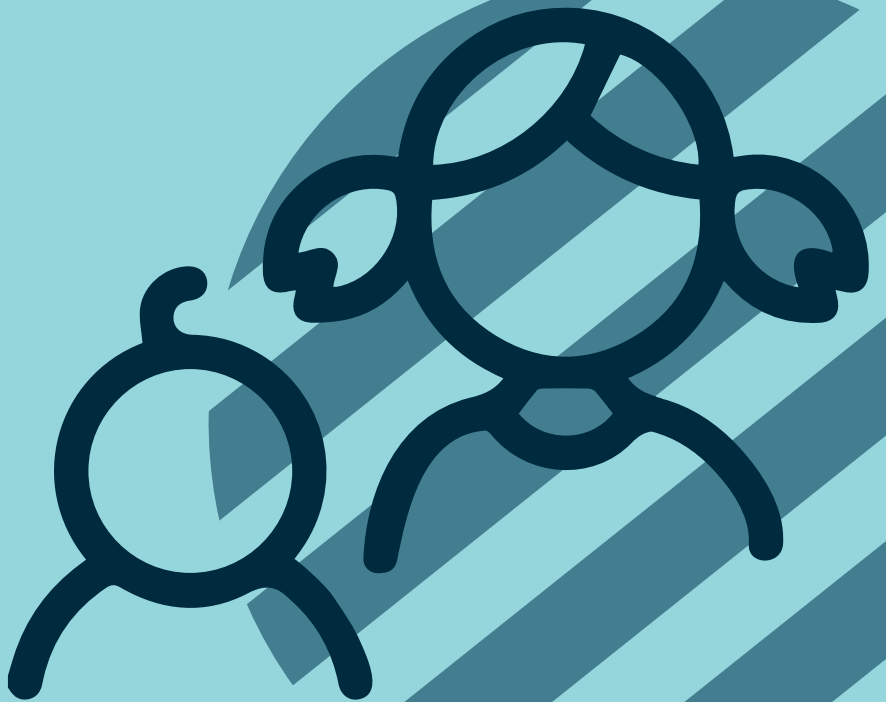


No End in Site

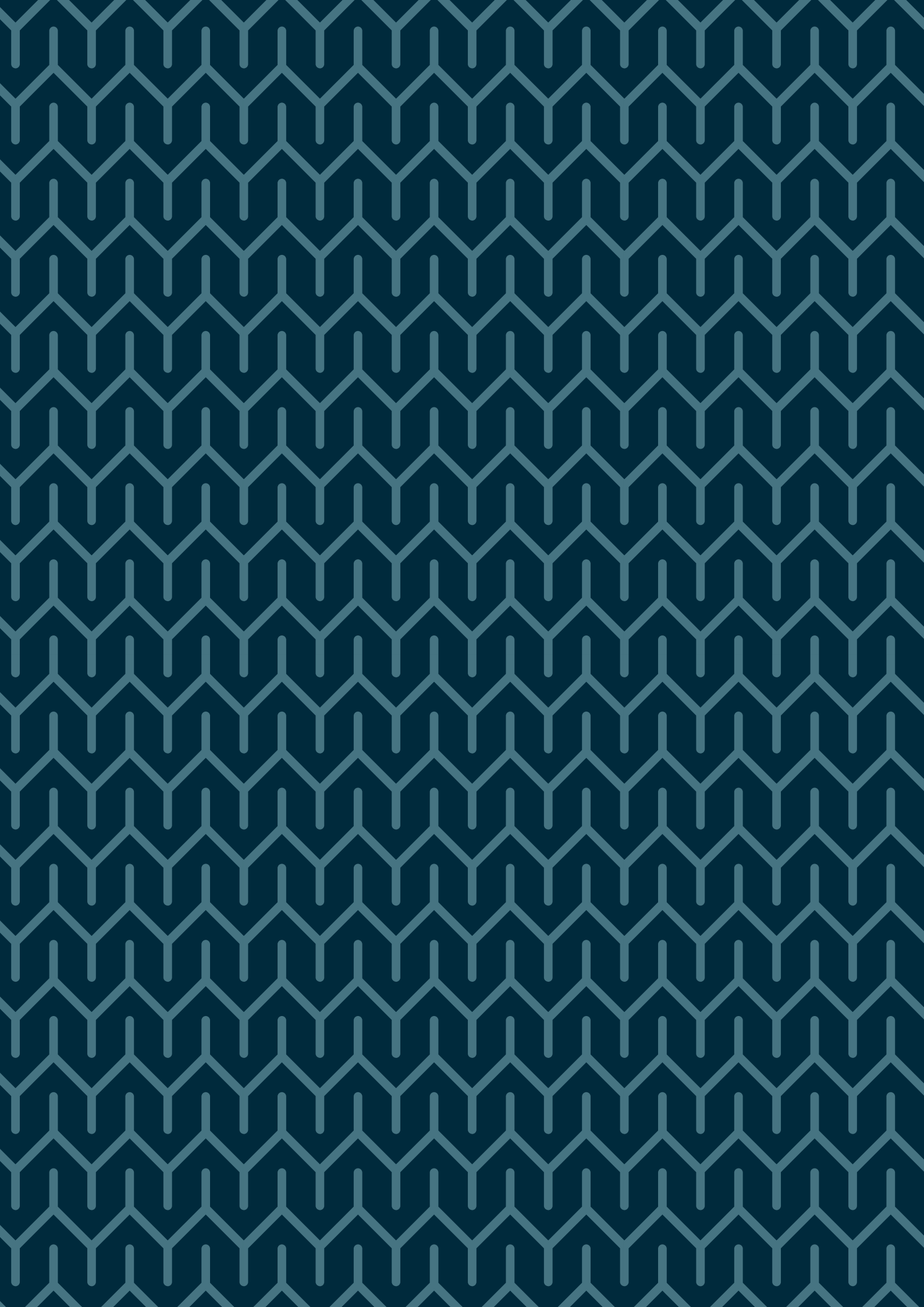


An investigation into the living conditions of children on a local authority halting site

May 2021



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No End in Site

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Summary

In March 2018, the Ombudsman for Children's Office (OCO) received a complaint from a Traveller Advocacy Group (TAG) about conditions at a Local Authority run halting site where 66 children and their families are living.

The issues raised by the TAG included:

- o **A persistent problem with rodent infestation**
- o **Inadequate sanitation**
- o **Extreme overcrowding**
- o **Safety concerns about access to the site**
- o **Illegal dumping nearby**
- o **Inconsistent and inadequate waste disposal**
- o **Inadequate heating systems**
- o **Unsafe and inadequate electrical works**
- o **A high rate of childhood illness caused by living conditions**
- o **No amenities or safe play areas for children**
- o **Housing applications for some families not being progressed**

We met with families living on the site and formally received 11 individual complaints. The OCO investigators visited the site on three occasions and observed very basic conditions which have been in place since the site was established in 1989. The halting site has 10 bays that were occupied on a first come, first served basis. Several families also took up unauthorised residency on the site and over the years overcrowding has become a significant issue. The Local Authority estimate that 38 families now live on site with 66 children between them. In total, there are approximately 140 people using toilets and washing facilities designed for 40 people and the residents say this has led to stress, tension and, at times, conflict.

During our investigation the HSE Director of Public Health Nursing told us that the children living on this halting site suffer skin conditions and respiratory problems at a much higher rate than the general population. She told us that in her opinion these health conditions were a direct result of the conditions of the halting site and welfare huts the children had to live with. The Chief Fire Officer reported in 2016 that there was unacceptable risk to life due to the proximity of the homes and an overloaded electrical system. He told us there were frequent calls to the site. The site caretaker told us of weekly requests from residents for repairs and upgrades of mobile homes and

wash facilities. These included reports about ceilings of welfare huts falling in, blocked toilets, dampness and large pot holes. He also told us that there was been very little improvement to these facilities for children in nearly 10 years. The children told us that they feel different to their peers due to standard of the conditions on the site.

We met with 17 children living on the site as young as 3 years of age. They told us that they knew their living conditions were different from other children.

***“walking up to school you see all the rats”
“they would be running up and down the walls
of the trailer” — (girl 12)***

***“people ask why I’m dirty, but I’d be ashamed
to say. I don’t want to say it was from walking
out of the site” — (girl 14)***

***“it takes two or three hours to heat up a bath
and we’re all using the one water” — (girl 13)***

“we only play in puddles” — (boy 7)

***“when you put your hands out of the bed in the
mornings, the blankets are all wet” — (girl 16)***

***“sometimes the electric goes off and then it’s
black — (girl 7)***

***“it’s like an abandoned place that people
forgot about, it’s like we’re forgotten, we feel
like garbage” — (girl 12)¹***

1 More comments from children are available in Chapter 3 The Investigation

The TAG who made the complaint told us they were exhausted by efforts over the years to try to make things better. They believed their efforts were in vain as they struggled to get improvements on the site.

The Local Authority told us they were trying to make things better. They expressed concern and compassion for the children and families of the site. They told us about some of the children and families hostility towards Local Authority staff, contractors, and service providers. When we met them, the Local Authority were clear that this was not all residents. Everyone agreed that all adults wanted to work together to make things better for children.

OCO findings in relation to the Local Authority:

- There was a failure to consider the best interests of children, including those with additional needs, and to ensure that children living on the site enjoy a safe, suitable standard of accommodation
- There was a failure to refurbish the welfare units in a timely manner, and to ensure consistent waste management and pest control on the site
- There was a failure to clear passage for children travelling to school, and to create safe spaces for them to play.
- Record keeping lacked transparency and accountability. Housing applications were incomplete or not processed meaning families may have missed out on getting a home or did not move up the list.
- Carelessness and undesirable administrative practice has resulted in overcrowding and serious risks on the site for children.
- There was a failure to account for the disadvantages experienced by Travellers in effectively securing accommodation
- There was a failure to comply with and implement the minimum requirements of the Traveller Accommodation Programme (TAP) which places a statutory duty on local authorities to meet the accommodation needs of Travellers to address the significant inequalities facing them.

Recommendations and response from the Local Authority.²

Recommendation 1

Oversight for the implementation of these recommendations must be held at CEO level to ensure accountability and a ring-fenced budget.

Local Authority Response:

- The Chief Executive will prioritise this matter. The annual revenue budgets and capital budgets relating to the provision of accommodation are currently ring fenced, once approved by the Elected Members (revenue

2 Full response from the Local Authority is available in Chapter 7 Recommendations

budget) and the Department of Housing Planning and Local Government (capital budget).

Recommendation 2

Immediately review housing applications complaints made by the 11 families. Any errors should be acknowledged and redress provided.

Local Authority Response:

- Not aware of any administrative errors but will undertake a review of the housing applications in question. Any errors will be acknowledged and rectified without delay.

Recommendation 3

Undertake a risk assessment in cooperation with the residents, including children, to address the health and safety risks identified. Particular consideration should be given to the connection of all mobile units to plumbing and sewerage, the refurbishment of the welfare huts, the removal of fire safety hazards, the clearing of children's passage to school and the consistent provision of waste management, pest control, electrical and other maintenance. The matter of illegal dumping on the site must also be addressed as a matter of priority.

Local Authority Response:

- A risk assessment will be carried in Quarter 3 2021. Initial survey work has already begun.
- New temporary welfare pods will be provided in Quarter 3, 2021 at the latest.
- The original 10 bays, including the welfare units, electrics, water, and sanitary services will be completely refurbished, in parallel with the delivery of a group housing scheme in the adjacent site.
- Alternative methods of refuse collection will be examined.
- Pest control service will resume following its temporary suspension due to Covid-19 and this will require full cooperation with residents.
- Clearing children's passage to the school is a complex and emotional matter but proactive engagement will continue to find mutually acceptable access solutions for both the children living in the halting site and the children residing in the neighbouring community.

Recommendation 4

Due to the ongoing risks to children and the prolonged paralysis in the system, the local authority must, in consultation with children and families, set out how the accommodation needs of the residents in 2021, 2022, 2023 and 2024 (including annual targets) will be addressed.

Local Authority Response:

- Comprehensive assessment setting out a strategy for addressing the accommodation needs of residents for each year from 2021 to 2024 inclusive will take place. Ability to deliver on expectations will be contingent on the availability within existing housing stock, the demands of the growing social housing support, waiting-lists and willingness of the residents to be flexible.

Recommendation 5

Conduct an independent audit of all social housing applications from the families on this site and consider whether the current allocation system is appropriate in ensuring equal access to social housing.

Local Authority Response:

- An independent organisation will be engaged to conduct an audit of all social housing applications from families in on the site. The results will be used to inform accommodation planning.
- Improvements and simplification of the current system will be considered for use by Traveller Community.

Recommendation 6

Devise and share specific policy setting out how Travellers who experience severe housing deprivation may be assisted proactively in navigating the housing Choice Based Letting system and the Housing Assistance Programme. Include implementation in the Monthly Management Reports to Council Members.³

Local Authority Response:

- The Choice Based Letting system will be assessed for equality and any resulting recommendations will be implemented. If a Traveller specific policy is required, this will be designed, approved, implemented, and shared without delay.

Recommendation 7

Review the purpose, function and operation of the Traveller Accommodation Unit to ensure they are adequately resourced to carry out its functions including: routine and emergency works are addressed in a timely manner; support is provided to families with their individual housing needs, with particular regard to well documented psycho-social challenges faced by the Travelling Community, and that regular engagement takes place with residents and Traveller representative groups.

Local Authority Response:

- A full review of Traveller Accommodation Unit will take place encompassing the purpose, functions, staffing, resources, training, and operation of the unit.

- An updated system will be in place to ensure routine and emergency maintenance and upgrade works are carried out efficiently.
- Efforts will be made to establish a structure to facilitate regular engagement between the halting site residents and the Traveller representative groups.

Recommendation 8

Establish a specific complaint handling mechanism within the Traveller Accommodation Unit or, amend the current complaint process to ensure it is easily accessible and effective in managing complaints.

Local Authority Response:

- A specific complaint handling mechanism within the Traveller Accommodation Unit will be established. The Travelling Community and Travelling Representative Groups will be made aware of the system and how to access it.

Recommendation 9

Engage with agencies such as the HSE social inclusion unit, Tusla, youth services and local schools and agree actions at a multi-agency level to improving the lives of the children living on the site. Children should be active participants in this work. Consider utilising the local Children and Young People's Services Committee.

Local Authority Response:

- Needs of the resident children will be prioritised in all actions and plans relating to the site. Enhanced staff training will be provided if necessary.
- Engagement with local Traveller Interagency Group, HSE Social Inclusion Unit and Tusla will take place.
- Engagement with local children and young people services will take place to support this initiative.

Conclusion:

The OCO will request a six month and 12 month update from the Local Authority on the progress in implementing the recommendations set out in this report and that there are clear timelines and targets in place for their implementation.

1. Role and Remit

- 1.1** The OCO is an independent statutory body established under the 2002 Act. The Ombudsman for Children has two core statutory functions:
- i.** to promote the rights and welfare of children; and
 - i.** to investigate complaints made by or on behalf of a child concerning the administrative actions of public bodies, which may have had an adverse effect on the child.

The Ombudsman for Children reports directly to the Oireachtas in relation to the exercise of these statutory functions.

- 1.2** The OCO may investigate a public body, school, voluntary hospital or another reviewable agency, where we believe that the body's administrative actions have, or may have, adversely affected a child.³
- 1.3** In our investigation role, we are neither an advocate for the child nor an adversary of the public body concerned. However, our legislation requires us to consider the best interests of the child concerned and their views as part of our work.⁴
- 1.4** The aim of an investigation is to determine whether a child has been, or may have been, adversely affected by the administrative action of a public body. Section 8(b) of the 2002 Act sets out the seven grounds to be considered. These are:
- 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.
- 1.5** We are required to produce a report outlining the results of our investigation.⁵ In the first instance, we send a draft report to the public body concerned so that they can consider our findings and provide a response.

3 Sections 8 – 16 of the 2002 Act

4 Section 6(2) of the 2002 Act

5 Section 13(2) of the 2002 Act

- 1.6** A key objective of the OCO's Strategic Plan 2019 - 2021 is to influence positive change for children, and to work accordingly towards the progressive realisation of the rights of vulnerable groups of children. Therefore, where an adverse effect is determined, this Office aims to make recommendations which are fair and constructive for all parties, and for the betterment of children's lives.⁶
- 1.7** In accordance with the 2002 Act, we will include the response of the public body to our recommendations with our final report, the investigation statement.⁷ This investigation statement is sent to the complainants, the public body, other relevant parties, such as Government departments, and/or anyone else the Ombudsman for Children considers appropriate. A redacted version may also be published more widely at the discretion of the Ombudsman for Children.⁸

6 Section 13(3) of the 2002 Act

7 Section 13(4) of the 2002 Act

8 Section 13(2) of the 2002 Act

2. The Complaint

2.1 On the 15th March 2018, the OCO received a complaint from a Traveller Advocacy Group (TAG) concerning the general conditions at a Local Authority run halting site where children and families live.

2.2 The complaint stated that:

- There was a lack of progress regarding housing applications for some families;
- There was a persistent problem with rodent infestation;
- The sanitation on site was inadequate;
- There was extreme overcrowding in mobile homes and on the designated bays;
- There were safety concerns regarding the entrance and exit to the site;
- There were illegal dumping problems on an adjacent site;
- There was inconsistent and inadequate waste disposal arrangements on site;
- There was inadequate heating systems in the trailers and welfare units (containing the wash and toilet facilities), and unsafe and inadequate electrical wiring throughout;
- There was a high rate of childhood illness, which the TAG said related to the living conditions on the site; and
- There were no amenities or safe play areas for children.

2.3 The complaint alleged that there had been a failure by the Local Authority to fulfil its duties under the *Housing (Traveller Accommodation) Act 1998* (the 1998 Act), and that the living conditions on the site were having a serious impact on the health and wellbeing of children living there.

2.4 Upon review of the complaint, the OCO identified four key areas of concern requiring further examination:

- Accommodation issues;
- Sanitation problems;
- Health and safety concerns; and
- Absence of play area/amenities for children.

2.5 On the 24th January 2019, we met with 10 families residing on the site and formally received their individual complaints. An 11th individual complaint was received from a family by phone the following day.

2.6 The individual issues raised by the families include:

- The standards on the site;
- The maintenance and general upkeep of the site;
- The general facilities on the site;
- The housing transfer process;
- The accessibility of the Local Authority's administrative system;
- The communication and interaction with the Local Authority; and
- Record-keeping.

Profile of the site

2.7 OCO investigators visited the respective halting site on three occasions. The site was originally a sand and gravel quarry, which in 1989 was established by the Local Authority as an official 10 bay halting site for members of the Traveller community. It is in shadow for the majority of daylight hours.

2.8 The services on the site in 1989 were, and continue to be, basic. The rudimentary concrete infrastructure from the original development of the site remains in place and no substantial, infrastructural improvements have taken place to date.

2.9 Investigators were informed that there was no organised allocation process in 1989, with most of the 10 bays populated on a first come, first served basis. It is reported that several families also took up unauthorised residency on the site, some on the bays and others on vacant areas throughout the site. Over the years, overcrowding has become a significant issue, as family growth has resulted in extended families taking up residence on the periphery of the halting site.

2.10 The Local Authority estimate that 38 families now live on site with 66 children between them. While electricity is available, there is no natural gas supply or telecommunications supply, and there has been persistent problems with regards to the waste management system for both solid and recyclable domestic waste in the past. Unauthorised residents on the site have no separate toilet, washing facilities, or running water of their own and depend on the tenants of the 10 serviced bays.⁹ In total, there are approximately 140 people using the toilets and washing facilities designed for 40 people and the residents say this has led to stress, tension and, at times, conflict. In addition, residents state that there is no safe place for children to congregate or play.

⁹ The Local Authority informed the OCO at an interview that when they supply a mobile home to a family, they do not connect the mobile to water and sewerage. They stated that if a family asked, they would plumb if for them, but that no family has made this request to date.

3. The Investigation

- 3.1** On the 15th March 2018, the OCO determined that the information provided in the TAG complaint warranted examination pursuant to the 2002 Act.
- 3.2** On the 11th June 2018, the OCO wrote to the Director of Housing at the Local Authority formally advising it of the complaint. On the 21st June 2018, the OCO met with the Local Authority.
- 3.3** In January 2019, the OCO engaged with the 11 families. Each family submitted an individual complaint. The OCO subsequently wrote to the Local Authority setting out the particulars of each of those complaints and requesting details regarding:
- How the housing needs of the complainants were identified, recorded, and addressed;
 - Local Authority engagement with the complainants and their advocates; and
 - All efforts to resolve outstanding issues outlined by the complainants and any challenges or impediments to these issues that the Local Authority would wish us to consider.
- 3.4** On the 21st March 2019, the OCO met with Local Authority staff in their offices. At that meeting, the OCO requested copies of all documentation and files, physical and electronic, held by the Local Authority pertaining to these families and issues complained of. An initial response to this request was received on the 30th April 2019.
- 3.5** Upon consideration of the information received, the OCO determined that the threshold for a full statutory investigation was met. On the 18th July 2019, the OCO advised the Local Authority that we intended to proceed to a statutory investigation.

Terms of Reference

- 3.6** Our investigation with respect to the Local Authority contained the following terms of reference:
- To investigate the administrative actions or inactions of the Local Authority in the discharge of its responsibilities to families residing at the Traveller halting site with a focus on:
 - Efforts by the Local Authority since 2012 to improve both the conditions on the site and facilities to individual dwellings that affect the health and wellbeing of individual children, including attempts to address barriers to same with the families and local Traveller representatives.

- Efforts made by the Local Authority to help these 11 families with their individual housing needs with due regard to the known and expressed poor literacy levels of some families and limited ability to access the online Choice Based Lettings (CBL) scheme.
- Progress made by the Local Authority under their Traveller Accommodation Plan (TAP) 2014-2018 to address the known poor living conditions of children living in the site to inform their TAP 2019-2024.
- to determine if those actions fall within sections 8(a) and 8(b) of the 2002 Act; and
- to make recommendations if required and warranted in accordance with the 2002 Act.

The Investigation Process

3.7 The OCO investigation consisted of a review of all the information and case files provided by the Local Authority in respect of their role and function on the site. It should be noted that the staggered provision of relevant documents by the Local Authority has been an unfortunate feature of this investigation.

3.8 Investigation meetings also took place with the following individuals, who had particular knowledge of the matters being investigated:

- Representatives from 11 families with separate residences on the site.
- 17 child residents on the site.
- The Local Authority's CEO, Director of Housing, TAU Administrative Manager, and Chief Fire Officer (CFO).
- The HSE's Director of Public Health Nursing (PHN).
- The site caretaker.
- A representative from the Department of Housing Planning and Local Government (DHPLG).

3.9 These meetings permitted us to gather further information in relation to the terms of reference, as well as the policies and procedures the Local Authority relied upon in the discharge of their responsibilities. The meetings also afforded those individuals with an opportunity to comment and provide any other information, which could assist our understanding of the matters under investigation.

Adverse Effect on the Child

3.10 The investigators visited the site on three occasions, met with the children's parents both on and off the site and raised the matter of adverse effect with each of the professionals, identified at section 3.9 above, during those interviews. Significantly, investigators met with 17 children to find out their views on the matters under investigation.

Site Visits

3.11 During their three visits to the site and its surrounds, OCO investigators made the following observations:

- Despite the efforts to decorate and make the mobile homes as comfortable as possible, of the five visited, overcrowding was obvious with children sleeping on makeshift beds cramped into the living/dining spaces. Furthermore, there was evidence of damp on the walls and ceilings of each of those mobile units, and the families contended that the heating provided was inadequate.¹⁰
- Of the five welfare huts visited, all were cold and in various states of disrepair. There were cracks in walls, ceilings and windows, the door on one welfare hut could not be closed over properly and a number had a stale damp smell.
- On the site, children were seen to be walking and playing in areas where there was an abundance of rubbish. This was particularly evident on the roadways outside the bays and on the entrance into the site during investigators first visit to the site in 2018 but was less visible upon investigators second visit to the site in November 2019.
- With their parent's permission, several children escorted investigators around to the areas of the site where they play, and showed the route, a short-cut, they take to school. Investigators observed that due to the water pools in the grassed areas and parts of the roadways, passage through the area can result in muddied shoes and clothing, which the children described as a particular problem in terms of their daily journey to and from school, and which they felt drew negative and unwanted attention from their peers.¹¹

Parents

3.12 During their interview with OCO investigators, parents spoke at length about the unreliability and lack of basic facilities such as heating, lighting, and hot water to bath and wash clothes in.

3.13 Parents spoke of the potential mental health impact of living on the site and one parent advised that their mental health team told them that their children's poor mental well being were linked to their living conditions.

Professionals

3.14 The Local Authority has accepted that there is extreme overcrowding and extremely poor living conditions on the site. A 2012 HSE Environmental Health Officer's report stated that the living conditions on site render it 'not fit for human habitation'.

10 The Local Authority informed the OCO that since 2017 it has replaced 33 mobile homes on the site at a total cost of €461,000, and that each mobile home is fitted with heating.

11 See also photos of the site at Appendix 2.

3.15 At interview, the Director of Public Health Nursing (PHN) expressed concern about the infection rates of children living on the site as being above those observed in the settled population, as well as the increased incidence of medical conditions such as impetigo, dermatitis, eczema, and abscesses along with upper respiratory and lower urinary tract infections. The PHN stated that, in their professional opinion, the increased incidence in health issues in children at the site were a direct consequence of the poor standard of accommodation and welfare huts on site.

Voice of the Child

3.16 Investigators met with 17 children aged between 3 and 16 years of age who represented six separate complainant families.

3.17 Overall, the children said they knew that the conditions on the site, as well as their individual living arrangements, differed greatly from other children's experiences.

3.18 In particular, the children spoke about having to wash and bath regularly in cold water and referred to the constant struggle to keep their clothes clean. Several children spoke of their embarrassment and shame at arriving in school with mud on their shoes and uniforms as a result of their journey to school.

3.19 One child asked his parents to allow him to leave school because the dirt on their clothing drew such negative attention and ridicule from other children. Another child commented that it was impossible to bring school friends home due to the site's conditions.

3.20 The children also spoke of there being nowhere for them to meet with friends and no safe place to play. Some of the older children referred to having to watch out for their younger siblings given the high risk of injury posed by excessive traffic on the site, out buildings in states of disrepair, and the electric cables traversing the site.

3.21 Some children spoke about their bedclothes being damp and, at times, wet due to inadequate heating and poor ventilation in their mobile homes.

3.22 The children also spoke about how overcrowding in their mobile homes impacted on their ability to get their homework done. Two teenagers talked about the impact of there being no Wi-Fi on the site in terms of schoolwork and connecting with others through social media. They described a complete lack of privacy in their mobile units.

3.23 A brief selection of comments made by the child residents at interview are set out below followed by images of the site:

“it's hell” (girl 16)

“it’s all mud and all and then you fall and cut ourselves all the time and our friends can’t go and visit us” (girl 7)

“walking up to school you see all the rats” “they would be running up and down the walls of the trailer” (girl 12)

“people ask why I’m dirty, but I’d be ashamed to say. I don’t want to say it was from walking out of the site” (girl 14)

“we’ve no swings or nothing, like nothing to play with” (boy 11)

“we only play in puddles” (boy 7)

“we have no internet” (girl 16)

“I’d like to have friends home but I’d be too embarrassed” (boy 12)

“there is no space” (girl 16)

“we don’t have much space, only a small skinny bed” (girl 6)

“I sleep in the bed with my two sisters and he (little brother aged 3) sleeps in with my ma” (girl 7)

“there is no locks and the children walk in on you” (girl 17)

“sometimes the electric goes off and then it’s black” (girl 7)

“it’s very bad there. There is no heating in the trailer, and you have to go outside to go to the toilet” (girl 17)

“you’ve got to walk about 100ft out to a shed to go to the toilet” (boy 11)

“it takes two or three hours to heat up a bath and we’re all using the one water” (girl 13)

“we don’t go to school in the mornings because it’s too cold to get out of bed” (boy 15)

“we don’t get no sleep because of the cold. We would be turning and twisting all night” (boy 12)

“When you want to wash clothes, you have to wash them in a basin and then hang them up, but they never get dry with the cold” (girl 17)

“You’ve to fill the kettle to make a bath, by the time you’ve the kettle boiled the water you put in is already cold” (boy 12)

“our brother is plugged into our bay, it’s very dangerous, there’s a wire across the road” (boy 15)

“some nights you’d have to hold your toilet because you don’t want to get up” (boy 12)

“when you put your hands out of the bed in the mornings the blankets are all wet” (girl 16)

“it’s like an abandoned place that people forgot about, it’s like we’re forgotten, we feel like garbage” (girl 12)

Images of the site

Electricity Boxes & Wiring



Welfare Hut



Short cut to school



4. Law and Policy

4.1 This Office reviews a public body’s administrative actions against international law, and domestic law, policy and procedures. The OCO considers the following provisions to be of particular relevance to this investigation.

Children’s Rights

4.2 Children’s rights are human rights.

United Nations Convention on the Rights of the Child (UNCRC)

4.3 The UNCRC recognises children as autonomous rights holders and sets out the obligations of the State as a duty bearer. Although the UNCRC has not been incorporated into Irish law, Ireland ratified the UNCRC in 1992 and is subject to the treaty monitoring procedure.

4.4 Article 3.1 of the UNCRC enumerates the best interests’ principle such that *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*.

4.5 The following UNCRC rights are of particular relevance to this investigation:

- Article 2 - Non-discrimination:
- Article 6 - Survival and Development:
- Article 8 - Protection and Preservation of Identity:
- Article 12 - The Child’s Opinion:
- Article 16 - Right to Privacy:
- Article 18 - Parental Responsibilities and State Assistance:
- Article 24 - Health and Health Services:
- Article 27 - Adequate Standard of Living
- Article 30 - Children from Minority or Indigenous Groups
- Article 31 - Leisure, Play and Culture

4.6 In its most recent ‘Concluding observations on the combined third and fourth periodic reports of Ireland’, the Committee on the Rights of the Child urged the State to strengthen its efforts to reduce poverty among children in vulnerable situations, in particular Traveller and Roma children, and to ensure that sites in which Traveller and Roma households reside are equipped with adequate water

and sanitation facilities as well as safe and appropriate recreation facilities for children. The State was also urged to increase the amount of funding allocated for housing facilities that address the needs of Traveller and Roma children and their families and provide mechanisms and procedures that ensure the effective and timely use of such funding.¹²

The Irish Constitution

4.7 Article 42A.1 of the Irish Constitution recognises and affirms the natural and imprescriptible rights of all children, and the State as the body responsible for the vindication of those rights.

ECHR

4.8 Ireland ratified the *European Convention on Human Rights* (ECHR), a Council of Europe treaty which guarantees fundamental civil and political rights, in 1953. It was incorporated into Irish law by the 2003 Act.

Duties owed by the Local Authority

Domestic Law

4.9 In accordance with the *Housing (Traveller Accommodation) Act 1998 (as amended) (the 1998 Act)* local authorities have a statutory duty to provide Traveller-specific accommodation by carrying out an assessment of the accommodation needs of Travellers, and by preparing, adopting and implementing a new Traveller Accommodation Programme (TAP) every five years in their areas. The housing provided may include standard local authority housing, group housing, permanent halting sites, transient halting sites and emergency provision. The relevant duties ascribed to local authorities under the 1998 Act are summarised in Appendix 1.

4.10 The *Housing (Miscellaneous Provisions) Act 2009 (as amended) (the 2009 Act)* provides for the provision of social housing, ancillary services and assessments by local authorities:

- Section 10 states that a local authority may provide housing support to households for the purposes of meeting their accommodation needs, and may provide for the management, maintenance and refurbishment of any dwelling, building or land under its management and control.
- Section 11 states that a local authority may provide and, if it considers appropriate, maintain in good order and repair, the ancillary services to land under its management and control. Ancillary services include roads, shops, facilities for the benefit of the community (including health and leisure facilities), playgrounds, places of recreation, and other such works or services, which in the opinion of the local authority, serve a beneficial purpose.

¹² Committee on the Rights of the Child, Concluding observations on the combined third and fourth periodic reports of Ireland; 29 January 2016, pages 11, 13 & 16

- Section 20 states that where a household applies for social housing support, the local authority shall carry out an assessment for the purposes of determining (a) whether the household is qualified for such support, and (b) an appropriate form of such support for that household.
- Section 21 states that the local authority shall appoint a local Traveller accommodation consultative committee (LTACC) to advise on the provision and management of accommodation for Travellers.

4.11 Local authorities' obligations towards Travellers have been examined on a number of occasions by the Irish Superior Courts. In *University of Limerick v. Ryan [(Unreported), 21 February 1991]*, which pre-dated the 1998 Act, Barron J. determined that s.13 of the 1988 Act imposed a duty to provide caravan sites, as opposed to merely empowering a local authority to do so and ordered that serviced halting sites should be provided by the local authority within a period of 12 months.

4.12 In the years since the 1998 Act, the High Court has allowed local authorities a reasonable margin of appreciation in the policies which it adopts, and in the construct and implementation of TAPs depending on the prevailing circumstances in its particular functional area.

4.13 In *O'Reilly & Ors -v- Limerick County Council [2006] IEHC 174*, MacMenamin J. considered the application of section 7 of the 1998 Act:

“The obligations which devolve upon the respondent under s. 7 are not a mere formulaic statement. Nor on any proper interpretation is the duty imposed upon the respondent merely aspirational... Section 7 of the Act of 1998 must be interpreted with the ‘needs’ of persons in the category of the applicant as the primary starting point. It is in the context of those needs as specified that a statutory duty devolves upon the respondents to specify precisely the provision of accommodation which is required to address the needs in question as identified. The word ‘specify’ means to set down in detail or particularise. Such detail is entirely absent from the Programme. In fact, the question of need is not addressed at all, in any real sense.”

4.14 In *Doherty & anor -v- South Dublin County Council & ors [2007] IEHC 4*, Charleton J. did not find a breach of ECHR Article 8 obligations in circumstances where an elderly Traveller couple in poor health, living in a caravan with basic electricity, no internal plumbing, toilet or central heating were refused a centrally heated, insulated and plumbed caravan. The couple had refused an offer of a two-bedroom ground floor apartment.

4.15 In *O'Donnell (a minor) & ors -v- South Dublin County Council & ors [2007] IEHC 204*, Laffoy J. found that there had been a breach of ECHR Article 8 obligations, where the local authority had failed to provide a second caravan for three severely disabled Traveller children living in a mobile home on a temporary site. The court ordered that the local authority provide a wheelchair accessible caravan, with indoor and wheelchair accessible shower, toilet, sanitary facilities and central heating. Laffoy J. stated that the applicants' “level of disability and dependency

and the degree of care and supervision they require and the appalling conditions in which they and their carers are living, and the meagre inadequate assistance proffered by the defendant distinguishes the factual situation in this case from the factual situation in the Doherty case”.

- 4.16** In *O’Donnell & ors -v- South Dublin County Council & ors [2015] IESC 28*, the Supreme Court, in a judgment by MacMenamin J. granted declaratory relief to the fourth named applicant, permitting her to recover damages where an organ of State has failed to perform its functions in a manner compatible with the State’s obligations under Article 8 of the ECHR. The Court stated that to interpret s.13 of the 1988 Act as mandating a housing authority to provide a mobile home for a Traveller would be to usurp the functions of the Oireachtas, however, it stated that the situation as known to the local authority, was truly, exceptional. That situation was in the Court’s mind sufficient as to impose a special duty upon the local authority due to exceptional overcrowding, and the destruction of the sanitation facilities, compounded by the fourth named applicant’s disability. The Court found the fourth named applicant’s *“capacity to live to an acceptable human standard of dignity was gravely compromised. Her integrity as a person was undermined. Her rights to autonomy, bodily integrity and privacy were substantially diminished”*.
- 4.17** In September 2017, the High Court also granted a Traveller family leave to seek an order directing Clare County Council to provide the family with suitable and permanent accommodation under the TAP 2014-2018. The family, including nine children, had been living in unhealthy accommodation circumstances for three years, including rat and insect infestation, and sewage seepage around their home.

Ministerial Guidance

- 4.18** The Minister for Housing has issued a number of guidelines for local authorities providing Traveller accommodation. The OCO considers the following to be of particular relevance to this investigation.
- 4.19** The DHPLG guideline entitled *‘Basic Services and Facilities for Caravans Pending the Provision of Permanent Accommodation, November 1998’* (the Basic Services Guideline) states that *“the minimum which should be provided is a potable water supply, portable toilet and washing facilities (i.e. shower and/or wash-hand basin), waste collection service (domestic refuse collection system and/or covered skip), and sufficient hard stand for caravans”*.
- 4.20** The Basic Services Guideline states that while local authorities have powers to control unauthorised encampments, the local authority should consider providing basic services and facilities to Travellers who are awaiting permanent accommodation having regard to health, fire safety, environmental, planning, legal and other obligations. The guideline further states that, if longer stays are envisaged, the capital investment in the accommodation to be provided will be higher. It states that as a general rule, the maximum number of families on a site should not exceed 20. It also states that consideration should be given to the provision of a play area having regard to need. With regard to fire safety, the location of caravans should be such as to reduce the risk of fire spread. It states

that, generally, there should be a minimum separation distance of six metres between caravans and nine metres between a caravan and a building or other structure.

4.21 After the October 2015 fire at a Traveller site in Carrickmines, Dublin, in which 10 people lost their lives, a national fire safety audit in Traveller accommodation was rolled out. The objective of this '*Programme to Review and Enhance Fire Safety in Local Authority Provided Traveller Accommodation*' was to ensure that practical and appropriate fire safety measures, which contribute to preventing loss of life and serious injury in local authority Traveller accommodation, have been applied systematically across the country.¹³ The DHPLG published the '*Programme to Review and Enhance Fire Safety in Local Authority Provided Traveller Accommodation*' on 21st September 2016. This report stated that fire safety should be an ongoing item at all LTACC meetings to be overseen by the National Traveller Accommodation Consultative Committee (NTACC).

4.22 The DHPLG guideline entitled '*Guideline for the Preparation, Adoption and Implementation of Local Authority Traveller Accommodation Programmes 2019-2024, July 2018*' (the TAP Guideline) reiterates a local authority's duty to make an assessment of accommodation needs of Travellers who qualify for social housing support. In making an assessment, a local authority is required to have regard to:

- The estimate of the number of Travellers for whom accommodation will be required during the course of the programme.
- The summary of social housing assessments prepared under section 21(c) of the 2009 Act as it relates to Travellers.
- The need for transient sites.
- Consideration by the housing authority of the views of the LTACC.

4.23 Under the TAP Guideline, the Minister has directed that the local authority must make an estimate of the projected accommodation needs of Traveller families arising during the duration of the programme (1 July 2019 to 30 June 2024). The Minister has also directed that the needs to be met by the programmes should be sufficiently detailed and that the local authority has a duty to provide a statement of policy to address general issues and specify goals and the timeframe within which needs are to be met, including the position in relation to meeting the distinct needs and family circumstances of Travellers.

4.24 According to the TAP guideline, the strategy for securing the implementation of the programme should, inter alia, detail the structures for the development of accommodation proposals, set out arrangements for management and maintenance of the accommodation, and specify the mechanisms for monitoring progress in implementing the programme. The Minister has directed that annual targets be included in the programmes in respect of the implementation of the programmes. The targets should include details of the numbers of units

¹³ National Directorate for Fire and Emergency Management, Report on Programme to Review and Enhance Fire Safety in Local Authority Provided Traveller Accommodation, (Dublin: Department of Environment, Community and Local Government, 2016), 12

of accommodation proposed to be delivered for each of the five years of the programme for Traveller specific accommodation.

- 4.25** The TAP guideline reiterates the local authority's duty to take any reasonable steps as are necessary for securing the implementation of the programme. In addition, under the Planning and Development Acts, County and City Development Plans and Local Area Plans must include objectives for the provision of accommodation for Travellers and the use of particular areas for that purpose.
- 4.26** The DHPLG's Circular 22/2016 concerns the '*Review of Traveller Accommodation Programmes*' (May 2016). It states that "*Each local authority was requested in June 2014 to include annual targets in their TAP 2014- 2018 [...] As local authority performance is measured by comparing the number of families permanently accommodated against the targets contained in your TAP, it is vital that both are accurate [...] Table A should detail the number of Traveller families provided with permanent accommodation under a number of headings in 2015 [...] Table B requests details of the actual units of accommodation completed in 2015 [...] Table C requests details of the units of accommodation under construction at the end of 2015.*"
- 4.27** The DHPLG's '*Guide to Fire Safety in Existing Traveller Accommodation (2019)*' (the Fire Safety Guideline) states that accommodation provided directly by local authorities should be checked by the local authority against the standards and guidance therein, and appropriate remedial actions taken in cases where deviations are seen to have a significant impact on fire safety.

5. Analysis

5.1 The OCO has considered the facts, including the administrative actions of the Local Authority in the context of its obligations to families residing at the Traveller halting site, and their positive public sector duty to vindicate the human rights of all children.

Efforts to Improve the Conditions and Facilities on the Site

5.2 The Local Authority has acknowledged that, while there is extreme overcrowding and poor living conditions on the site, it has and is working with families to try to resolve this. The OCO's ability to ascertain the Local Authority's efforts to improve the conditions and facilities on the site has been hampered by the staggered provision of relevant documents to the OCO. However, investigators have as far as possible tried to collate the actions taken by the Local Authority with respect to the site below.

5.3 The site was established as an official 10 bay halting site for members of the Traveller community in 1989. In 2000 there was a proposal put forward by the Local Authority to redevelop the site, but this was not proceeded with. From 2000 to 2011, there were no significant renovations of the site.

5.4 In December 2011, the Local Authority sought to extend the existing halting site into an adjacent vacant commercial yard through the rezoning process. This application was successful, and that adjacent yard is central to the Local Authority's current TAP.

5.5 According to the TAG and the complainants, concerns about living conditions on the site were reported to the Local Authority prior to 2012, however, this time period is outside the scope of this investigation.

5.6 In early 2012, the TAG arranged for water in an area of the site, which was prone to lagooning, to be tested by a water quality testing laboratory. The report, issued in May 2012 to the Local Authority, identified extremely high levels of E-Coli contamination, consistent with presence of faecal matter.

5.7 In 2012, the HSE commissioned three reports of the site, which were formally submitted to the Local Authority. These were the HSE Environmental Health Department Report (June 2012), an Architect's report commissioned by the HSE (July 2012), and a Public Health Department Report (August 2012) compiled by the HSE's then Acting Director of Public Health Nursing. These reports documented acute overcrowding, inadequate accommodation, and sanitation facilities; persistent flooding; rodent infestation; waste management problems; an unstable overhanging cliff face; and the lack of a safe environment or space for children.

- 5.8** Following these reports, and on foot of the rezoning submissions, a community working group was established in 2012. The purpose of this forum was to assess the overall conditions present on the site and to explore all housing options to alleviate overcrowding. The Community Forum Report published in September 2012 recommended as follows:
- A Health and Safety review should be conducted, underpinned by the availability of funding to address identified need.
 - Residents should be realistic regarding requested housing transfers.
 - Strategic planning of managing population growth on the site should take place.
 - Estate management meetings should be reconvened.
 - Residents should comply with the engineer's report to prevent further erosion of the cliff face.
 - Drainage issues should be addressed.
 - Modern sanitary units for families should be provided.
- 5.9** At an LTACC meeting in October 2012, it was noted that residents choose to use a shorter route rather than the designated route to access the main road, including children going to school. It was suggested that this be cleared of overgrown bushes and broken fence repaired, or a wall be built with the gate for pedestrians included. It is understood that no action was taken as a result of this suggestion as a member once again highlighted the dangers of the walkway used by children to walk to school each day, which had turned into muck, at a LTACC meeting in February 2018.
- 5.10** A committee was established in 2012 entitled the 'Traveller Interagency Group' (TIG). That group consisted of members of the Local Authority, the HSE and Traveller advocacy groups, however, the group collapsed in 2014. The TIG Chairperson subsequently commissioned external investigators to examine the reasons leading to the group's collapse and to propose how to move forward.
- 5.11** At a LTACC meeting in February 2014, a member raised the "*appalling conditions*" on the site and queried what the Local Authority were doing to attempt to address the issue. The Local Authority stated that it was responding to a Department of the Environment (DOE) query regarding the procurement of an electrical contractor to upgrade the electrics prior to going out to tender. They explained that a further funding bid was being considered for the DOE addressing issues such as the welfare huts on site. A level of frustration was voiced among the LTACC regarding the lack of engagement among residents concerning electrical safety on site. The TAU informed the LTACC that ESB electrical safety booklets on unsafe domestic electrical use have been circulated to residents of the site and an electrical consultant gave an electrical safety lecture to residents at a meeting in November 2013.

- 5.12** The external investigator's report was published in June 2014. The report made a series of recommendations in relation to remedial works to the site to address flooding, electrical problems, and the unstable cliff face.
- 5.13** That report also highlighted the potential impact of the accommodation on the children living there, stating: *"It is important to see these issues in the context of the potential adverse impact on children. The Convention (UNCRC) should inform the accommodation programme"*.
- 5.14** In 2014, the Local Authority engaged the services of an engineering company to conduct a survey of the cliff face on the site. That report, issued in November 2014, highlighted prior concerns regarding the instability of the cliff face and the risks to the mobile homes that were placed under it.
- 5.15** In 2015, the Local Authority commissioned a housing association to undertake a two-yearly housing needs assessment on the site as required under section 9 of the 1998 Act. That assessment was completed in 2015. The authors provided copies of their findings and recommendations to the LTACC and made a presentation to the residents. Those recommendations included the development of group home schemes, the transfer to social housing for those that have sought same, cross tenancy mediation, and the promotion of a culture of responsibility and ownership.
- 5.16** At a LTACC meeting in March 2015, it was noted that the electrical contractor was blocked from carrying out upgrade works by residents of the site. A member stated that the frustration was with one family and not the collective. At a LTACC meeting in September 2015, it was noted that electrical upgrade works had been demobilised for the 4th time due to the actions of residents. A member asked why the Gardai hadn't arrested people who had interfered with the works.
- 5.17** At a LTACC meeting in December 2015, the Traveller projects represented on the LTACC withdrew. In a statement, the Traveller projects involved identified key areas of concern locally. This included the fact that the housing association report had been withheld from the LTACC, preventing the committee to advise the Local Authority on its recommendations. It stated that *"while the implementation of the report is being stonewalled, and commitment and action about the details of the proposed accommodation provision remain unclear, discussions and decisions appear to be taken behind closed doors in an arbitrary manner, while the accommodation crisis in [the named site] continue without an end in sight, and no proposals being made to the residents"*. It also stated that there was a failure by the Local Authority *"to ensure halting sites have not only basic facilities but access to the level of sanitation and services expected by any other council tenant e.g., shower facilities, areas for laundry etc"*.
- 5.18** The Local Authority has stated to the OCO that this is *"a 10-bay site only which is grossly overcrowded due to unauthorized occupation of the site by multiple families related to the original occupants"*. In addition, the Local Authority has suggested that it is unfair to compare facilities available on an overcrowded site such as this to any other council tenancy. The OCO notes in this regard that the Local Authority has a statutory duty in legislation, and under the Department of Housing, Planning and Local Government guidelines, to anticipate unauthorised

encampments, given the annual movements of Travellers, and address capacity issues and overcrowding through its TAPs [see further sections 4.12, 4.23, 4.25 & 4.26 above].

- 5.19** Between 2015 and 2016, the Local Authority pursued a court injunction to move five families to another location on the site due to safety concerns arising from their placement of mobile homes under the cliff face. Temporary fencing away from the cliff face was put in place. In December 2015, part of the cliff face dislodged.
- 5.20** In 2016, electrical upgrade works were completed, with both official and unofficial bays receiving electrical connections. This followed an April 2013 electrical survey commissioned to report on making the site safer. At a LTACC meeting in March 2016, it was noted that due to damage under the new ESB substation that it would take an additional two months to finish the electrical job. The Local Authority stated that they were massively frustrated that two months' work had now run into its eighth month due to the actions of residents. The Local Authority stated it would not be entering into multiple contracts at the same time on the site.
- 5.21** Despite the completion of electrical upgrade works, the caretaker's weekly reports and the electrical contractor's monthly records (referenced further below) continued to report that electrical capacity on site was inadequate and that fuses trip on a regular basis. At a LTACC meeting in September 2016, the Local Authority stated that power supply was within health and safety guidelines and the Local Authority had no discretion to alter this.
- 5.22** At a LTACC meeting in September 2017, the Local Authority highlighted the difficulty that the TAU faced in trying to get staff on site to do jobs and that this has resulted in a recent gap of nine months. To this end, the Local Authority stated that it could speak to its maintenance department with a view to identifying someone who might be able to do some of the sites day-to-day repairs. They stressed that this had not yet been finalised.
- 5.23** At a LTACC meeting in November 2017, there was a discussion about the absence of Local Authority officials from the site due to health and safety concerns. One councillor noted that she had been on site recently without any difficulty. A resident of the site said that the site was a dangerous environment and difficult for Local Authority officials to work in.
- 5.24** The Local Authority informed the OCO that, following two large storms which caused significant damage to several mobile units in 2017, it replaced a total of 33 mobile homes on the site at a total cost of €461,000.
- 5.25** At a LTACC meeting in May 2018, it was noted that 18 replacement mobile homes had been requested at the time of the meeting, 11 had been delivered. A member expressed reservations about the quality of the mobile homes and asked if each had been double glazed. She claimed that some were damp already because water was running off the windows. A representative from the Local Authority stated mobile homes were purchased as a result of need, budget available, family composition, and available stock at the time of the emergency. She also advised that all the mobile homes purchased in 2018 were the result of an emergency situation and that these were issued with double glazing.

- 5.26** The Local Authority has stated that while each mobile home is fitted with heating and electricity, the Local Authority does not take responsibility for the installation of amenities such as gas and water. At interview, the TAU Senior Staff Officer explained that when the Local Authority supplies a mobile home, they do not connect it to water and sewerage. They stated that if a family requested plumbing, they would arrange this for them but that no family has requested this. The Local Authority was unable to confirm whether all mobile homes on the site were plumbed but stated that they had appointed a contractor to complete a survey to confirm if this is the case. Similarly, the Local Authority were unable to confirm whether the children subject to the complaint had access to sanitary facilities and running water in their mobile homes. It is noted that, at interview, many children conveyed the need to go outside to use the toilet at night. The Local Authority have since informed the OCO that they have plumbed mobile homes provided after March 2020.
- 5.27** The Local Authority informed the OCO that families on the official bays pay a weekly rent to the Local Authority and that those that do not pay rent, but are living in the site, are charged for their use of electricity.
- 5.28** The Local Authority contracted a caretaking service from a private company to service the site and the same caretaker was based at the site for nearly 20 years. The Local Authority provided us with copies of the caretaker's weekly reports dated between January 2018 and December 2019.
- 5.29** At interview, the caretaker informed the OCO that their reports were a weekly summation of issues they observed, or which were brought to their attention. In this regard they also advised that, depending on the urgency of issues arising, they would communicate these to the TAU.
- 5.30** Each weekly report reviewed by the OCO showed the same issues arising year on year e.g., ceilings in huts falling, toilets blocked, large potholes, uneven ground, dampness, and damaged fencing. The caretaker stated that maintenance issues on the site are a significant and ongoing concern. Significantly, the caretaker advised that since 2012 "*very limited improvements*" have been made in relation to the welfare hut facilities. At interview, the Local Authority stated that under the current TAP, the welfare huts are due to be upgraded.
- 5.31** The Local Authority informed the OCO that this caretaker service ceased in October 2020 after the caretaker was no longer able to access the site due to the actions of some residents. A copy of an email from the TAG to the Local Authority dated November 2020 refers to a complaint by 45 Traveller residents from various sites who were concerned about the Local Authority's use of a caretaking service in which a middle manager was alleged to be responsible for the rounding up and impounding of horses from sites and for enforcing previous evictions. Another contractor for caretaking services was sourced and began working in November 2020.

Public Health and Sanitation

- 5.32** The PHN informed the OCO that, from a public health perspective, there is no place or facilities on the site where children and young people can safely gather and play. The PHN stated that the infection rates in the children are concerning and above those observed in the settled population. These include recurring medical conditions such as impetigo, dermatitis, eczema, and abscesses along with upper respiratory and lower urinary tract infections. The PHN further commented that the site has a high percentage of children with special needs, including speech and language and learning difficulties.
- 5.33** While such a disparity in health outcomes between settled and Traveller children is not unusual, the PHN stated that the higher incidence of medical conditions and infections were directly related to the conditions on the site. The Director stated that these concerns were previously reported to the Local Authority in the Public Health Department Report (August 2012), and that they remain valid as the PHN continues to provide outreach to the site to this day.
- 5.34** Sanitary provisions on site are within communal washrooms, referred to as 'welfare huts'. These consist of a toilet, a bath/shower and sink (see images). All facilities are located within non-insulated out-houses made of blocks and concrete with the sinks and baths made of stainless steel. Mains water and communal washrooms are shared in some cases by three families or up to 16 people, including children. Not all welfare huts have hot water, and during electricity outages children spoke about having to boil kettles for a bath that is shared by the entire family.
- 5.35** Of the eight washrooms visited by OCO investigators, all of them were in a poor physical state. Each washroom had concrete/linoleum covered floors, the walls were cracked in places with evidence of damp and mould, and the window were in poor state of repair with evidence of leakage (see images). The countertops and washing facilities were clean but had aged. The OCO was informed by the TAG that three of these welfare huts had been upgraded since 1989 to accommodate residents with medical conditions.
- 5.36** The main drainage system and sewerage system is located in the north-western end of the site and is not connected to the main grid. According to complainants, it has malfunctioned on numerous occasions resulting in the lagooning of water. Residents have informed the OCO that raw sewage has been visible at times. In addition, they state that a combination of poor drainage, potholing and sewerage problems has led to the pooling of waste in places when there is rainfall.

Waste Management and Pest Control

- 5.37** With respect to domestic waste management, the Local Authority advise that, up until 2018, skips were kept to designated areas and emptied weekly. However, in 2018, the two residents who had previously allowed the skips to be placed adjacent to their mobile homes refused to allow this practice to continue due to concerns about the risk of fire, falling rubbish and rats. For a short period of time, the Local Authority stated that they had to place a skip on the access road. Residents told us they were not advised when the skips would be dropped off

and collected and this contributed to skips being overfilled. The Local Authority stated that there had been a conscious decision to vary the timing of the service in order to avoid rubbish being dumped in the skips from outside the site. The collection arrangements lead to tensions between the residents and the staff of the waste management company, with the eventual withdrawal of the service in the summer of 2018. The Local Authority issued letters to all residents advising of the situation and offered two options for waste management going forward. The first was to replace skips with closed skips on the site and the second was to introduce wheelie bins to each resident. Residents were invited to discuss these options at the TAU offices. The first option was eventually adopted, with now twice weekly servicing of two roll-on roll-off skips, which are dropped off and collected within a two-hour window. During the investigation process, the Local Authority maintained that the intimidation of waste management employees by some residents was a problem and had affected the Local Authority's ability to provide a consistent service over the years. The Local Authority informed the OCO in February 2021 that, since the change in contractor in 2019, there have been no further issues of this kind on the site. The Local Authority also informed the OCO that since March 2020, additional skips have been provided whenever necessary and it has allocated resources of two hours per day to cover clean up outside the site.

- 5.38** Rodent infestation is a longstanding issue at the site, as referred to in the reports commissioned and prepared by the HSE in 2012 and 2014. At interview, the children told us of watching rats routinely run up the side of their homes. The Local Authority informed the OCO that in February 2019, 30 rodent traps in the form of bait boxes were placed by a contracted company on the adjacent yard as part of the ongoing clean-up of that site, at a cost of €1320. However, they stated that on that day some children from the site took those bait boxes and placed them near their own homes. The Local Authority clarified that the bait boxes were to be placed in the adjoining yard given extensive illegal dumping that occurred there and the consequent infestation of rodents, as opposed to the site itself. It is understood that no bait boxes were provided to the site itself at that time.
- 5.39** The Local Authority provided us with a 2019 email exchange with a company who had ceased providing a pest control service to the site two to three years prior. The email states that the service was cancelled "*due to it being deemed unsafe for our operative to attend site*". The Local Authority stated that a new contract was signed with a pest control service in March 2020 and that 35 bait boxes have now been placed on the site.
- 5.40** The Local Authority informed the OCO that the issues of waste management and pest control are interlinked and suggested that the residents' behaviour was a significant factor in those issues not being resolved. They provided evidence of extensive illegal dumping in the adjacent yard as well as the overfilling of the two skips placed on site for domestic waste. They told us this contributed to rodent infestation on the site and in the local housing estate. The Local Authority informed the OCO that it had no evidence that the illegal dumping was conducted by residents at the site. The Local Authority informed the OCO that costly clean ups of the adjacent yard and the access road to the site have taken place over the years, most recently in March 2019 at a cost of €99,880.

5.41 The issues of waste management and illegal dumping have been raised at successive LTACC meetings since 2012. Significantly:

- November 2015: The Local Authority asked for suggestions from the committee on how to tackle the historic issue of illegal dumping on the adjacent yard. However, none were forthcoming.
- January 2017: The Local Authority highlighted the issue of illegal dumping on the site and ask for suggestions on how to stop the problem. A member suggested that CCTV on site might be a deterrent.
- March 2017: The Local Authority highlighted the issue of illegal dumping on the site and said that they were working with the residents to stop the problem. A member asked if there had been a prosecution for illegal dumping and suggested that CCTV on site might be a deterrent.
- February 2018: The issue of dumping was raised. A member suggested that lids on the skips might stop people dumping. The Local Authority was asked about the clean-up of the adjacent yard, but it was explained that the revenue budget for 2018 had been spent on storm replacements and the remainder of the budget will cover contract payments for the rest of the year.
- June 2018: The issue of skip fires was raised. The Local Authority advised that the waste contractor would not be in position to put covers on the skips unless the Local Authority paid the cost of replacement covers, and that this was not an option. A resident told the meeting that her young child recently narrowly avoided serious injury after a 50-inch television had fallen out of the skip. The Local Authority outlined waste management options such as wheelie bins and closed skips. She then asked the group for a range of alternatives. None were forthcoming. A member suggested that advocate groups might sit down with the Local Authority to discuss the matter in more detail.
- October 2018: The Local Authority advised that all replacement skips were now on the site. The ongoing issue of skips was raised. The skips were on site for two hours on a Wednesday. A resident advised that this window was not long enough for residents. She asked that the time be extended. The Local Authority stated that they would have to see if the caretaker was available, should the time be changed. A member asked whether the skip could stay on site longer or if each mobile home could be given a wheelie bin to be collected. The Local Authority advised these were no longer options as they were more dangerous in the event of fire. A resident advised that members of the public were also dumping in the adjacent yard. It was asked if CCTV was a possibility in the site. The Local Authority advised that CCTV is an option.
- December 2018: The Local Authority advised that skips would be collected on Mondays and Fridays. This will be reviewed at the end of the year. There were a lot of health safety issues around the placement of the skip. The Local Authority is hoping to clean up the adjacent yard and put in

measures to prevent unauthorised access. The yard is zoned for traveller accommodation. The option of CCTV was raised to prevent unauthorised dumping.

- July 2019: The fire service attended the meeting to discuss the issues on the site with regard to an alleged assault on a firefighter the previous evening. Both representatives from Traveller groups condemned the behaviour towards the fire officer as totally unacceptable. One stated that people on site are concerned about the rubbish. A member asked could this be followed up with the litter section and could prosecutions be made to send a message. The Local Authority advised the meeting that they were told by residents of the site not to put the skip in or there would be trouble. It was suggested that one solution might be to put a camera over the bin. The Local Authority advised that they intended to vary skip dates and times. A member queried where the rubbish was coming from. The Local Authority advised the meeting that the rubbish was both commercial and domestic. A member asked had someone gone through the rubbish, as people may be caught from searching the rubbish and prosecuted. The Local Authority advised they would set up a meeting with the Environment Director and discuss options available.
- September 2019: The skip service on the site had been ceased until further notice. The rubbish is now being dumped across the main road. This is a risk to residents, the public and to passing traffic. The Environment Department of the Local Authority is cleaning this up. The Local Authority has been told that it is not the residents of the site. The TAU is now looking for solutions to the problem. The waste contractor is refusing to service the site anymore. The Local Authority advised the meeting that they are looking at putting a compactor on the site, costing over €30,000. They stated that if the compactor was to be put in, a camera would also have to be installed. It was noted there are cameras on other sites and there are no problems there. It was also noted that not all rubbish from the site is domestic and the Local Authority is covering the cost of removing all this. In October 2019, the LTACC were informed that the skip was back on the site once a week.

5.42 The Local Authority has latterly submitted to the OCO that, under GDPR, local authorities cannot use data obtained from the use of CCTV cameras in the prosecution of illegal dumping, and that the use of CCTV does not necessarily lead to an improvement in addressing waste management issues. The Local Authority did not address why it had acknowledged the deterrent effect of cameras in its communications to the LTACC nor did the Local Authority submit any evidence of actions taken to deter illegal dumping on the site during the course of the investigation.

Fire Safety

5.43 Following the tragic loss of life in the Carrickmines fire in 2015, a national review of fire safety conditions in all local authorities was initiated. Under the direction of the DHPLG, the Local Authority convened a steering group to conduct a review of fire safety on all Local Authority halting sites. That group comprised of representatives

from TAU, the City Fire Department, and the Housing Directorate. The TAG attended a preliminary meeting; however, it was not invited to join the steering group.

5.44 The CFO's subsequent Fire Review Report of the site was issued in 2016. His findings are set out below:

- *“Of the majority of units entered, it was found that there was no working smoke detectors or carbon monoxide detectors. It is strongly recommended that smoke detectors and carbon monoxide detectors are provided to each unit on site as a matter of urgency. Detection is also recommended within the welfare units.”*
- *“Stoves fitted within the mobile homes are of a serious cause of concern; many are poorly fitted and badly located; often in close proximity to combustibles and with poor ventilation in the area which they are located. The department guidelines on the use of stoves are not complied with. It is strongly recommended they be replaced with suitable heating appliances.”*
- *“Mobile homes are located both in close proximity to the walls separating the bays and in close proximity to other units on the same site and this prohibits escape via bedroom windows. This is extremely dangerous in the event of fire in the living area of such mobile homes and presents an unacceptable risk to life”.*
- *“Electrical installation at present is extremely dangerous and is a serious hazard to the occupants. System is overloaded; indoor extension leads are being used externally; cables exposed to mechanical damage; there is evidence of burnt-out sockets etc. Furthermore, the power supply is dangerously extended to unofficial pitches”.*
- *“The site is seriously overcrowded. The department guidelines on separation between mobile homes are not complied with. In the event of a fire in a Unit, rapid spread to adjoining units will occur”.*

5.45 In addition to the Fire Review Report, an email from the CFO to the Local Authority dated 22nd of January 2016 outlined that there had been 74 fire brigade callouts to the site since 2013.

5.46 The CFO advised the OCO that representatives from his department and the TAU met with Traveller representatives in 2016 to discuss the Fire Review Report and to consider its implementation.

5.47 The CFO informed the OCO that Fire Awareness Training was provided to the residents at the site in February 2016. The Local Authority has also provided the OCO with an invoice dated July 2016 detailing their purchase of 100 Carbon Monoxide and 200 Smoke Alarms in fulfilment of their responsibilities to this site and other Local Authority accommodation.

5.48 At a LTACC meeting in May 2018, a member noted that some residents had oil installed in their bays independently and that the electrical boxes in the bays were not strong enough to run some of the appliances in the mobile homes.

- 5.49** The CFO informed us that there had been 113 fire brigade callouts to the site and adjacent yard in 2018, and 46 callouts in the year to 25th of November 2019. These related to rubbish fires, skip fires, and overheating in sockets in mobile homes.
- 5.50** The CFO stated that under the Fire Services Acts of 1981 & 2003 the duty of care in respect to Fire Safety in buildings rests with the owner/occupier and that his department has no authority over the actions of residents on sites.
- 5.51** The CFO informed the OCO of the efforts their department has made to establish good communication and relationships with the residents at the site in the circumstances of frequent call outs. The Local Authority also informed the OCO that an electrical contractor has been appointed to carry out monthly electrical inspections on 10 bays of the halting site since 2016. Details of those inspections were included in the information provided by the Local Authority. Upon review of same, investigators noted that they contained records of works and repairs required but limited and/or incomplete records of corresponding works/repairs conducted.
- 5.52** From a review of the minutes of LTACC meetings held between 2012 and 2020, the issue of fire safety has been a recurring agenda item since 2017. The Local Authority has stated that the electrical contractor is satisfied that they leave the site safe following each service, however, the electrical contractor finds that when they next return to the site, the same practices of misuse have been repeated. Such misuse includes overloading, inappropriate connections, using extension cables, inadequate wiring, damaged cables, and sharing of sockets. The Local Authority stated that it does not condone, promote, agree or accept direct responsibility for the misuse of electrical services.
- 5.53** At a LTACC meeting in November 2019, it was noted that the electricity on the site needs to be looked at as some of it is very dangerous. The Local authority advised the meeting that they will get a contractor to look at the electricity on the site. Should an emergency arise at the weekend on site, and if the caretaker is not available, the Local Authority advise that there is a service available, and this contact number is to be circulated to all residents.

Capital and Current Expenditure

- 5.54** OCO investigators interviewed the Principal Officer at the DHPLG Traveller Accommodation Unit in June 2020. The Principal Officer subsequently provided the OCO with information regarding the funding streams available to the Local Authority in respect of Traveller-specific accommodation, including the availability of capital funding to fund 100% of the capital cost of the construction, redevelopment, and refurbishment of Traveller-specific accommodation and services.
- 5.55** In June 2020 and October 2020, the Local Authority provided details of capital funding and expenditure for all Traveller Specific Accommodation since 2016.

In summary:

- In 2016, €86,244.85 was spent on cliff re-stabilisation work; €141,039 was spent on electrical upgrades; and €74,152 was spent on general upgrades.
- In 2017, the Local Authority was allocated €1,108,344 in funds of which €97,000 was drawn down. The Local Authority stated that site refurbishment and repairs to the cliff face could not take place due to serious disputes among residents, which would have made it impossible to have contractors on site.
- In 2018, the Local Authority were allocated €310,000 of which €180,250 was drawn down. According to the Local Authority, three major storms required the mass replacements of mobile homes across the city.
- In 2019, the Local Authority were allocated an additional €275,799 and drew down €1,316,023 (including €900,000 relating to the provision of the Traveller Group Housing Scheme at a separate location).¹⁴ The bulk of the remaining funds were spent on environmental clean-up and associated works.
- The Local Authority also claims a general maintenance grant towards the cost of managing its various halting sites, including the costs associated with caretaking arrangements, general maintenance and skip hire. These claims were as follows: 2016 - €140,855, 2017 - €129,748, 2018 - €164,325, and 2019 - €185,742.

5.56 In response to a request for capital funding and expenditure details as they relate to the named site only, the Local Authority provided figures for capital funding relating to expenditure on mobile homes following storm damage 2017/18 (€461,000); clean ups to the adjoining yard in 2019 (€377,730); repairs to the cliff face 2019/20 (€13,145 + €28,121); and costs associated with the sanitisation of the site in the context of the Covid-19 pandemic 2020 (€6,583). According to the Local Authority, families have been provided with free electricity during the pandemic to the value of €5,200.00 since January 2020 and the Local Authority has applied for funding to replace mobile homes for seven families on the site.

5.57 The DHPLG advised the OCO that funds are available to support local authorities' day-to-day costs in relation to Travellers' accommodation needs, including 90% of the salary of social workers employed to assist Travellers regarding their accommodation needs. The DHPLG advised that such funding was made available to the Local Authority for the equivalent of two social work posts, however, the Local Authority stated that they are only aware of funding for one Traveller-specific post – a Traveller Engagement Officer – and that this post was filled by a senior staff member with the agreement of Traveller representatives. The Local Authority stated that the other social worker post referred to is the Housing Welfare Officer post within the Housing allocations section, however, their remit does not cover the Traveller community.

14 The Local Authority informed the OCO that if allocated funding is not drawn down in a particular year, then the money is put back into the reserve for the following year.

5.58 The TAU representative informed the OCO that they are often drawn into discussions with residents about their psycho-social needs and that they provide what support they feel able to in the circumstances and refer on as necessary.

The Relationship between the Local Authority and Residents

5.59 The OCO accepts that the Local Authority has faced multiple challenges in the discharge of their duties to families living on the site, not specific to the complainants in this case. From the letters, emails and records provided, and through interviews conducted with the Local Authority, staff have described many such difficulties encountered, which this Office would not condone or wish to minimise. The Community Forum Report (2012) also referenced a level of distrust between the Local Authority and residents.

5.60 The issues raised by the Local Authority in this regard are summarised below:

- Resident hostility towards Local Authority staff, contractors, and service providers, with some residents refusing contractor access to the site to collect waste and make essential fencing, electrical, and health and safety repairs and upgrade works;
- Complaints of anti-social behaviour from local housing estates, which has led to local resistance to the rezoning of adjacent land for residential purposes; and
- Persistent illegal dumping in the area.

The Local Authority latterly informed the OCO that site residents have not shown any hostility towards the current TAU staff.

5.61 At interview, representatives of the Local Authority exhibited personal concern and compassion for the plight of the residents on the site. The Local Authority has stated that it has made every effort to resolve the difficulties encountered over the last year through meetings with groups of families and An Garda Síochána, who acted as a mediator.

Assistance with Individual Housing Needs

Record-Keeping

5.62 This investigation was severely hampered by our repeated requests for records from the Local Authority in respect of the individual families, policies, procedures and reports, and their staggered provision of same. Despite repeated requests to management it took the Local Authority 20 months to provide us with the information received (April 2019 - December 2020).

5.63 Significantly, the OCO was initially unable to locate any tenancy agreements or financial records for the 11 families who had submitted individual complaints on their Local Authority files. The Local Authority had stated that tenancy agreements exist with five of the 11 families, while the remaining six families are unofficially resident on the site. On the 24th November 2020, the Local Authority belatedly provided tenancy agreements for three of the five families. According to the

'National Retention Policy for Local Authorities' tenancy agreements should be maintained for halting sites and housing applications.

- 5.64** From an OCO review of the 11 complainants' housing files, record keeping in relation to offers of accommodation and refusals or acceptance of same was inconsistent. In one case, an offer made in 2020 was listed in a spreadsheet of all offers provided by the Local Authority, however, on reviewing the family's file there was no record that the family were ever informed of the offer. The offer was instead listed as being withdrawn by the Area Housing Officer on estate management grounds.
- 5.65** The Director of Housing and the TAU staff member, both acknowledged that all records relating to the site and residents are not centrally located or coordinated through the TAU and, as such, not easily retrievable. We were told that some records were held in offsite storage and others were held by different departments within the Local Authority.
- 5.66** The OCO notes that the *'National Retention Policy for Local Authority Records'* states that *"Records Management is a vital support function for all organisations, but it is particularly vital in government organisations, where there is a responsibility to offer transparency and accountability to the public that they have been established to serve"*.
- 5.67** The significance of accurate record keeping is essential in circumstances where the Local Authority does list Travellers as a priority group, second only to homeless and in the context of other criteria such as medical priority and length of time waiting to be rehoused being key criteria used by the Local Authority to allocate housing.

Housing Assistance

- 5.68** The Local Authority informed the OCO that a 'Housing Needs Assessment' is conducted every two years and that letters are issued to the residents' onsite by hand in advance of this assessment.
- 5.69** Choice Based Letting (CBL) is an online scheme for individuals to express interest in housing stock in a preferred area. It was introduced by the Local Authority in November 2015. Those registered on the housing transfer list and on the CBL system can bid for a house as it becomes available. Their position on the housing list will dictate if they will be considered for the property bid. The Local Authority provides internet access at their offices where staff are available on request to support anyone who may have difficulties accessing or using the system.
- 5.70** The Local Authority stated that those on the housing list typically wait up to seven years to be accommodated due to the lack of the availability of appropriate housing stock. The Local Authority further advise that residents can apply for social housing under the Housing Assistance Programme (HAP). However, the Local Authority acknowledge that members of the Traveller community may experience discrimination from landlords in their attempts to secure housing through HAP.

- 5.71** At the time of their individual complaints, all 11 families were on the housing list, awaiting offers of accommodation. Four of the families' files were received in April 2019 and the remaining seven were received in February 2020. In January 2020 the Local Authority provided further notes on the 11 housing applicants, most of which were not included in the files previously provided to us. In November 2020, the Local Authority provided further information and records pertaining to all 11 complainants.
- 5.72** Further analysis and cross-referencing of the information provided in the files suggest that these files are still incomplete. For example, in one family the Local Authority advised us the family were waiting 17 years for social housing, but their file contained no housing application before 2016. In another, the Local Authority told us that this applicant had never made a housing application and were therefore not eligible for social housing. However, from review of the file we found one dated December 2019.
- 5.73** There were only 17 'Assessment of Housing Needs' forms across all the files dating from 1998 to 2020. To put this in context, one complainant informed the OCO that they had submitted an Assessment of Housing Needs' form every year for the past 18 years. From review of the housing applications on file, although persons who are living in overcrowded accommodation is listed as a priority group in the Local Authority's allocations policy, there is no evidence that overcrowding was considered as a key issue in rehousing these families. While the Local Authority has not addressed the specific issues identified above, it has stated that, since 2013 housing applicants are reviewed every second year and that, prior to that, reviews were conducted every three years at the instruction of the Minister. It stated that a file review may also be conducted when an applicant's circumstances change but this would be at the request of the applicant.
- 5.74** Under section 12 of the *Social Housing Allocation Regulations 2011 (S.I. No. 198/2011)* an offer shall be deemed reasonable where the allocation of the dwelling would in the opinion of the Local Authority meet the accommodation needs and requirements of the household and is situated in an area of choice specified by the household. Upon review of the Local Authority files, it is not always clear what constitutes a reasonable/unreasonable refusal and/or no rationale for decision making about what reasonable/unreasonable is documented.
- 5.75** Without being specific, the Local Authority has stated that site residents have contributed to overcrowding by refusing to accept housing offers made over the years. From an OCO review of the 11 complainants' housing files, there was a total of eight offers of accommodation made to these families between 2006 and 2019. Two of these offers were accepted in 2019 and those families moved out of the site. In 2020, eight offers of accommodation were made under the Covid-19 voids scheme, whereby the DHPLG made funding available for the refurbishment of vacant local authority properties for households who required alternative accommodation to help prevent, limit or minimise the spread of Covid-19. While most of these offers were outside the remaining complainants' areas of preference, one of these offers was accepted.

At interview, the CEO confirmed that such offers of accommodation could be availed of on a temporary basis to facilitate social distancing during the pandemic with families retaining their place on the housing list in circumstances where the properties were outside of the applicants' area of preference.

From review of the files it was noted that in May 2020, a letter was sent to each family who was to be made an offer under the Covid-19 voids scheme. The letter states 'An offer of a dwelling allocation by (the Local Authority) shall be deemed reasonable where the allocation of that dwelling would, in the opinion of (the Local Authority) meet the accommodation needs and requirements of the qualified household concerned. It needs to be noted that the option of housing available may not be in your area of choice, but has been selected from the (Local Authority's) available housing stock'. The letter makes no mention of the housing offers being available on a temporary basis and we found no evidence of on the files of the families being informed of this.

From the information provided by the Local Authority it appears that none of the 11 complainants have received two reasonable offers within a 12-month period and only one complainant is listed as having made two 'unreasonable' refusals. It should be noted that there was a significant period of time between these two refusals.¹⁵

5.76 In a letter to the OCO dated October 2020, the Local Authority stated that since the start of the investigation three of the complainant families have been housed.

5.77 The Local Authority has stated that it did not have a system for recording telephone contact, until the customer support unit was established in 2019. It stated that email correspondence with respect to the site has returned over 62,000 records from 2012 to date, which it states would be excessively onerous to review. A selection of these emails was belatedly received by the OCO in November 2020.

5.78 The Local Authority advised the OCO that they face two major issues in rehousing families. They stated that many of the families will not consider any houses outside of their preferred area, which does not have sufficient housing stock to meet this desire. They also stated that the families have been slow to engage with the CBL system, which is the only mechanism for securing social housing. A UCC equality review of Local Authority Traveller accommodation provision, completed in May 2019, refers to disadvantages experienced by Travellers in accessing the CBL system with a 2018 census revealing that over 58% of Travellers do not have direct internet access. For its part, the Local Authority has said they have a dedicated CBL support room available to assist all housing applicants to log onto the system and to bid on properties should they so wish. They stated that the TAU is available to assist families who need further help in this regard and this has all been made known to the TAG. In addition, they stated that all user guides and documentation

¹⁵ Under the Local Authority's 2017 housing allocation scheme, 'Where a qualified household refuses two reasonable offers of the allocation of different dwellings in any continuous period of one year commencing on the date of the first refusal, the said household shall not, for the period of one year commencing on the date of the second refusal, be considered by [the Local Authority] for the allocation of a dwelling to which section 22 of the Act of 2009 applies the latter period shall not subsequently be reckonable in any way for the purposes of determining the relative priority of that household for a dwelling allocation.'

in relation to the use and operation of the system were assessed and approved by the National Adult Literacy Association, and that all applicants for housing support receive this user guide.

5.79 A review of the LTACC meeting minutes for the relevant period reveals that:

- April 2013: The issue of housing applications for the periphery tenants on the site was raised. Recently, members of the TAU had spent 2.5 hours on site with the intention of assisting people to fill in those forms, however, the time was spent listening to all manner of complaints about the site.
- October 2013: Housing offers have been made to residents; however, these have been refused as they were not in their preferred area. It was noted that the lack of space on the named site has caused numerous frustrations for the residents. A councillor wondered why people would refuse properties at all.
- At a LTACC meeting in December 2015, the Traveller projects represented on the LTACC withdrew. In a statement, the Traveller projects involved identified key areas of concern locally. This included the lack of transparency in housing allocation and the removal of Travellers as a category of housing need, and a failure by the Local Authority *“to recognise the difficulties Travellers have in accessing private rented accommodation due to discrimination and the lack of appropriate supports offered to Traveller families to access emergency accommodation, and a noticeable increase of Traveller families facing homelessness and overcrowding (including ‘couch surfing’)*”. It should be noted that, according to the Local Authority, the removal of Travellers as a category of housing need was implemented nationally under the instruction of the LGMA, following the introduction of the 2011 assessment regulations. However, the Local Authority does list Travellers as a priority, second only to homeless, in its 2017 housing allocation scheme.
- May 2017: The Local Authority stated that a number of families on the site had been identified as having an interest in standard housing. These families have been written to. Some needed to update their application forms. They stated that assistance is always available from the TAU. It was noted at the meeting that only two of 13 applicants were currently bidding on the CBL.
- September 2017: A Local Authority representative outlined that they had contacted most of the residents from the site regarding their housing applications at this stage. He also stated that because of a security concern he wouldn't be visiting the site. Members expressed their disappointment at this decision. One member suggested that the LTACC members needed to get their heads around the matter and perhaps a delegation visit to the site might be of assistance.
- July 2019: The Local Authority advised they were currently engaged with families that wanted to move off the site and there are families that have an interest in standard housing. The Local Authority said they would be happy to hold these meetings, but they would not entertain a shouting match, and

the meetings needed to be very structured.

Addressing Accommodation Issues within the TAP

TAP 2014-2019

- 5.80** The Foreword to the TAP 2014-2019 states that the national allocation available for Traveller specific capital projects was reduced from €32m in 2009 to €4m in 2013. It states that *“As a direct consequence of these significant reductions, expectations will have to be realistic in the drafting and implementation of the plan.”*
- 5.81** Section 6 of the 1998 Act stipulates that local authorities must undertake an assessment of Traveller accommodation requirements as part of their TAP. Indeed, this assessment forms the basis of the programme.
- 5.82** According to their TAP 2014-2019, the Local Authority’s assessment of Traveller accommodation was based on (a) data on Traveller families contained in the housing waiting list, (b) 2012 annual returns in respect of Traveller Accommodation prepared by the Local Authority, and (c) interviews with Traveller families.
- 5.83** The analysis of accommodation need refers to 20 individuals being surveyed from the named site. Those surveyed were asked questions in relation to whether they wished to remain on a halting site or move to standard or group housing. They were also asked about family size composition, specifically children living with parents in the 13–17 year age bracket, in order to assess likely future accommodation needs. Of the 20 residents surveyed, 10 indicated a preference for standard housing, seven stated a preference to remain where they were in a refurbished halting site, one family requested a stand-alone site, and two families expressed no opinion. It is noted that a survey was circulated to young adults on the site, but no responses were returned.
- 5.84** The TAP states that the Local Authority will *“over the lifecycle of the Programme endeavor (sic) to carry out upgrade works on the Halting Site. Much of this work is dependent on funding being made available by the Department of the Environment, Community & Local Government. A funding application to address the short to medium term issues has been submitted to refurbish the existing halting site. Priority was emphasised in upgrading the electrics onsite. This funding bid was successful in late 2013. It is envisaged having an electrical contractor appointed in 2014 to conduct the works. The remainder of the funding application is under active consideration by the Department of the Environment, Community & Local Government.”*
- 5.85** Under the section entitled ‘Strategies and Implementation Measures’, the TAP states that, with respect to standard housing, the Local Authority *“will endeavour to meet the needs for the provision of standard housing for Travellers. This will be addressed having regard to the extensive housing waiting list which continues to increase in the current economic climate. A report to the Housing and Community Functional Committee stated that the number of eligible applicants on the Local Authority housing waiting list as at the 31st December 2013, amounted to 7,896. The proposed Choice Based Letting Scheme will provide an opportunity*

for applicants seeking social housing support which includes Traveller families to place expressions of interest on vacancies being advertised for which they are eligible. If families insist on seeking offers of accommodation only in areas where vacancies rarely occur these targets will not be achieved. Whilst as far as possible Travellers will be accommodated in their area of family or community links, limitations exist in regard to availability of housing stock in particular locations. Unrealistic expectations leading to non-acceptance by Travellers of offers of housing may hinder progress in achieving the yearly target for new tenancies". With respect to the named halting site, the Local Authority will "also be looking at formulating a plan during the life of this Programme in the medium to long term to address the difficulties currently on the Halting Site. This is contingent on it being resolved with the Local Authority's Development Plan 2015 – 2021".

- 5.86** Under the section entitled 'Assistance in providing Accommodation' the Local Authority states that it "*will encourage Travellers, by way of information and support in dealing with outside agencies, to avail of measures such as House Purchase Loans to provide their own accommodation or to purchase standard housing*".
- 5.87** There is no further mention of the Local Authority's plans for the site, timelines or annualised targets being worked towards. The 1998 Act specifically states that timelines for work proposed must be included.
- 5.88** At a LTACC meeting in December 2015, the Traveller projects represented on the LTACC withdrew. In a statement, the Traveller projects involved identified key areas of concern locally. They stated that:
- The partnership nature of the LTACC is clearly lacking; the agenda and information flow tightly controlled by Local Authority officials, and a culture of mere reluctant reporting by the officials to the committee, submissions and recommendations from Traveller projects have been largely ignored, etc. Their experience of the LTACC is of a tokenistic structure, not meeting its statutory function. The Housing Directorate intends to exclude the LTACC and its members from any 'meaningful involvement' in the upcoming statutory review of the TAP.
 - The submissions by Traveller groups on the TAP plan were not taken into account, and the subsequently adopted TAP is legally deficient, not meeting statutory requirements in regard of annualised targets for different categories of Traveller accommodation, an insufficient estimate of projected needs, etc.
 - There was an apparent lack of any urgency in undertaking the departmentally directed fire and safety review of Traveller accommodation, following the tragic deaths in Carrickmines in 2015.
 - There was a lack of identifiable data collection tools to assess the numbers and needs of Traveller families.
 - There was a lack of Traveller specific accommodation being built and offered to families.

5.89 The Local Authority's mid-term review of the TAP 2014-2019, as per Circular 22/2016, states that, with respect to the named site:

- Significant health and safety works have taken place, including securing the area at the base of the cliff face in the south and east of the halting site.
- The electrics on the halting site have been substantially upgraded including public lighting.
- The internal road of the halting site has been resurfaced and traffic calming measures installed.
- A housing association has carried out an accommodation needs assessment of the named site and is looking at long term solutions to meet the long-term accommodation needs of the current residents.
- 10 social housing offers made, 2 accepted and 8 refused.

5.90 The TAP 2019-2024, adopted on 16th December 2019, states that the TAP 2014-2019 achieved the following:

- In 2016 electrical upgrades took place on the 10 bays with 10 additional points being set up around the periphery; road resurfacing and upgrading work on the access road into the site took place; and seven additional public lights were installed in and around the site.
- In 2019 the Local Authority removed an abandoned mobile unit from the adjacent site and provided for pest control on that site. They also removed illegally dumped rubbish from the access road.

TAP 2019-2024

5.91 At a LTACC meeting in January 2019, the Local Authority informed the committee that the main issues facing the site were overcrowding, the cliff face and the dumping situation on the adjacent yard. The Local Authority representative said that, due to feedback she got from surveys, it was their intention to pursue a new group housing scheme on the adjacent yard and refurbish existing bays (plan A) as part of the upcoming TAP. However, the Local Authority advised that prior to starting a group housing scheme the cliff face works had to be completed. She estimated that the new group housing scheme could provide up to 20 new units on the adjacent yard.

A member made the point that this was planned for before and asked how this plan is different from plans in the past. The Local Authority said that the adjacent yard is now zoned for Traveller accommodation. A member also asked how this proposal would be sold to the residents of neighbouring parks. The Local Authority representative advised that her plan involves reducing the overall number of families on the site by also providing social housing to the families that want to leave.

The Local Authorities said that objections from local residents was a risk and that they may have to pursue a different option, which would be two smaller group housing schemes (plan B). A member urged the council to think strategically in

dealing with potential local objections as he felt those posed the biggest risk to the plan. A member made the point that it was important to begin work on his plan as soon as possible, particularly given the erratic weather that had occurred in recent years. A member said they were concerned of a defeatist attitude regarding the plans for the adjacent yard on the committee and urged members of the committee to engage and get behind the plans. A member made the point that she feels that this the last attempt to really resolve the longstanding issues at the site. She said that there had been many plans in the past and now it's important for residents to start to see some progress.

Another member said she was worried that the rejection of the plan would set the site back another few years, and urged all parties involved to get behind the adjacent yard plan. A resident said that, in her experience, the families on the site are sick of regularly calling into and engaging with the Local Authority and not seeing any improvements or changes. She said that she believed there are families on the site that would prefer standard social housing, and that residents wouldn't mind moving on to the adjacent yard on a temporary basis while the main bays were being refurbished. Another member made the point that it was very important for the council to utilise all the funding that was available to it.

- 5.92** At a LTACC meeting in April 2019, the Local Authority advised that residents of the site were going to have to work with the Local Authority. The minutes state that *“the behaviour of residents on the site has been appalling and it is extremely hard to make any progress with the site”*.
- 5.93** At a LTACC meeting in July 2019, a representative from the Local Authority advised that there were a lot of submissions to the TAP, and it was going to take a few weeks to go through them. She stated that they would prefer not to meet with residents during that time.
- 5.94** The Background to the TAP 2019 – 2024 states that the Local Authority *“has carried out a root and branch review of its Traveller Accommodation Programme with a view to making fundamental improvements and interventions to improve the lives of the travelling community”*.
- 5.95** With respect to the named site, the TAP states that it *“is a ten-bay site [...] This site has increased in population over the years and is now significantly overcrowded with approximately 38 family units on site. There are a range of concerns for the Council on this site such as overcrowding, deficiencies in welfare facilities as well as ever-changing challenges with general health and safety and antisocial behaviour due to the scale of the population on the site. This is a dynamic ever-changing site with a relatively young population.”*
- 5.96** In accordance with the 1998 Act, the Local Authority commenced the assessment of current and future needs process in October 2018 by inviting the residents of the Traveller community to complete a survey with staff of the TAU. The Local Authority received 13 responses from the named site.
- 5.97** Under the heading ‘Strategies and Implementation Measures’ the Local Authority’s TAP 2019-2024 states that the plan for the site is to develop a Group Housing Scheme on the adjoining yard (no details are provided of number of units), to

upgrade and refurbish the existing ten bay site and return this Halting Site to its original ten bay usage, and to continue to support families who wish to avail of the HAP scheme, the CBL system or Caravan Loan Scheme. The Local Authority would also consider “*other options such as smaller group housing schemes or purchasing of properties suitable for Traveller accommodation, subject to funding being approved by the DHPLG*”. The TAP 2019-2024 states that the proposal for development of the group housing scheme will take place in 2020, along with a parallel application to the DHPLG for funding. It is emphasised that any such Housing Scheme development will be subject to planning, consultation, and funding approval.

5.98 The TAP states that “*The Council will make every effort to deliver Traveller specific accommodation to families who have expressed an interest in this type of accommodation however the expectations of the families need to be realistic and alternative accommodation options need to be explored by families such as Private Rented Sector, Standard Housing etc*”.

5.99 Within the TAP 2019-2024 there is no clear reference to how the Local Authority intends to reclaim or refurbish the existing bays or address the likely delay of seven years for residents to be accommodated from the housing list. The TAP also only makes passing reference to the issue of population growth and how the Local Authority anticipates addressing this in the context of the site.

5.100 At interview, the Local Authority advised that it had a threefold plan for dealing with the overcrowding and poor conditions on site. It intended to build 10-15 units of group housing on the adjacent site, to re-establish the site as a ten-bay facility, and to accommodate the remaining residents of the site in standard housing. With regard to the rehousing of residents in standard housing, the Local Authority advised that they were considering the purchase of some privately owned houses but that this would be subject to the approval of DHPLG.

5.101 The CEO of the Local Authority informed the OCO that over 900 submissions were received with regard to the latest TAP, the majority of which were related to the proposed redevelopment of the adjacent yard. The CEO clarified that under part 8 of housing planning legislation, the Local Authority has the power to dispense with objections when the plan comes to planning consultation stage, but that it wishes to have broad consensus on the development. The CEO stated that “*if you don’t have the buy-in of a local community those powers will never work, you’ll end up in judicial review or an injunction*”. At interview Local Authority representatives informed that public consultation at the planning stage in the development of a Group Housing Scheme on the adjacent yard was crucial to get the buy-in of the community. It was acknowledged that public opposition to the plan was likely to be a significant challenge.

5.102 At a LTACC meeting in January 2020, the Local Authority advised the refurbishment of the bays would take place in tandem with the proposed new group housing scheme in the adjacent yard. A member asked how many houses will be built in the site and what would happen if there were not enough housing bays for all the residents of the site. The Local Authority advised that it proposed to build 10 properties and that there was enough interest in standard housing to resolve

accommodation for the remaining families who would neither have a bay nor a house.

6. Findings

Administrative Actions

- 6.1** The OCO has considered the administrative actions of the Local Authority. The OCO has determined whether those actions were affected by one of the seven grounds referred to in the 2002 Act, and whether those actions have resulted in an adverse effect on children residing at the Traveller halting site.
- 6.2** The seven grounds referred to in the 2002 Act are:
- Taken without proper authority,
 - Taken on irrelevant grounds,
 - The result of negligence or carelessness,
 - Based on erroneous or incomplete information,
 - Improperly discriminatory,
 - Based on an undesirable administrative practice, or
 - Otherwise, contrary to fair or sound administration.

Causation

- 6.3** For a finding to be made by the OCO, there needs to be a causal relationship between the conduct of the public body and the adverse effect which results. The adverse effect must arise from a fault of the public body. The act need only be a contributing factor for an adverse effect finding to be made.

Adverse Effect

- 6.4** The OCO must also conclude that the action has adversely affected a child. In this context, the OCO is conscious of the Local Authority's positive duty, as a public body, to promote equality, prevent discrimination, and protect the human rights of children affected by their policies and plans. Indeed, the best interests of the child must be a primary consideration in all Local Authority decisions and actions.
- 6.5** In addition, the Traveller community is identified by name as a protected group within the *Equal Status Acts 2000 to 2015*. For this reason, there is a positive obligation on public bodies to facilitate the Traveller way of life, and to ensure that where a rule or policy looks the same for everyone but, in effect, disadvantages people from a particular protected group, reasonable adjustments are made so that they do not experience greater inequality.
- 6.6** An adverse effect on a child may relate to the loss of a right or amenity, or not receiving, or the delayed receipt of, a service or supports to which the child was entitled.

6.7 Children on the named site are entitled to protection against all forms of discrimination, supports to ensure their survival and development to the maximum extent possible, respect for the preservation of their Traveller identity and the enjoyment of their culture. They are entitled to have due weight accorded to their views, respect for their private and family life, appropriate assistance to their parents in the performance of their child-rearing responsibilities and the enjoyment of the highest attainable standard of health.’ Next sentence to read ‘Children are also entitled to standard of living adequate for their physical, mental, spiritual, moral and social development and appropriate measures to assist their parents, and the equal opportunity to participate in cultural, artistic, recreational and leisure activity.¹⁶ Any failure by the Local Authority to protect these rights and entitlements, will result in an adverse effect on the child(ren) on the named site.

Efforts to Improve the Conditions and Facilities on the Site

6.8 While the Local Authority has acknowledged the extreme overcrowding and poor living conditions on the site, the OCO has not seen any evidence of reasonable efforts taken by the Local Authority to improve the standard of living for children residing on the named site. In particular:

- Children on the site have no designated place to play, and their passage to school is overgrown and unsurfaced. Despite these matters being raised at LTACC meetings as early as October 2012, the OCO has seen no evidence of concerted efforts to address these matters in the best interests of the children involved. Children living on the site described feeling “abandoned” to the OCO.
- The Local Authority has a public sector duty to consider the rights of children living on the site, and to include these children in policymaking and planning. The OCO has not seen evidence of the consideration of children’s rights in the Local Authority’s policy and planning processes.
- While the Community Forum Report published in September 2012 identified a need for the provision of modern sanitary units for families, these have still not been refurbished. At interview, the Local Authority stated that under the current TAP, the welfare huts are due to be upgraded, but that TAP does not particularise when or how this refurbishment will take place. In this context, the OCO notes the higher incidence of medical conditions and special needs among children living on the site as identified by the PHN.
- Electrical works proposed to make the site safer, following an April 2013 electrical survey, did not begin until mid-2015. The Local Authority has stated their completion was delayed by six months due to interference by one resident, and for this reason, it would not be entering into multiple contracts at the same time on the site. The Local Authority has not demonstrated any actions taken to address the issue by way of pursuing a site exclusion order against obstructors, or referring the matter to An Garda Síochána, as suggested by one LTACC member at the time. In this

16 See section 4.9 above.

instance, the Local Authority appears to be penalising all residents, and further endangering the safety of children living on the site, as a result of the actions of one.

- The 2016 Fire Review Report found that of the majority of units entered, there were no working smoke detectors or carbon monoxide detectors, stoves poorly fitted by residents within the mobile homes were of a serious cause of concern, the electrical system was overloaded, mobile homes were located in close proximity to the walls separating the bays to other units prohibiting escape via bedroom windows, and the site was seriously overcrowded, with DHPLG guidelines on separation between mobile homes not complied with. While the Local Authority subsequently purchased carbon monoxide and smoke alarms for the site, and provided fire awareness training to residents, it is unclear what, if any, actions were taken to address the serious matter of overcrowding, such that in the event of a fire in one unit, its rapid spread to adjoining units is likely to occur. At an LTACC meeting in November 2019, it was noted that the electricity on the site, needed to be looked at as it was very dangerous. The Local Authority advised the meeting that they will get a contractor to look at this. The Local Authority has not addressed the danger to residents, particularly children, of its failure to comply with the DHPLG's basic guidelines on the location and separation of caravans.
- At a number of LTACC meetings in 2017, TAU staff raised their concerns regarding the reluctance of Local Authority staff and contractors to attend the site for health and safety reasons.¹⁷ Once again, the Local Authority has not demonstrated any actions taken to address the issue by way of pursuing a site exclusion order or referring the matter to An Garda Síochána, as suggested by one LTACC member at the time.
- The Local Authority could not provide a reasonable explanation for why it did not, as a matter of practice, connect mobile units to water and sewerage prior to March 2020.
- The Local Authority has persistently failed to address the issue of illegal dumping on the site and adjacent grounds, and the overfilling of the two skips placed on site for domestic waste. In November 2015 it asked for suggestions for dealing with this issue from the LTACC. None were forthcoming so nothing was done. In January 2017, the LTACC suggested CCTV as a deterrent. In June 2018, the Local Authority advised the LTACC that it could not pay for replacement covers for the site skips, which were a fire safety hazard, as it had exhausted its annual budget in February of that year. This was despite surplus allocated funding for the year and a resident informing the meeting that her young child recently only just avoided serious injury after a 50-inch television had fallen out of the skip. In October 2018, CCTV was raised as a potential deterrent. In December 2018, the option of CCTV was raised to prevent unauthorized dumping. In July

17 See sections 5.22, 5.23, 5.55, 5.79 & 5.93 above.

2019, a resident informed the LTACC that families on site were concerned about the rubbish. One member suggested putting a camera over the bin, while another member asked whether illegal dumping could be followed up with the litter section and could prosecutions be pursued. As the rubbish was both domestic and commercial, another member asked whether the rubbish had been sorted to identify the perpetrators. In September 2019, the LTACC were advised that the skip service had ceased altogether, and that rubbish was being dumped across the main road at a risk to residents, and the public. The minutes state that the TAU is now looking for solutions to the problem. The Local Authority suggested putting a compactor with a camera on the site, noting that cameras had been put in on other sites, and there were no problems as a result. Once again, the Local Authority has not demonstrated any actions taken to deter dumping by way of deterrents such as CCTV, or to address the matter by way of identifying perpetrators and referring the matter to An Garda Síochána.

- Despite rodent infestation, the Local Authority did not employ a pest control contractor to place bait boxes in the adjacent site, where illegal dumping by the public was a continual problem, until February 2019. Bait boxes were not placed on the main site until March 2020. No reasonable explanation has been provided for this.
- Apart from the weekly caretaking and monthly electrical contracts, the Local Authority has only invested in essential cliff stabilisation, electrical upgrades, access road resurfacing, and additional public lighting during the relevant period. This was despite surplus allocated funding.
- While replacement mobile homes were provided to families following 2017 storm damage, it is noted that the quality of these units was raised at an LTACC meeting in May 2018. A resident “expressed reservations about the quality of the mobile homes and asked if each had been double glazed. She claimed that they were damp already because water was running off the windows”. The Local Authority stated that “mobile homes were purchased as a result of need, budget available, family composition, and available stock at the time of the emergency. She also advised that all the mobile homes purchased in 2018 were as a result of an emergency situation and these were issued with double glazing”. It should be noted that the Local Authority had surplus allocated funding at that time.
- The High Court has found that a situation of exceptional overcrowding imposed a special duty upon a local authority to ensure residents’ private family life was respected.¹⁸ Despite this, and the fact that it has a statutory duty to address overcrowding in legislation and under the DHPLG guidelines, the Local Authority has consistently failed to act to improve the situation, blaming this on residents’ refusal of offers – even if these refusals are reasonable [see paragraphs 5.74 & 5.75 above] – and the fact that once a family moves off the site, another family moves on to the site to take its

18 See sections 4.19 & 4.20 above.

place. The issue of unauthorised encampments is anticipated in legislation and under the DHPLG guidelines [see paragraph 5.18 above], however, the Local Authority has failed to explicate specific actions it has taken to address this foreseen issue.

Finding 1

6.9 The OCO finds that the Local Authority's failure to consider the best interest of children, including those with additional needs, in their decision making, and to act to ensure that children residing on the site enjoy a safe, suitable standard of accommodation in circumstances where the Local Authority has both the power and authority to do so, constitutes undesirable administrative practice.

Finding 2

6.10 The OCO finds that the Local Authority's failure to refurbish the welfare units in a timely manner, and to ensure consistent waste management to the site and pest control, constitutes a failure to affirm child residents' enjoyment of the highest attainable standard of health and is undesirable administrative practice.

Finding 3

6.11 The OCO finds that the Local Authority's failure to clear passage for children travelling to school, and to create safe spaces for recreation, constitutes a failure to give children living on the site an equal opportunity to participate in recreational and leisure activity, and is undesirable administrative practice.

Assistance with Individual Housing Needs

6.12 The Local Authority has acknowledged the extreme overcrowding on the site. However, the OCO has not seen any evidence of additional efforts taken by the Local Authority to assist residents, with a recognised disadvantage¹⁹, to access social housing. In particular:

- The significance of accurate record keeping is essential in circumstances where the Local Authority's allocations scheme lists medical needs, overcrowding, and length of time waiting to be rehoused as a key criteria for priority in the allocation of housing. The Local Authority's system for record keeping, as observed by the OCO, lacked transparency and accountability with the result that families on the housing waiting list may have been denied access and/or priority. In their statement, the Traveller projects represented on the LTACC cited the lack of transparency in housing allocation as a reason for their withdrawal from the Committee.
- The Local Authority asserted that their housing allocation system was fully accountable and transparent being subject to audit both internally and externally with data regarding allocations published and circulated to Elected Members on a regular basis. They also advised that the residents also have a responsibility to engage with the system as and when required

19 See sections 5.70 & 5.78 above.

and the TAU has always been available to assist residents. We maintain our view that greater transparency and accountability is required as supported by the evidence under para. 5.62 to 5.79 of this statement.

- The OCO notes the Local Authority's passivity, since at least April 2013, in dealing with resident's social housing applications despite their acknowledgement of extreme overcrowding on the site. The fact that the TAU "*is available to assist*" the 50% of site residents who have expressed an interest in social housing, fails to recognise or address the disadvantages experienced by Travellers in accessing the CBL system. This was exacerbated by TAU staff reluctance to engage with residents on the site.
- The Local Authority advise that a significant amount of consultation and training occurred before the implementation of the current CBL system. Support is also provided by staff in the CBL support room and also with a dedicated phone line. They also advised that a HAP drop in support clinic is also in place for anyone seeking HAP supported accommodation.
- In their statement, the Traveller projects represented on the LTACC cited a failure by the Local Authority to recognise the difficulties Travellers have in accessing private rented accommodation due to discrimination, the lack of appropriate supports offered to Traveller families to access emergency accommodation, and a noticeable increase of Traveller families facing homelessness and overcrowding as a reason for their withdrawal. While the Local Authority insist that residents' refusal of offers is a significant contributor to overcrowding on the site, the OCO cannot accept this in circumstances where there was a total of eight offers of accommodation made to the 11 families between 2006 and 2019, of which two were accepted, and the Local Authority has been unable to show evidence whether the refusals were reasonable or unreasonable [see also sections 5.74 & 5.75 above]. The difficulties in securing accurate records for the 11 families as part of this investigation would also raise questions on the administration of accommodation applications from other families on this site to support this claim of multiple refusals of reasonable offers.
- A resident member of the LTACC stated that, in her experience, the families on the site are sick of regularly calling into and engaging with the Local Authority and not seeing any improvements or changes. She said that she believed there are families on the site that would prefer standard social housing, and that residents wouldn't mind moving on to the adjacent yard on a temporary basis while the main bays were being refurbished.

Finding 4

- 6.13** The OCO finds that the Local Authority's failure to administer its social housing allocation scheme in a transparent and accountable manner, is a significant contributor to the severe overcrowding on this site. The lack of accurate housing records has meant that the families on the housing waiting list may have been denied access and/or priority. This overcrowding has resulted in serious risks

on the site which present a real and present danger to the safety and health of children and is the result of both carelessness and undesirable administrative practice.

Finding 5

6.14 The OCO finds that although the Local Authority does list Travellers as a priority group, second only to homeless people, in its 2017 housing allocation scheme, Travellers require additional assistance in accessing the CBL system and securing housing through HAP. The OCO considers the Local Authority's failure to account for the disadvantages experienced by Travellers in effectively securing accommodation is based on undesirable administrative practice.

Addressing Accommodation Issues within the TAP

6.15 The Local Authority has acknowledged the extreme overcrowding on the site, however, the OCO has not seen any evidence of concerted actions taken by the Local Authority to plan for residents existing and future housing needs. In particular:

- In its successive TAPs, the Local Authority has failed to estimate the number of Traveller families that require accommodation for the period directed by the Minister from the needs' assessment.
- The Local Authority has also failed to outline the needs to be met by the programmes in sufficient detail or to provide a statement of policy to address general issues and specify goals and the timeframe within which needs are to be met, including the position in relation to meeting the distinct needs and family circumstances of Travellers. As the High Court has stated, the duty imposed on the Local Authority is not merely aspirational. The Local Authority must specify, setting down in detail, precisely the provision of accommodation, which is required to address the needs as identified.²⁰
- The Local Authority has failed to include annual targets in the programmes in respect of the implementation of the programmes or to detail the structures for the development of accommodation proposals, set out arrangements for management and maintenance of the accommodation, and specify the mechanisms for monitoring progress in implementing the programme.
- In their statement, the Traveller projects represented on the LTACC cited the fact that TAP 2014 – 2018 was legally deficient, not meeting statutory requirements in regard of annualised targets for different categories of Traveller accommodation and was insufficient in its estimate of projected needs, as a reason for their withdrawal from the committee. It also cited a lack of Traveller specific accommodation being built and offered to families.

20 See section 4.16 above.

- The Local Authority has failed to demonstrate reasonable steps taken to implement the proposals of in the TAP 2014 – 2018 in respect of the named site.
- With respect to TAP 2019 – 2024, the Local Authority stated that it was their intention to pursue a new group housing scheme on the adjacent yard and refurbish existing bays (plan A). An LTACC member made the point that this was planned for before and asked how this plan is different from plans in the past, to which the Local Authority responded that the adjacent yard was now zoned for Traveller accommodation. It is understood that the successful rezoning application was in fact submitted in December 2011. The Local Authority also said that objections from local residents was a risk and that they may have to pursue a different option, which would be two smaller group housing schemes (plan B). A member urged the council to think strategically in dealing with potential local objections as he felt those posed the biggest risk to the plan. An LTACC member made the point that she feels that this is the last attempt to resolve the longstanding issues at the site. She said that there had been many plans in the past and now it's important for residents to start to see some progress. Another member said she was worried that the rejection of the plan would set the site back another few years.
- The Local Authority advised that it sets out its TAP in accordance with guidelines from the Department following public consultation. The TAP is submitted to the Department for final approval. The Local Authority further advised that it strives to meet targets but various challenges such as severe weather, security issues and protracted court proceedings has impeded them in doing so.

Finding 6

6.16 The introduction of the TAP under Irish legislation was to place a statutory duty on local authorities to meet the accommodation needs of Travellers as a means to address the significant inequalities facing them. The OCO finds that the Local Authority's failure to comply with the minimum requirements of the law in devising and most importantly, ensuring the implementation of its TAP 2014 - 2018 is both contrary to fair and sound administration and is improperly discriminatory.

7. Recommendations

- 7.1** Where the OCO has determined that the public body's actions were affected by one of the seven grounds referred to in the 2002 Act and that those actions had an adverse effect on a child, the OCO may make recommendations to be implemented by the public body in order to remedy, mitigate, or alter the adverse effect of the actions on a child or children. This may include recommendations of a general nature with respect to systemic issues.
- 7.2** In accordance with section 13(3) of the 2002 Act, the OCO endeavours to make recommendations which are fair and constructive for all parties to the complaint. In so doing, the OCO shall also have regard to the best interests of the child concerned. The OCO may request an update from the public body on the measures taken in response to these recommendations to determine whether they are considered satisfactory.
- 7.3** Travellers and Roma are amongst the most disadvantaged and marginalised people in Ireland. Despite clear legal frameworks and national level policy objectives, there exists a significant policy 'implementation gap' between central government and local authorities with respect to the provision of Traveller-specific accommodation. Empirical evidence suggests that this is a result of significant ambiguity and/or conflict at local level, combined with high levels of prejudice and negative stereotyping of Travellers.²¹
- 7.4** Furthermore, the Traveller Accommodation Expert Review (July 2019) identified three main problems with planning for Traveller accommodation needs. These included the inadequate connection between the 1998 Act and the planning legislation, a lack of adequate planning guidance for local authorities concerning Traveller accommodation, and the lack of monitoring and reviewing of Development Plans and how they relate to Traveller accommodation. A recent Mercy Law Resource Centre study entitled 'Minority Groups and Housing Services: Barriers to Access' found that minorities are overrepresented in homelessness figures and often fall foul of the 'local connection' test within the 2011 housing assessment regulations. It quotes a 2018 IHREC report which noted that "*while they represent less than 1 per cent of the Irish population, they make up 9 per cent of the homeless population. Travellers also experience the highest levels of discrimination: they are almost ten times as likely to report discrimination in access to housing as the White Irish population, even after education and labour market status are held constant.*"²²

21 Spotlight 'Traveller Accommodation: The challenges of implementation', Houses of the Oireachtas, 1 October 2018

22 Available at <https://mercyllaw.ie/publications/>. See also The Irish Times 'Local authority housing rules discriminate against minorities – report' 4th March 2021.

7.5 Significantly, the European Union Agency for Fundamental Rights' 'Roma and Travellers Survey 2019' published in September 2020 reported the following disadvantages experienced by Travellers in Ireland with respect to access to accommodation:

- Most Irish Travellers (92%) feel that there are not enough places – especially Traveller specific accommodation – for them to live.
- 73% indicate the second highest rate of discrimination when trying to rent or buy houses in the last five years.
- 24% of Travellers face severe housing deprivation, the second highest after Travellers in France and 30 times more than people generally in Ireland (0.8%).
- 22% point to crime, violence and vandalism in their neighbourhood, and 20% mention too much noise from neighbours/ from outside.

7.6 The OCO recognises the difficult task local authorities have in fulfilling their statutory role regarding the accommodation needs of diverse groups in a situation of limited resources, including housing stock, and limited capacity, including the availability of experienced personnel to meet the needs of marginalised people.

7.7 Despite those challenges, or indeed, because of them, it is incumbent on this Local Authority to discharge their statutory responsibilities and adhere to the legislation and policy that frames their services, making adjustments where necessary. This must include identifying the scope of need and planning to address same.

The Local Authority advised that they welcomed this recognition by the OCO of the challenges but that they struggled to accept the findings of the investigation in relation to administration of their social housing allocation scheme, their choice based letting system and their administration of their TAP.

Notwithstanding this, the CEO of the Local Authority stated their determination to work tirelessly to improve the lot of children living on this site. They further advised that all of the actions listed in response to the recommendations will be gathered into an action plan to be agreed by all relevant stakeholders. This will result in a revised targeted and time bound framework for action over the lifetime of the current TAP. They note that they look forward to the input of the independent organisations as outlined which will serve as a benchmark for activities in this area in the future.

Of note is the expressed commitment by the CEO 'to implement the measures outlined in the current TAP for the benefit of all the residents including the children of {named of halting site} and to work with all stakeholders involved to bring about improvements to the lives of the children'. We very much welcome this.

Recommendation 1

7.8 Due to the significant and prolonged adverse impact on children living on this site, the oversight for the implementation of these recommendations must be held at CEO level to ensure accountability and a ring-fenced budget.

In response the Local Authority advised that the CEO will prioritise this matter and take specific measures to have appropriate oversight of the implementation of the recommendations of the report. The annual revenue budgets and capital budgets relating to the provision of travel accommodation are currently ring fenced, once approved by the Elected Members (revenue budget) and the Department of Housing Planning and Local Government (capital budget).

Recommendation 2

7.9 The Local Authority should immediately review the housing applications and complaints made by the 11 families. If there were any administrative errors that may have adversely affected them and their children, then redress should be provided including an acknowledgement of same.

In response the Local Authority advised that they are not aware of any administrative errors but will undertake a review of the housing applications in question in Quarter 2. If any errors are found they will be acknowledged and rectified without delay.

Recommendation 3

7.10 The Local Authority should, without delay and in cooperation with the residents (including children), undertake a risk assessment of the named site with a view to taking immediate action to address the health and safety risks identified. Particular consideration should be given to the connection of all mobile units to plumbing and sewerage, the refurbishment of the welfare huts, the removal of fire safety hazards, the clearing of children's passage to school and the consistent provision of waste management, pest control, electrical and other maintenance. The matter of illegal dumping on the site must also be addressed as a matter of priority.

In response the Local Authority advised that:

- A risk assessment will be carried out by a competent contractor in quarter 3 2021 and initial survey work has already begun on this.
- Will immediately action the provision of a new temporary welfare pods in the short term and they will be provided in Quarter 3, 2021 at the latest.
- Will totally refurbish the original 10 bays which include the welfare units, electrics, water, and sanitary services in parallel with the delivery of a group housing scheme in the adjacent site.
- Will examine in Quarter 2 whether alternative methods of refuse collection are possible on this site, with a view to reducing or eliminating illegal use of the service.
- Will make sure that the current pest control service will resume shortly following its temporary suspension due to the Covid-19 pandemic and this will require full cooperation with residents to ensure success.

With regard to the clearing of the children's passage to the school, the Local Authority advises that this is a complex and emotional matter but it will continue to proactively engage to find a mutually acceptable access solutions for both the children living in the halting site and the children residing in the neighbouring community without delay.

Recommendation 4

7.11 Due to the deficiencies in the current TAP 2019-2024, the Local Authority should, without delay and in cooperation with the residents (including children), set out in particularised form how it will address the accommodation needs of the site residents in 2021, 2022, 2023, and 2024 (including annual targets). The risk of failing to address the needs of this group which is experiencing severe housing deprivation is too great to allow the current paralysis in the system to continue.

In response the Local Authority advised that:

- A comprehensive assessment in conjunction with the residents, Traveller representative bodies and TAU will be commenced in quarter 3 2021. That assessment will set out a strategy for addressing the accommodation needs of residents for each year from 2021 to 2024 inclusive. They noted that their ability to deliver on expectations will of course be contingent on the availability within existing housing stock, the demands of the growing social housing support and waiting-list (currently over 5000 approved households) and willingness of the residents to be flexible regarding the type and location of support they are willing to accept to meet their housing needs.
- As part of the statutory review of the TAP 2018 to 2022, will re-examine the plan as documented in detail in light of the finding and make appropriate changes where such are deemed necessary.

Recommendation 5

7.12 The Local Authority should conduct an audit of all social housing applications from the families on this site, including those for local authority housing, group housing and halting sites. This audit should be completed independent of the Local Authority and inform accommodation planning under Recommendation 4. It should also consider whether the current allocation system is appropriate in ensuring equal access to social housing for these families with due regard the findings of this investigation. Consent should be sought from residents participating in the audit. Where that consent is refused, that data should be excluded in line with GDPR.

In response the Local Authority advised that it would engage an independent organisation to conduct an audit of all social housing applications from families in on the site. The results will be used to inform accommodation planning to be carried out on the recommendation 4.

The Local Authority advised that it would also consider whether the current system can be improved and simplified for Travellers when the results of the equality audit under recommendation 4 are published.

Recommendation 6

7.13 The Local Authority should consider how Travellers who experience severe housing deprivation may be assisted proactively in navigating the housing CBL system and the HAP scheme. The Local Authority should devise and share their Traveller

specific policy setting out the same. The specific implementation of this policy should be included in the Monthly Management Reports to Council Members.²³

The Local Authority will arrange that the CBL system is independently equality proved in quarter three of 2021 and will implement any resulting recommendations in a timely manner. Should it call for the establishment of a Traveller specific policy, this will need to be designed, approved, implemented, and shared without delay.

Recommendation 7

7.14 The Local Authority should review the purpose, function and operation of the Traveller Accommodation Unit. This review should consider the capacity, resources and staff composition of the unit to ensure the following:

- 1.** Strategic planning for the development of Traveller Accommodation going forward.
- 2.** That a system is in place to ensure routine and emergency maintenance works and upgrade works are addressed in a timely manner and that contracts with external service providers are proactively managed.
- 3.** Support to families with their individual housing needs, with particular regard to well documented psycho-social challenges faced by the Travelling Community.
- 4.** That structures are established through which regular engagement can take place with residents of halting sites and Traveller Representative Groups.

In response the Local Authority advised that:

- It will carry out a full review of Traveller Accommodation Unit in Quarter 3 of 2021. This review will encompass the purpose functions, staffing, resources, training, and operation of the unit.
- It will put an updated system in place to ensure routine and emergency maintenance and upgrade works are carried out efficiently in quarter 4 of 2021.
- It will attempt to establish a structure to facilitate regular engagement between the halting site residents and the Traveller representative groups. This should be a place by Quarter 4 of 2021 following consultation with residents groups.

Recommendation 8

7.15 The Local Authority should establish a specific complaint handling mechanism within the Traveller Accommodation Unit or, as an alternative, amend the current complaint process to ensure it is easily accessible and effective in managing complaints raised in the course of this investigation.

23 The European Union Agency for Fundamental Rights' 'Roma and Travellers Survey 2019' published in September 2020 reported that 24% of Irish Travellers face severe housing deprivation. This is 30 times more than people generally in Ireland (0.8%).

In response, the Local Authority advised that it would establish a specific complaint handling mechanism within the TAU in Quarter 4, 2021 and will ensure the Travelling Community and Travelling Representative Groups are made aware of the system and how to access it.

Recommendation 9

7.16 The Local Authority should engage with other key agencies that have specific responsibilities for the health and welfare of children such as the HSE social inclusion unit, Tusla, local youth services and local schools. This child centred multi agency approach should focus on improving the lives of the children living on the site through dedicated actions such as access to youth services, educational supports and mental health services. Children should be active participants in this work. The Local Authority should consider utilising the local Children and Young People's Services Committee to support this,

In response the Local Authority advised that it would:

- Prioritise and immediately re-emphasise the needs of the resident children in all its actions and plans relating to this site, and, if necessary, will provide enhanced staff training and monitoring to keep this to the forefront of all its deliberations.
- Will continue to engage with the local Traveller Interagency Group which includes HSE Social Inclusion Unit and Tusla to develop actions to improve the lives of children on this site by Quarter 4 2021.
- Will engage with local children and young people services to support this initiative.
- Has commenced collaboration with Tusla to participate in important deliberations in relation to services to this site.

Recommendation 10

7.17 The Local Authority should in consultation with children residing on the site, take measures to ensure the provision of safe dedicated play areas and activities, and should commit to reviewing this on an ongoing basis.

In response, the Local Authority advised that measures to ensure the provision of safe dedicated play areas will be considered this year in conjunction with the refurbishment of the 10 bays and development of the Group Housing Scheme.

Appendix 1

- Section 6 requires local authorities, when making an Assessment of Housing Accommodation Needs under Section 9 of *the Housing Act 1988* (the 1988 Act), to also make an assessment of the need for sites in their functional area. It provides that in carrying out this assessment local authorities should consider the need for sites with limited facilities, having regard to annual movement of Travellers, other than their normal place of residence. From this assessment local authorities must estimate the number of Traveller families that require accommodation within their functional area for a period directed by the Minister.
- Section 7 requires local authorities to adopt an accommodation programme for its functional area within a time limit set by the Minister. The programme must specify details of the accommodation needs of Travellers and the provision of accommodation required to address those needs. The Act provides that a relevant local authority may adopt a programme jointly with one or more relevant local authority. The adoption, amendment or replacement of the programme is a reserved function to the members of the authority.
- Section 8 obliges local authorities to give written notice of its intention to prepare a draft accommodation programme to adjoining local authorities, relevant health boards, local consultative committees, local community bodies and other organisations such as voluntary organisations providing accommodation in the functional area.
- Section 9 provides that the local authority must inter alia: publish a newspaper notice regarding its proposal to adopt, amend or replace an accommodation programme; make the draft programme available for inspection, and take into consideration any written submissions received within a two-month period allowed for making submissions. The local authority must also send a draft copy of the accommodation programme to the bodies under Section 8 of the 1998 Act, referred to above.
- Section 10 provides for the preparation of an accommodation programme, as directed by the Minister. The accommodation programme should include, inter alia, the results of the most recent Traveller accommodation needs' assessment and the local authority's statement of policy and strategy for meeting Traveller accommodation needs and implementing the strategy.
- Section 11 of the Act requires the Manager of the local authority to prepare a report on the written submissions received. The Manager of the local authority must submit this report and the draft accommodation programme to the members of the local authority within a specified time period, as directed by the Minister.

- Section 15 requires that once the accommodation programme has been adopted the local authority should publicise the adoption of the accommodation programme in its public offices and at least one local newspaper. A copy of the accommodation programme should be made available to the Minister, the elected members of the local authority and bodies identified under Section 8 of the 1998 Act.
- Section 16 provides that local authorities must take any reasonable steps necessary to implement the proposals of the accommodation programme.
- Section 17 requires local authorities to review the accommodation programme at least once in each three-year period, or at such time as directed by the Minister.
- Section 21 requires local authorities to establish a local Traveller consultative committee to advise on the provision and management of Traveller accommodation.
- Section 23 states that nothing in the 1998 Act shall prevent a local authority from providing accommodation for Travellers, notwithstanding that it has not adopted an accommodation programme under this Act.
- Section 25 provides that local authorities may make a loan for the acquisition or repair of a caravan or the acquisition of land for the purpose of providing a site.
- Section 29 amends section 13(6) of the 1988 Act. It states that local authorities may provide and manage sites with limited facilities, such as sufficient water, hard surface for parking a caravan and toilet facilities for those who pursue a nomadic way of life or for those pending accommodation under the accommodation programme. It also enables the Minister for Housing to issue guidelines for the provision of sites for caravans by local authorities.
- Section 35 applies the provisions of the *Housing (Miscellaneous Provisions) Act 1997 (as amended)* (the 1997 Act) to address anti-social behaviour in halting sites with caravans provided by local authorities. In addition, the 1998 Act provides that exclusion orders against occupants of halting sites can require the individual(s) to remove any caravan they own or occupy from that halting site.

