transition to the new International Protection Support Service will be led by the Department of Children, Equality, Disability, Integration and Youth. Progress will be monitored by a Programme Board whose membership will include non-government stakeholders. It is envisaged that the new system will be fully operational by December 2024. Work is in progress to appoint the expert Transition Team, who will develop the detailed Implementation Plan which will set out the process for moving to the new model and related timelines. Work is also in progress to appoint the Programme Board which will be chaired by the Department of Children, Equality, Disability, Integration and Youth. The Minister for Children, Equality, Disability, Integration and Youth and the Minister for Justice will report jointly to the Cabinet Committee on Social Affairs and Equality on the work of their Programme Boards and on the implementation of the proposed reforms in the area of services provide to protection applicants.'*
- 6.3** IPAS/ DCEDIY provided the following update on actions taken, and yet to be taken, to progress the recommendations to the IPAS unit:

#### **Recommendation 1: Recognise the Vulnerability of Children**

The Department supports the OCO's position that regard must be had to an International Protection Applicant's vulnerability in the planning and provision of their accommodation needs. To that end, the Vulnerability Assessment process has commenced. The Department's aim is to have all families living in own door accommodation at the earliest opportunity and work is ongoing in this regard.

Currently 25.2% of accommodation centres are own door with private cooking facilities. Of 44 accommodation centres, 32 offer self-catering facilities. A number of the EACs also offer self-catering facilities.

### **Recommendation 2: Cease the use of Commercial Hotels**

The percentage of children in IPAS accommodation who are in EACs has now reduced to 9.3%. IPAS is actively working on ceasing the use of emergency accommodation.

### **Recommendation 3: Robust Quality Assurance Mechanism**

The Minister for Health has agreed that HIQA will take on the role of monitoring centres against the standards published in August 2019 during the transitional period to December 2024. That will give a strong baseline for developing the inspections system that will apply to the new system once it is fully operational. The Department has been engaging with HIQA about assuming the monitoring role and HIQA has submitted initial proposals in this regard. All accommodation centres were inspected by IPAS officials at least once in 2020, with 21 centres being inspected twice. In addition, all EACs and other emergency locations, with the exception of three now closed, were visited by IPAS in 2020.

### **Recommendation 4: Monitoring of Children First Act 2015**

The Department is continuing to work on this recommendation and as previously stated, all Accommodation Centres, EACs and EROCs have developed child safeguarding statements, all staff are continuing to be Garda vetted and re-vetting for staff has been introduced in all of those settings within 36 months of their initial vetting.

### **Recommendation 5: Child and Family Services Unit**

Increased staffing resources have been approved by the Department for IPAS, including the CFSU. A proposal for training for all IPAS staff, to commence with the Vulnerability Assessment Officers, is being reviewed by the Department's Learning and Development unit.

### **Recommendation 6: Functional Complaints Mechanism**

IPAS is currently undergoing a restructuring process, in order to ensure a more resident centred approach. An additional three Assistant Principal Officers ('APO') and three Higher Executive officers ('HEO') have been appointed to IPAS since December 2020. An APO and HEO have been appointed to manage a dedicated customer service unit in IPAS. The work of the unit has commenced and will place residents at the heart of all of its operations. This will involve IPAS resident focused communications (e.g. the IPAS Newsletter), listening to IPAS residents through a formalised feedback mechanism and actively responding to the concerns of residents, investigating and following up any complaints received. The new unit will be taking a proactive approach to establish how to improve communication for residents and to identify methods to provide further avenues for residents to engage with IPAS about any issues that arise in their centres. IPAS will be meeting

with centre managers to outline the new structure shortly and advise them of the new approach IPAS will be taking to ensure IPAS residents are listened to and their lived experiences understood. Due to the return to national level 5 restrictions, on-site clinics continue to be suspended, with remote clinics being carried out as an alternative.

### **Recommendation 7: Special Reception Needs**

A pilot Vulnerability Assessment programme is now in place. An APO and HEO have been appointed to oversee the implementation of the Vulnerability assessment process. All new arrivals, including children, are now being offered a Vulnerability Assessment in the International Protection Office. As part of the Vulnerability Assessment pilot, IPAS officers conduct an interview with applicants to obtain information that will help establish if any categories of vulnerability apply. The assessment involves two stages. The first stage, with the Vulnerability Assessment officer, the second stage with a Social Worker. IPAS has met with a broad range of organisations, such as Spirasi, RCNI and UNHCR, as part of the pilot, and has developed a draft policy and assessment toolkit in order to assist officers administering the assessment. IPAS would welcome meeting with the OCO for its insight and advice about how IPAS can ensure the voice of the children are taken account of through the process. A comprehensive training programme is currently being planned. As part of the pilot programme appropriate training of Vulnerability Assessment Officers will be provided. Ultimately this training will be rolled out to all IPAS staff, and in the longer term a similar package of training to Centre Managers. The purpose of the pilot is to allow the Department to assess the efficacy of the nascent process and flag logistical adjustments required to ensure IPAS delivers the most effective assessment process possible. This will include an ongoing assessment of the interview environment, interpretation regime, length of interviews, and recording and resolving any unforeseen issues which emerge during the pilot period. The pilot also provides the Department with an opportunity to cater for the impact of future changes in Covid-19 restrictions and to complete the recruitment of additional resources to meet the expected increase in demand when Covid-19 restrictions are relaxed.

### **Recommendations 11 & 12: Interagency Protocol and On Site Cooperation**

IPAS and Tusla are continuing to explore the development of the protocol and the implementation of recommendation 12.

## **Tusla**

- 6.4** Tusla accepts the findings of the investigation and the recommendations for the Agency and is committed to implementing the recommendations to improve their response to children and families seeking international protection.
- 6.5** Tusla provided a copy of their implementation plan, which summarises each recommendation, the specific actions to be taken, the named responsible person for implementation and the timelines for same. Tusla's timelines and actions for each recommendation are reproduced below:

### **Recommendation 8: Recognise the Vulnerability of Children (Q3 2021)**

By virtue of the fact that children and families are seeking international protection and the setting in which they reside, vulnerability is acknowledged in terms of a) those who require a supportive welfare response (multi-agency responsibility) and b) those whose vulnerability requires a child protection response (Tusla). These distinctive vulnerabilities will be reflected in Tusla's Direct Provision Policy (2021).

- The 'White Paper' states DCEDIY will provide strategic policy and systems guidance to CYPSC to ensure that local structures and supports are fully co-ordinated and mobilised in response to the needs of children, young people and their families resident in IPAS settings. In its National and local coordination role and as Chair of the majority of CYPSCs, Tusla will be a key stakeholder in shaping and enabling the CYPSC actions outlined.
- CYPSC Fora will be the forum to shape the required multiagency response to support these families to realise children's full potential.
- Where new Support Centres are located, or planned in regions, the local CYPSC will identify supports to be extended, or, developed to target the needs of children and families in DP Centre.
- The CYPSC supports will harness the input of Tusla services, including PPFS Responses and Tusla Educational Support Services (TESS). There will be a focus on aligning Health and Local Authority supports and harnessing the community and voluntary sector to best effect for children, young people and their families.
- CYPSC plans to be shared with relevant LCDC to reinforce alignment, implementation and local engagement.

### **Recommendation 9: Review of Child Protection and Welfare Referrals (Q2 2021)**

- Tusla will undertake a sample audit of referrals of children living in IPAS accommodation on specific dates since 3rd April 2017.
- These referrals will be tracked to ensure that there are no children, from the sample, at an enduring/significant risk of harm.
- In considering the impact of living in DP, Tusla will give full consideration to all available research in:
  - Reviewing and tracking referrals through PPFS/Meitheal or Initial Assessment, Child Protections Case Conferencing, or reception into care.
  - Considering impact of findings.
  - Utilising the findings and available evidence in developing Tusla's Intercultural Strategy.

### **Recommendation 10: Intercultural Strategy and DP Policy (Q4 2021)**

- Tusla have initiated a policy position which will:
  - Include all of the requirements set out by OCO in this recommendation.

- Inform Tusla/IPAS Joint Action Protocol.
- Inform Tusla Intercultural Strategy.
- Developing an intercultural strategy will require ethnic data collection work as a key dependency to be progressed and completed in 2021.
- Key steps to include:
  - Ethnic Data Collection rationale statement and implementation plan.
  - Consultation with representative groups.
  - Alignment with White Paper and to current Government Policies, including NTRIS, Migrant Integration Strategy, HSE Intercultural Health Strategy, and the IHREC Act.
  - Alignment with Tusla Integrated Response Pathways (currently in development).

**Recommendation 11: Interagency Protocol (Shared Action TUSLA & IPAS) (Q3 & Q4 2021)**

- Interagency Protocol will be commenced following the completion of the DPIA (TUSLA & IPAS). Interagency Protocol to be completed by Q4 2021.
- Wider Tusla IPAS training will be provided following development of Strategy from White Paper on Direct Provision.
- Process has been agreed to inform Area Managers when new accommodation centre is to open in their Area.
- As part of Interagency Protocol, each Centre will have a named Tusla point of contact in the Area to contact with any concerns.
- A process for identification of a lead Tusla worker and the notification for the movement of families (open active case) within IPAS will be included.

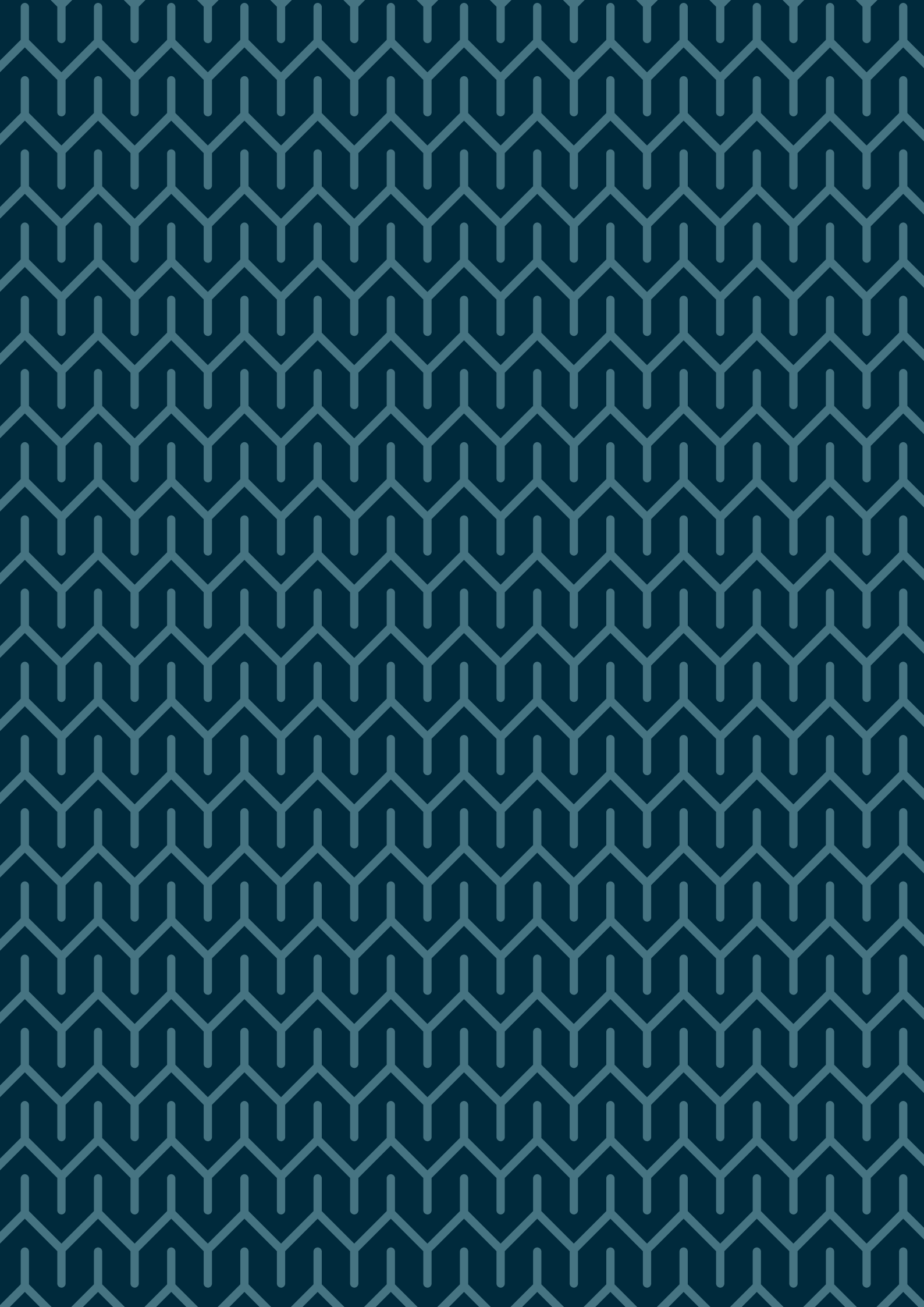
**Recommendation 12: On Site Cooperation (Shared Action TUSLA & IPAS) (Q2 2021)**

- Tusla Point of Contact in Region will liaise with IPAS Centre Management on any concerns, or, queries in respect of referral, prevention and early intervention, educational support services and child protection.

## The Ombudsman for Children

- 6.6** We will request a six-month and 12 month update from IPAS and Tusla on the progress in implementing the recommendations we have made.





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