



Irish Refugee Council Submission on the National LGBTI Inclusion Strategy

December 2018

Introduction

The Irish Refugee Council (IRC) provides direct support to asylum seekers and refugees at every stage of the Irish international protection process. These services include advice and information provision through a free drop-in service; early legal advice through the IRC's Independent Law Centre and holistic integration supports through dedicated programmes on access to education, housing and employment.

Through these services we encounter and assist international protection applicants from a diverse range of backgrounds, each person presenting with complex issues and particular needs. Lesbian, Gay, Bisexual and Transgender (LGBT) asylum seekers and refugees face a significant gap in protection and fulfilment of basic needs, both in the context of reception conditions and throughout the international protection decision making procedures. In our work with LGBT asylum seekers, through both individual case work and involvement in other policy and advocacy activities such as facilitating the Identity Peer-Support Group¹ and consultation with LGBT asylum seekers for research projects,² it has become clear that LGBT asylum seekers and refugees are an excluded group in both the asylum seeking and Irish LGBT communities.

This submission aims to highlight some areas of concern that should be incorporated into the National LGBT Inclusion Strategy if the strategy is to be genuinely 'inclusive' of all members of the LGBT community in Ireland. The examples and recommendations provided herein are by no means an exhaustive overview of the issues, nor do they purport to be representative of the needs of LGBT asylum seekers and refugees as a whole, but rather reflect trends emerging from the IRC's casework and direct engagement with people in the asylum process.

¹ <http://changeofaddresscollective.com/identity-lgbt-support-group/>

² For example, the IRC recently held consultations with LGBT people in the international protection process as part of research for projects looking at the development of an alternative to Direct Provision and a project exploring the application of the Public Sector Duty to Direct Provision and Emergency Reception and Orientation Centres. See also, Luke Hamilton, *Elaborating on the challenges facing LGBT asylum seekers: Asylum procedures and reception conditions in Ireland*, Working Paper, COC Netherlands, Out & Proud? LGBTI asylum in Europe Conference, 5-6 October 2017.

Legal and Policy Developments Relevant to LGBT people in the asylum process

There have been a number of recent legislative and policy developments in the Irish asylum context, which are of relevance to the inclusion of LGBT asylum seekers in Irish society.

Ireland's opt-in to the EU recast Reception Conditions Directive³ bears significant implications for the quality of living of people who are in Direct Provision while they await a decision on their asylum application. The Directive enumerates a set of minimum standards for the provision of accommodation and ancillary services provided to asylum seekers. The IRC previously set out its recommendations for a human rights-based transposition of the Directive into Irish domestic law, including a number of recommendations to ensure that the needs of LGBT asylum seekers are taken account of.⁴ While the transposing regulations do not refer explicitly to the needs of LGBT people, they do contain a number of mechanisms relevant to ensuring that LGBT people in Direct Provision are included in Irish Society.⁵ Regulation 8, for example, requires that an assessment to identify the "special reception needs" of an applicant must take place within 30 days of a person lodging their protection application. Effective implementation of this provision – in line with the recommendations set out below - would ensure that LGBT persons are accommodated in a location that ensures their safety and capacity to engage with society.

Furthermore, the recent development of a set of National Standards for Direct Provision is a much welcomed initiative that could increase accountability and protection for all people living in Direct Provision. The incorporation of the needs of LGBT people throughout (including reference to LGBT people under the definition of 'vulnerable resident') constitutes a strong framework against which the human rights of LGBT people in Direct Provision can be upheld. However, the IRC is concerned that there may be some barriers to effective implementation of the standards.⁶ For example, the draft

³ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ 2013 L180/96.

⁴ Irish Refugee Council, *Recommendations on the Transposition of the EU recast Reception Conditions Directive (2013/33/EU)*, March 2018. Available at: <https://bit.ly/2wIj74h>

⁵ S.I. No. 230 of 2018, *European Communities (Reception Conditions) Regulations 2018*.

⁶ Irish Refugee Council submission on the draft National Standards for Direct Provision, 3 October 2018. Available at: <https://www.irishrefugeecouncil.ie/wp-content/uploads/2018/10/Irish-Refugee-Council-submission-on-national-standards-03.10.18.pdf>

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version of the Standards do not identify an independent body responsible for inspection of accommodation centres, nor are they binding on RIA and other public bodies responsible for providing services to asylum seekers.

Finally, the IRC submit that public bodies such as RIA and OPMI, which have responsibility for providing accommodation to asylum seekers and refugees, are bound by the Public Sector Duty held in Section 42 of the Irish Human Rights and Equality Commission Act 2014.⁷ The Public Sector Duty requires that public bodies incorporate human rights, equality and non-discrimination into the execution of their public functions. This includes the function of drafting contracts under which private companies operating accommodation centres are bound. Effective implementation of Section 42 obligations requires that RIA incorporate human rights and equality considerations into the procurement process and contracts for Direct Provision centres, including the rights and protection needs of LGBT people. The IRC is in the process of finalising a project funded under IHREC's human rights and equality grant scheme, which is examining the application of the Public Sector Duty to Direct Provision.⁸

The Irish Refugee Council recommends that:

- The Reception Conditions Regulations are fully implemented in line with international human rights standards (as outlined in the IRC's submission on transposition of the Directive), including due **consideration of the special reception needs** of LGBT asylum seekers;
- The final version of the National Standards for Direct Provision identifies **an independent body with responsibility for monitoring** asylum seeker and refugee accommodation facilities;
- RIA incorporate **human rights and quality considerations into the procurement process** and text of contracts for private operators of accommodation centres that incorporate the rights of LGBT people, in line with its obligations under Section 42 of the IHREC Act 2014.

⁷ For an overview, see: Irish Human Rights and Equality Commission, *Public Sector Duty Equality and Human Rights Duty – Eliminating Discrimination, Promoting Equality and Protecting Human Rights*, November 2017. Available at: <https://bit.ly/2rGKQV5>

⁸ Irish Human Rights and Equality Commission Grant Awardees 2017: <https://bit.ly/2zEsAQj>

Isolation and Access to Key Services

Among key criticisms of Direct Provision is the entrenchment of social exclusion by accommodating asylum seekers in centres in remote locations, in many cases accessible only by a chartered transport service to and from centres twice a day. The alternative is for residents to pay for a taxi out of their own pocket, which is difficult, or impossible to do on the paltry weekly Direct Provision allowance, even despite the recent increase of €38.80 for adults and €29.80 for children.⁹ The result is that people in the asylum process have limited means to travel to urban centres to attend important meetings or appointments, or to otherwise engage with Irish society.

A recent study conducted by the Irish Human Rights and Equality Commission on Ireland and the Optional Protocol to the Convention against Torture noted that while Direct Provision residents “are free to leave these centres, some [...] had limited ability to do so and [Direct Provision] should therefore be considered as de facto detention.”¹⁰

The isolating effect of Direct Provision is acutely felt by LGBT people in the asylum process, especially those accommodated in more rural parts of the country. LGBT clients of the IRC frequently emphasise the negative impact of being denied meaningful opportunities to socialise with other LGBT people both within their Direct Provision centre (due to being accommodated in rooms and centres with people of different cultural and geographical backgrounds) and in the local Irish community. The isolated location of many Direct Provision centres also means that LGBT asylum seekers are often cut off from crucial lifelines provided by LGBT community support organisations and LGBT social spaces such as LGBT bars and clubs. Access to such support is critical to nurturing a person’s sense of self-worth, personal development and overall mental health.

Notwithstanding the ongoing capacity issues within the Direct Provision estate, it is important to ensure that the special reception needs of LGBT persons are taken into account – as required under the EU Reception Conditions Directive - before dispersal to accommodation centres around the country takes place.

⁹ Irish Refugee Council, *Increase in Direct Provision Allowance*, 9 October 2018.

<https://www.irishrefugeecouncil.ie/news/increase-in-direct-provision-allowance/6751>

¹⁰ Rachel Murray, Elina Steinerte, Irish Human Rights and Equality Commission, *Ireland and the Optional Protocol to the Convention against Torture*, January 2017, p. 33. Available at: <https://bit.ly/2fEh5h6>

The Irish Refugee Council recommends that:

- The **special reception needs of LGBT asylum seekers** are taken into account prior to dispersal to Direct Provision centres, with the aim of ensuring that their accommodation location facilitates access to the local LGBT community and support organisations;
- Integration policy and programmes focus on the need for **awareness-raising among Irish LGBT communities** of the needs of LGBT asylum seekers in Direct Provision and to facilitate interaction between Direct Provision centres and local communities.

Safety in Direct Provision

Many LGBT clients of the IRC have expressed concern they feel unsafe or uncomfortable in their Direct Provision centre as a result of homophobic treatment from other residents and in some instances centre staff. Given the isolated nature of many Direct Provision centres and the limited opportunity to leave centres, LGBT people have described feeling compelled to keep their sexual orientation or gender identity hidden for fear of being discovered by other residents. In a number of cases, LGBT people have been expected to share rooms with other people of the same cultural or religious background, effectively recreating the same persecutory environment that caused them to flee their country of origin in the first place. In this respect, it is all the more crucial to have regard to the specific needs of LGBT people when designating accommodation. In previous consultation with the IRC, one LGBT person used the expression “minority within a minority” to describe their particular isolation within the asylum seeker community due to the stigma often attached to living openly as an LGBT person within the Direct Provision system.

The above issues, if unaddressed, can exacerbate existing trauma or mental health difficulties, leading to withdrawal, inability to engage fully with international protection procedures and further exclusion from Irish society.

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Adequate policies and procedures must be in place to remedy complaints and safety concerns. The IRC notes that the Reception & Integration Agency (RIA) has in place a number of policies and guidelines that establish a framework for responding to harassment and discrimination. The *RIA Code of Practice for persons working in accommodation centres*, for example, requires that Direct Provision centre staff are aware and competent to respond to discrimination based on sexual orientation.¹¹ Similarly, the *RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment* sets out the procedures and guidelines for responding to claims of sexual and gender-based violence and harassment and includes sexual orientation as one of the grounds under the definition of ‘harassment’,¹²

While these policy documents are welcome, the extent to which they have impact in practice is uncertain and is not reflected in the experiences of the IRC’s LGBT service-users. In its submission to the UN Committee on the Elimination of Discrimination against Women in 2017, the Irish Human Rights and Equality Commission noted concerns as to whether the RIA guidelines were actually being implemented in practice.¹³ To give effect to the human rights and equality entitlements of LGBT people living in Direct Provision, RIA’s suite of policies must be updated, ideally to include a specific policy on the needs of LGBT people. The full implementation of the Draft National Standards on Direct Provision, including the introduction of dedicated ‘Reception Officers’ with competency to respond to the needs of LGBT people would be concrete step towards establish robust procedures for ensuring the safety of LGBT people in Direct Provision. The implementation of all policies and complaints procedures should be evaluated on a regular basis. Public bodies providing accommodation to asylum seekers have a duty of care to all asylum seekers to maintain updated policies and effective complaints procedures to ensure that the human rights of service-users are upheld.

¹¹ *RIA Code of Practice for persons working in accommodation centres*, 29 September 2005. <https://bit.ly/2ANnEs4>

¹² *RIA Policy and Practice Document on safeguarding RIA residents against Domestic, Sexual and Gender-based Violence & Harassment*, April 2014. <https://bit.ly/2lvYqK0>

¹³ IHREC, *Ireland and the Convention on the Elimination of All Forms of Discrimination Against Women, Submission to the United Nations Committee on the Elimination of Discrimination Against Women on Ireland’s combined sixth and seventh periodic reports*, January 2017.

The Irish Refugee Council recommends that:

- RIA establish a **dedicated policy and guidance document** for responding to complaints and protection concerns of LGBT asylum seekers living in accommodation centres;
- Ensure that **protection concerns of LGBT people are taken into account prior to dispersal** to Direct Provision centres – ideally through a dedicated vulnerability assessment mechanism, as envisaged under Regulation 8 of the Reception Conditions Regulations;
- Ensure that a designated **'Reception Officer'** – as envisaged in the Draft Standards for Direct Provision – is established in each Direct Provision centre and adequately trained to address the reception needs of LGBT asylum seekers.