



Statement to the Committee on Public Petitions

White Paper on Direct Provision

Stephen Kirwan, Human Rights & Equality Committee

16 September 2021



Introduction

Thank you for the opportunity to discuss the Law Society's recommendations on the White Paper on Direct Provision and related matters.

The Society welcomes publication of the White Paper in February of this year¹ and the Government's commitment to ending direct provision and creating a **new system grounded in the principles of human rights, respect for diversity and respect for privacy and family life.**²

The Society has advocated for an end to the non-statutory system of direct provision for many years³ and has recommended the introduction of an alternative system to accommodate and support those seeking international protection in the State.

Key to any discussion on an alternative system is the need to address **practical concerns** within the present system. That is, of course, a vital component in improving that system.

1. Early Intervention and Benefit of Legal Advice at an Early Stage

We welcome the commitment contained in the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process* to ensure that legal advice is provided at reception stage.⁴ The recommendation is also mentioned in the White Paper as a target for completion.⁵

The Society notes that the provision of legal advice prior to conducting preliminary international protection interviews is not currently provided for.⁶ Given the administrative pressures on Law Centres, the Society shares concerns which have been articulated around legal advice not being automatically availed of prior to completion of the Questionnaire, which is – as you will know - a vital stage in the international protection process.

In our experience, by the time clients have the opportunity to seek advice from a private practitioner in relation to their international protection claim, they will often have submitted their Questionnaire without the benefit of appropriate legal advice. This is often because clients are anxious to comply with the IPO's administrative deadline for submission of the Questionnaire.

¹ White Paper to End Direct Provision and to Establish a New International Protection Support Service in February 2021

² *ibid*

³ See for example Law Society Submission on Ireland's Third National Report to the UN Universal Periodic Review 2021

⁴ Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process (September 2020) Paragraph 3.15

⁵ *Op cit* White Paper p.141

⁶ 13(2) International Protection Act 2015

As mentioned, both the Questionnaire and the initial interviews are vital steps in the process and applicants are often criticised for any omissions at those vital stages as the process progresses.

Upon arrival in the State, international protection applicants and immigrants are particularly vulnerable as they are often unaware of their rights and in fear of deportation or detention. In such circumstances, access to a solicitor would safeguard the right to liberty and the ability to apply for international protection, if required. It would also bring necessary balance to the international protection system as a whole.

2. Delays in the International Protection Process

The White Paper recognises the importance of fair and efficient international protection procedures and acknowledges that the Department of Justice must ensure that steps are taken to significantly reduce the time spent in the asylum process and, in turn, that spent in Direct Provision.⁷ These delays not only undermine the integrity of the international protection system – they are the root cause of significant and preventable stress to those within it.

The Society asks that the Department of Justice addresses the significant and growing backlog of existing cases in an urgent and pragmatic manner. In this regard, the Society endorses the submission made in the *Report of the Advisory Group on the Provision of Support including Accommodation to Persons in the International Protection Process*⁸ to grant leave to remain to those who have been in the system for more than two years.

3. Assistance of a solicitor at IPO interviews

It is welcome that practitioners are now permitted to attend substantive IPO interview hearings with clients however, we are concerned that there is a lack of legislative guidance or indeed guidance from the IPO about the role of solicitors in these interviews. There is a further lack of guidance around disclosure prior to the IPO interview particularly given the complications which often arise at interview stage. We would ask that consideration be given to putting appropriate guidance on a statutory footing in order to ensure consistency, transparency and fairness for all international protection applicants.

4. Availability of Translated IPO Questionnaires

While we acknowledge that Questionnaires are now more routinely available in a variety of languages, the list of such languages is not necessarily comprehensive and additions would be welcome as part of any review of the operation of the international protection scheme in the State.⁹

⁷ *White Paper* op cit p.49

⁸ Op cit; p.82

⁹ Op cit 12.4 p.113

5. Level of remuneration and lack of Legal Services

International Protection cases involve the most fundamental of human rights and the vast majority of protection applicants are impecunious. The White Paper recommends setting up a fully funded Legal Aid Unit to deal with all legally aided international protection claims.¹⁰ However, the majority of legal aid cases are currently handled by private practitioners who are selected from a Private Practitioners Panel which is maintained by the Legal Aid Board.

We would emphasise that the current level of fees payable to private practitioners under the Legal Aid Board's Private Practitioners' Panel are inadequate given the volume and complexity of work involved in protection cases. Proportionate fees will ensure that lawyers with sufficient expertise in the area will opt to provide the required services, thereby continuing to develop as experts in the field as well as providing a much-needed service.

We would further emphasise that international protection applicants often require ancillary services above and beyond what is covered by the Legal Aid Board's Scheme such as family reunification which, unfortunately, is not currently included.

6. Adequacy of Translation Services

The White Paper recommends commitment to an accreditation test for interpreters working in the international protection process together with relevant training and competency standards.¹¹

The Society welcomes this call and again, suggests that appropriate guidelines are developed and placed on a statutory footing.

7. Barriers to Integration including Labour Market Access

Under the present system, there are numerous barriers to international protection applicants accessing the labour market.

The Society welcomes the fact that, pursuant to the *European Communities (Reception Conditions) (Amendment) Regulations 2021*, asylum seekers may now seek work after a period of six months in the asylum system. However, the Regulations also acknowledge that certain invisible barriers to work remain for asylum seekers which will not be addressed by the recommendations which are contained in the White Paper.

These barriers include matters related to opening bank accounts and applying for a driving licenses as well as other difficulties posed by the remoteness of some Direct Provision Centres.

¹⁰Op cit 4.1.6 p. 54

¹¹ White Paper op cit;

i. Bank Accounts

It is welcome that the Department of Justice is engaging with key stakeholders to resolve difficulties around access to bank accounts for International Protection applicants¹² which include issues around the production of the documentation necessary to satisfy anti-money laundering requirements.

The Society commends Bank of Ireland for agreeing to accept State-issued identification documentation to enable asylum seekers to open bank accounts following formal engagement with them on the issue by the Irish Human Rights and Equality Commission.¹³ We understand that a number of other banks have since followed their lead¹⁴ and we would ask that all financial service providers would recognise Article 16 of Directive 2014/92/EU which requires that all consumers, including those in Direct Provision and the international protection process, are permitted to open payment accounts without undue difficulty.¹⁵

ii. Driving Licences

While the White Paper recommended that International Protection applicants should be granted the right to apply for an Irish driving licence, we note that the legislation necessary to give effect to the recommendation was to be introduced before Summer 2021.¹⁶ We are not aware of the progress of measures to clarify the issue and the law in area given that *Regulation 12(1) of the Road Traffic (Licensing of Drivers) Regulations 2006* expressly provides that an individual who has ordinary residence in the State is entitled to make an application for a licence. This position should be clarified as a matter of urgency.

We are also concerned that failure to facilitate the obtaining of drivers' licences is contrary to the Receptions Conditions Directive¹⁷, the core guarantees of Article 14 of the European Convention of Human Rights and Article 21 of the European Charter of Fundamental Rights.

Conclusion

In conclusion, the Society welcomes publication of the White Paper. We hope it is a concrete and tangible step towards ending direct provision in the State and creating a **new system grounded in the principles of human rights, respect for diversity and respect for privacy and family life.**

Thank you for your time and attention – I will be happy to take any questions you may have.

¹² *White Paper* op cit 4.7.5 at p.63

¹³ <https://www.ihrec.ie/access-to-bank-accounts-confirmed-for-asylum-seekers/>

¹⁴ <https://www.rte.ie/news/2021/0513/1221299-banking-asylum-seekers/>

¹⁵ EU Directive 2014/92/

¹⁶ *Ibid* 4.7.4 at p.63

¹⁷ Directive 2013/33/EU