



**SUBMISSION ON THE DRAFT NATIONAL
STANDARDS FOR DIRECT PROVISION CENTRES**

3 October 2018

Introduction:

The introduction of the National Standards for Direct Provision Centres is an important and very positive step in reforming the accommodation of people seeking international protection in Ireland. They provide a strong framework and starting point for improving the lives of people seeking asylum in Ireland.

We acknowledge what has obviously been a long and time-intensive process in developing these standards, led by the Government, but with NGOs and other actors giving crucial input. The Irish Refugee Council were invited to participate in the group developing the Standards. We respectfully declined this opportunity due to a lack of staff capacity at the time of asking and also because we believed that this process would be better led by an independent body. We now take this opportunity to offer our feedback on the Standards.

The National Standards will place a significant burden on service providers. In our opinion, many of the current Direct Provision centres will not meet the Standards nor will management of some of those centres be willing, or qualified, to implement the Standards. The second, and arguably more difficult part of this project, is therefore to attract non-profit providers to consider providing accommodation. The Irish Refugee Council have already begun work in this area and will continue to do so.

One of the reasons why direct provision accommodation is unsuitable as a means of accommodating people seeking asylum presently is precisely because responsibility has been outsourced to private actors. Two serious problems stem from this.

The first is an absence of expertise and knowledge in respect of the psychosocial needs of people seeking asylum. Private actors are profit-motivated and, while we recognise that this is a legitimate aim in other contexts, in the context of the international protection process, it can mean that the long term best interests and human rights of residents are not the primary concern of the provider. It may also mean that private actors generally do not possess expertise or experience in social care.

The second problem is that private actors are not bound directly by the international human rights and constitutional rights obligations which apply to the State. Despite improvements in the provision of accommodation which, we hope, the National Standards will introduce, it remains the case that the outsourcing of accommodation and the direct provision model itself falls short of the highest standards of human

rights. Remedying a model which is not fit for purpose requires a commitment to a rights-based approach to the accommodation of people seeking asylum and the elimination of the out-sourcing of public obligations to private actors.

Finally, the Standards, while a positive step, do not include reference to important elements that would create a complete alternative to Direct Provision in its current form. In particular the following need to be developed:

- Increased delivery of support and services by non-profit housing organisations that are expert in this area;
- The location of accommodation in areas that are close to support services, communities and amenities;
- Reduced waiting times for the processing of applications for international protection;
- Increased legal aid to support a person's initial application for asylum to reduce over-reliance on the appeals process;
- A broader access to the right to work and education for people seeking asylum;
- Integration services and strategies that apply to people from the point at which they make their asylum claim, not just when they receive status.

Headline comments:

- An independent inspectorate is required to ensure compliance with the Standards. It is essential that such a body with responsibility for enforcing the standards is identified and resourced. In the absence of an enforcement mechanism, there is a danger that the National Standards will comprise aspirations for accommodation, rather than a mandatory set of criteria applying to all direct provision centres.
- Clarity is needed around the legal status of the National Standards and their interaction with the legal framework around reception conditions, including the 'House Rules' which are mentioned in Statutory Instrument 230 of 2018 on reception conditions;
- The role of RIA, in particular the relationship between RIA and service providers in the context of the National Standards, needs to be clarified. At present, there is no clear statement of how the National Standards apply to RIA or RIA's role in oversight of the implementation of the National Standards by the service providers. We also suggest that the State should take the lead in developing the policies and operating procedures identified in the National Standards, rather than have a situation where each centre develops their own, individual policies.
- The Standards should explicitly acknowledge the fundamental importance of the relationship between adequate reception conditions and a person's capacity to engage fully with the international protection status determination process. Poor reception facilities negatively impact on a person's ability to put forward their asylum application, engage fully with the process, and benefit from their entitlements as asylum seekers.
- The use of the term indicator in the Standards seems to be misplaced in many instances. What are stated to be indicators are arguably objectives and an indicator should be created for each objective. An indicator should demonstrate how a service provider can show that it has met an objective. Many of the items listed as indicators are goals or requirements rather than indicators. For example, '1.2.5 Leadership'. The goal should be: leadership is shown by staff at all levels. An indicator for this goal could be: 'senior staff attend an annual training session on leadership skills'.

- In order for the service provider to demonstrate that they have satisfied the requirements made under the Standards, there needs to be concrete, demonstrable actions with which they can show compliance. Otherwise, evaluation of compliance and the effectiveness of the Standards will be difficult to show.

Introduction to the National Standards

- Paragraph 9: Statutory Instrument No. 230 of 2018 should be referenced here and also included in the overarching legal framework.
- Paragraph 16: Given that the Standards will not be affect many existing contracts, thought and consideration needs to be given as to how to input the Standards in to existing services where a contract has been created and may be due to exist for several years.

Theme One: Governance, Accountability and Leadership

While it is very positive that the Standards set under theme one clearly set out that dignity and respect are to be the cornerstone of the governance of accommodation centres, the Irish Refugee Council is concerned that there is an absence of an external enforcement mechanism or body to ensure compliance with the Standards.

The Standards envisage, for example, that the service provider will be responsible for training staff, establishing governance lines, creating strategic and operational plans, and providing information on the services available to residents. The service provider is then also obligated to review and audit itself in the discharge of its obligations under the Standards. In such circumstances, there is a risk that weaknesses, flaws, and failures may be overlooked.

In particular, it leaves open the possibility that a breach of the Standards is identified to the service provider and not acted upon or corrected by it. As currently comprised, there is no mechanism within the Standards to address that failing by any group or body other than the service provider itself, nor is there any mechanism for compelling the service provider to respond to any breaches of the Standards.

There are two primary reasons that the absence of an external review mechanism is of concern. The first concerns the adequacy and efficacy of self-regulation as outlined above. The second concerns the potential for different standards to be applied in practice as between the various different service providers in individual direct provision centres. While the National Standards are intended to be nationwide in scope, there is significant scope for deviations as between different accommodation centres. While deviations in interpretation and practice that are minor in nature may not create problems, it is easy to envisage how different practices may produce different conditions among accommodation centres.

It would undermine the idea of a set of standards which apply nationally and equally to each accommodation centre if the application of the National Standards is not broadly uniform across the country. A system whereby one accommodation centre is much more compliant than another, would produce unfairness. It would be preferable if an external review mechanism is in place to ensure that the Standards are adequately and uniformly applied across the board.

Our preference is for an independent inspectorate which would be tasked with ensuring compliance with the National Standards. At a minimum, reporting requirements and a review mechanism should be incorporated into the Standards themselves.

Standard 1.1

The service provider performs its functions as outlined in relevant legislation, regulations, national policies and standards to protect residents living in the accommodation centre in a manner that promotes their welfare and respects their dignity.

1.1.1 Staff knowledge This indicator lacks precision and reads more like an objective. It places the burden for identifying “relevant legislation, regulations, policies and standards” on the service provider who may not necessarily possess this expertise. Either this indicator needs to be more precise, and identify (by way of appendix) the relevant materials or sources of materials, or RIA needs to provide service providers with these materials separately and in an ongoing matter as these materials change. Otherwise, there is a risk that the indicator will be so vague as to be meaningless.

1.1.2 Analysis This indicator anticipates that the service provider will examine itself to assess whether the service meets relevant standards. A self-audit cannot be regarded as a reliable inspection process. External accountability is required to ensure compliance, preferably an independent inspector. At the very least, the IRC suggests that the service provider should be required to submit the results of the inspection process to RIA for review as part of the RIA inspection process.

1.1.3 Responsiveness This indicator lacks precision. It needs to be more specific and involve an external accountability mechanism. The IRC proposes that the service provider is required to submit an implementation report to RIA for review as part of the RIA inspection process.

1.1.4 **Compliance** Again, the IRC is concerned that the service provider is required to identify and understand “new and existing legislation and national policy”. This is very vague and provides the service provider with no guidance. Either this indicator needs to be more precise and identify (by way of appendix) the relevant materials or sources of materials, or RIA needs to provide service providers with these materials separately and in an ongoing way as these materials change. Training may also be necessary if there is a particularly wide ranging reform or change. Otherwise, there is a risk that the indicator will be so vague as to be meaningless.

Standard 1.2

The service provider has effective leadership, governance arrangements and management arrangements in place and staff are clearly accountable for areas within the service.

1.2.3 **Manager Skills:** This indicator reads more like an objective. An indicator for this objective should list a basic level of qualification for each skill or, if this is not appropriate, the number of years of experience a person would be required to have.

1.2.7 **Resources:** “Resources” needs to be defined, or a ratio per person needs to be given for this to be meaningful.

Standard 1.3

There is a residents’ charter which accurately and clearly describes the services available to children and adults living in the centre, including how and where the services are provided.

1.3.1 **Resident’s Charter** Rather than having multiple Charters of different size and content it may be preferable to have a single Charter that can be amended centre by centre. Residents should also be provided with a statement of their legal rights under Statutory Instrument 230 of 2018 and the Reception Conditions Directive. Specifically, they should be made aware of their entitlement to appeal any decision with respect to withdrawal or reduction of reception conditions and their right to legal advice in respect of same.

Residents should also be informed of their rights and recourse to the Ombudsman and the Ombudsman for Children.

Provision of information in respect of services should specifically include information in respect of relevant NGOs and civil society organisations.

Standard 1.4

The service provider monitors and reviews the quality of care and experience of children and adults living in the centre and this is improved on an ongoing basis.

1.4.1 Participation This indicator needs to be specific. For example, it would be preferable if the indicator stated: “The service provider ensures that a monthly/quarterly meeting with residents is held at which there is an opportunity for feedback on accommodation needs and service delivery. The service provider also provides a participation form for residents who cannot attend the meeting to submit written feedback.”

1.4.2 Improvement audits This indicator needs to be specific and state how often an improvement audit is conducted – “regularly’ is open to interpretation. A focus group, every six months could be a way of achieving this.

1.4.3 Quality review This should also be provided to RIA who can assess the results of the audit, identify problems, and ensure compliance with the Standards.

1.4.4 Training This indicator should state the nature of the training; how frequently it should occur and how it should be carried out.

1.4.6 Public sector duty The public sector duty contained in Section 42 of the Irish Human Rights and Equality Act 2014.

The Irish Refugee Council is currently undertaking research on behalf of the Irish Human Rights and Equality Commission concerning the nature and scope of the Public Sector Duty. This research will be published and various stakeholders invited to a roundtable to discuss the research.

The National Standards need to explicitly state the obligations which apply to service providers.

Standard 1.5

Management regularly consult residents on their views.

1.5.2 **Consultations** Specify how frequently consultation should take place. This indicator overlaps with 1.4.1

Theme Two: Responsive Workforce

The key aim of theme two should be to develop a workforce in each accommodation centre in which professional relationships based on mutual trust and cooperation between staff and residents are encouraged and supported.

Supporting staff in order to manage challenges and develop good working relationships with residents should be emphasised. One of the key aspects of this is ensuring that there are sufficient staff members present to provide an adequate level of support and to manage contingencies and any emergencies which may arise.

Broadly speaking, the Standards provide guidance on how this can be achieved. We suggest that the Standards are more proscriptive and direct in respect of, for example, the number of staff members required.

For example, with indicator 2.2.1: guidance should be provided on what “sufficient numbers of staff” would be. While the number of staff members required might change depending on the circumstances, a guide should be provided to assist the service provider in identifying the required number of staff. For example, a guiding ratio of staff to residents would be helpful.

Theme Three: Contingency Planning and Emergency Preparedness

Standard 3.1

The service provider will carry out a regular risk analysis of the service and develop a risk register.

3.1.1 **Identifying risk:** The risk register should be provided to RIA as part of the inspection process (as currently drafted it must be “available” rather than

mandatorily provided) and should be reviewed and evaluated by RIA as part of the inspection process.

Theme Four: Accommodation

Standard 4.1

The service provider, in planning, designing and allocating accommodation, is informed by the identified needs of residents and the best interests of the child.

This Standard should be addressed to RIA and not to the service providers. As a matter of law, decisions as to designation of accommodation centres and transfer decisions are within the competency and responsibility of the Department of Justice (Section 7 of Statutory Instrument 230 of 2018 European Communities (Reception Conditions) Regulations 2018. It is for the State, acting through its departments and agencies, to ensure that the rights of all residents are vindicated in all respects and it is concerning that the implementation of, for example, a vulnerability needs assessment is being left to the service provider. Working together with other relevant Government department and agencies, RIA must ensure that appropriate room allocation, living space etc. is guaranteed in each accommodation centre.

The current drafting of this Standard is concerning because it appears to muddle the role of the State and to outsource the responsibility to vindicate the rights of the child, vulnerable people, and every person seeking international protection to private actors providing accommodation services, rather than to the State. For example, Standard 4.1.4 and 4.1.5 require decisions to be made by service providers when in fact those decisions should have been made prior to dispersal and when the Minister designates the accommodation centre for the recipient.

It is important to emphasise that that various different actors and bodies have recognised that the best interests of the child are not served by living in the system of direct provision.

Standard 4.3.3

Single bedrooms. The service provider will facilitate a single resident to apply for a single bedroom after 9 months. If you are a single resident, you can apply for a single bedroom after 9 months and should be given a single room within 15 months (in so far as it is possible).

In our submission, single people should have their own bedroom immediately upon claiming asylum. The Standards should reflect this position regardless of whether it is unrealistic given the composition of the current Direct Provision estate.

Standard 4.4

The privacy and dignity of family units is protected and promoted in accommodation centres. Children and their care-givers are provided with child friendly accommodation which respects and promotes family life and is informed by the best interests of the child.

This standard is strong and is a good framework for developing accommodation for families. It should also be applicable to pregnant women, particularly pregnant single women. Pregnant single women and those with infants should be treated as a family unit and provided with their own private living space and access to a private bathroom. A pregnant single woman can be accommodated with other family members where appropriate and desired.

Standard 4.5

The accommodation centre has adequate and accessible facilities, including dedicated child friendly, play and recreation facilities.

The Standards should expressly state, in accordance with the Statutory Instrument 230 of 2018 (see Regulation 7(6)(a) and (b)) and the decision of Mac Eochaidh J. in [CA & TA v Minister for Justice](#) (see para 8.12 – 8.14), that the service provider cannot ban guests in private rooms. Access to accommodation centres cannot be arbitrarily denied to visitors and any restriction must be proportionate to the objective to be achieved by the restriction.

This is a matter of law and should be restated explicitly in the National Standards.

Standard 4.6

The service provider makes available, in the accommodation centre, adequate and dedicated facilities and materials to support the educational development of each child and young person.

Supports for education should include access to transport to ensure that children and young people can access schools and educational institutions in the locality or reach a main transport hub.

Standard 4.8

The service provider has in place security measures which are sufficient, proportionate and appropriate. The measures ensure the right to privacy and dignity of residents is protected.

Any measure to ensure the security of residents must be proportionate to the objective to be achieved and should not unduly or unreasonably interfere with the privacy rights of residents and the constitutional inviolability of the dwelling place.

Standard 4.9

The service provider makes available sufficient and appropriate non-food items and products to ensure personal hygiene, comfort, dignity, health and wellbeing.

This Standard is admirable in its aim and scope. It will be necessary to quantify certain items in this Standard and also ensure that Service providers

Theme 5: Food, Catering and Cooking Facilities

The overarching principle for this theme should be to accommodate preference and choice insofar as possible, to facilitate a comfortable and adaptable approach to meals, and to work with residents to find the most appropriate way to accommodate their needs.

Cultural awareness is an important aspect of this and training should be provided to all staff members. A level of flexibility should also be incorporated to assist residents who may have commitments which make it difficult to abide by a strict timeframe for meals or kitchen access.

Standard 5.1

Food preparation and dining facilities meet the needs of residents, support family life and are appropriately equipped and maintained.

Theme 6: Person Centred Care and Support

The IRC welcomes the inclusion of this theme in the Standards. Each of the standards under Theme 6 emphasises the dignity and rights of the individual while living in direct provision accommodation.

In certain cases, this Standard places a significant responsibility on the service provider when, arguably, the State is the body responsible. For example, 'Indicator 6.1.2' the State has a statutory responsibility (Section 3 of S.I. no. 230 of 2018) to provide information to the applicant. Any information given by the service provider in this context should be consistent with this information. Another example is 'Indicator 6.1.4' about Legal Support. It is an admirable objective that residents receive the appropriate assistance and support they may require to uphold their right to recognition before the law and to exercise their legal capacity, but the responsibility for this lies with the Department of Justice and the Legal Aid Board. Without the Legal Aid Board being resourced to allow it to meet this objective it risks being meaningless.

Standard 6.3

The service provider respects and safeguards the dignity of each resident

The IRC suggests that this Standard should specify that the service provider will respect and safeguard the dignity of each resident in respect of their gender identity, gender expression, and sexual orientation, particularly in respect of room allocation.

This Standard should also be addressed to RIA in respect of its role in designating accommodation centres and facilitating transfers, for example, in the case of transgender people.

Standard 6.4

The service provider makes information available, and communicates this, in an accessible format which is appropriate to any special requirements of residents' communication needs.

It is absolutely vital that the necessary supports to facilitate communication with residents, especially more vulnerable residents, is in place. The IRC is of the view that this Standard may require external supports in order to ensure it is implemented effectively. Our preference would be to see additional language included around access to available State supports and non-governmental supports which the service provider can avail of in order to facilitate the needs of residents.

Theme 7: Individual, Family and Community Life

Standard 7.1

The service provider supports and facilitates residents to develop and maintain personal and family relationships

This Standard should restate the position of the law (see the decision of Mac Eochaidh J. in [CA & TA v Minister for Justice](#) para 8.12 – 8.14), that the service provider must allow residents to receive guests in their private rooms.

7.1.5 **Visitors** currently states that a private space should be provided. This should be amended to state that visitors may be received in private rooms, subject to proportionate restrictions (for example, the rights of other residents who might be sharing the private room).

Theme 8: Safeguarding and Protection

Given the scope of the responsibilities placed on the service provider, the IRC recommends that the role of RIA is explicitly stated in respect of the Standards under this theme. For example, where policies are developed by individual service providers, in the absence of external input or guidance, the standards applied in practice might differ hugely as between the accommodation centres.

RIA has an important role in overseeing the State's human rights obligations in respect of reception conditions, none more so than safeguarding and protecting the rights and welfare of residents. RIA's role should be tied into that of the service provider to ensure that adequate systems are in place and to ensure that all legal and human rights obligations on the State are complied with. At the very least, adequate oversight by the State must be in place but preferably an independent inspectorate would also provide oversight.

Theme 9: Health, Wellbeing and Development

Similarly, to Theme 8, the role of RIA and the State must be stated explicitly in respect of health, wellbeing and development. The legal obligations, under the Statutory Instrument 230 of 2018, the (recast) Reception Conditions Directive, international human rights law, and case law are all relevant and should be incorporated at least by reference.

While the National Standards are applicable to the service providers, they do not exist in a vacuum and the role of the State in respect of complying with legal obligations and developing public policy should be made clear, particularly insofar as it overlaps with the Standards applying to the service provider.

Theme 10: Identification, Assessment and Response to Special Needs

The IRC works extensively with people seeking asylum who could be considered vulnerable in both the context of reception conditions (through our housing; advice and information and other direct support services) and throughout the asylum procedure itself (through the provision of Early Legal Advice by our Independent Law Centre, which provides this service on the basis of vulnerability criteria).

In our casework experience, vulnerability in the asylum context goes far beyond overt medical vulnerability. In this respect, the IRC welcomes the acknowledgement in the draft standards of a non-exhaustive categorisation of who might be considered vulnerable, together with the need for holistic, person-centred approach to vulnerability, as set out on page 10 of the draft document. Assessment of vulnerability and related needs in any context must always be conducted on the basis of an individualised assessment, with the examples of who might be considered vulnerable that are set out in the document, and in Article 22 of the recast Reception Conditions Directive intended as guidance for the relevant officials.

Ensuring that vulnerability is identified on a continuum, i.e. throughout the asylum process, rather than a once-off screening on arrival, is crucial to ensure an adequate standard of living and full engagement with the asylum procedure. The inclusion of a dedicated 'Reception Officer', whose role would be to ensure that the outcomes of vulnerability assessments are responded to and that new vulnerabilities are identified throughout the process, would be a very welcome addition to the Irish reception system and would reflect a sincere effort on the part of the RIA to ensure that people's needs are met throughout the asylum process. The Reception Officer would also serve as a dedicated point of contact for frontline service providers such as the IRC and our partners, and other stakeholders who work directly with asylum seekers. Responsibility for carrying out recruitment and training of the Reception Officer and providing other supports necessary for the individual to carry out their work effectively, should lie with RIA rather than individual accommodation management. This would ensure that Reception Officers across the Direct Provision estate are operating under the same terms of reference.

Generally, the IRC regrets the missed opportunity, with the transposition of the recast Reception Conditions Directive, to establish a vulnerability-identification mechanism that captures both special reception **and** special procedural needs (as envisaged in Article 24 of the recast Asylum Procedures Directive, which encourages states to adopt an integrated mechanism). In the experience of the IRC's casework, the cross-cutting impact of vulnerability between the distinct but interrelated reception system and asylum procedures is profound. An adequate standard of living, which is ensured by appropriate response to vulnerability, is crucial to ensuring an asylum applicant is fully able to engage with the complex legal process that goes with applying for international protection. It is important that any vulnerability identified in the context of reception conditions be taken account of in the application decision making process. However, no provision has been made in the inclusion of a special reception needs identification mechanism for cross-referencing between the departments responsible for reception conditions and decision making. In this context, it is unfortunate that the draft Standards document makes no reference to the positive impact an adequate standard of living has on a person's experience navigating the asylum process. The IRC would recommend that a number of the indicators, at a minimum, ensure that legal representatives are informed (subject to the applicant's consent) of any developments in reception that might have an impact on their application for asylum. In particular, the outcome of any vulnerability assessment.

Standard 10.1

The service provider ensures that the outcome of vulnerability assessments is incorporated into the provision of accommodation and associated services for the resident.

10.1.1 Work plan: The development of a work plan tailored to the specific needs of an individual is a welcome inclusion. However, any work plan should be developed in cooperation with relevant actors such as the person's legal representative or psycho-social support worker, where appropriate, taking into account the need for confidentiality and full consent.

10.1.2. Assessment Shared: The wording in this indicator seems to suggest that responsibility for conducting an initial vulnerability assessment lies with the service provider, when this should in fact lie with the Department of Justice, who should conduct assessments prior to dispersal and maintain that information on the individual applicant's file. Therefore, in the reception context specifically, it is RIA who are responsible for ensuring that the outcomes of initial vulnerability assessments are disseminated to the Reception Officer and other relevant stakeholders where necessary (legal representatives, etc). Likewise, the Reception Officer, rather than the contractor or service provider, should be responsible for disseminating the outcome of any subsequent vulnerability assessments to RIA and relevant parties.

Standard 10.2

All staff are enabled to identify and respond to emerging and identified needs for residents.

The IRC welcomes the requirement for all reception centre staff to be adequately trained and equipped to identify and respond to special needs. However, as indicated above, any training on this (and related) issues should be developed and implemented at State-level, so as to ensure consistency and harmonisation of practice. If individual centre management are responsible for developing and implementing their own training on vulnerability assessment, this will result in disparate approaches to vulnerability identification, which contradicts the aim of achieving harmonised national standards.

RIA, or another relevant body, should have a dedicated training and development team which is responsible for developing and rolling out all training modules incorporated within the Standards. RIA, or the independent inspectorate, would then have responsibility for evaluating the implementation of the entire package of training envisaged throughout Standards. A top-down approach would also ensure that best practice examples are effectively captured and disseminated across accommodation centres, in line with indicators 10.2.5 and 10.2.6.

Standard 10.3

The service provider has an established policy to identify, communicate and address emerging special reception needs.

As mentioned above, the IRC is concerned that responsibility in the Standards document seems to lie with the service-provider in the development and implementation of key policies. The onus should be with the State, who offer the contracts for reception centres, to ensure that all relevant policies are in place and are then implemented uniformly by contractors across the accommodation estate. Again, if individual centres are developing their own unique policies on a range of issues, monitoring and evaluation of the implementation of those policies will be impossible in practice.