



Heading for an Accommodation Crisis?

Analysing RIA's capacity and changing policies for accommodating asylum seekers before and after a final determination of status

Policy Submission

Jesuit Refugee Service Ireland

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1. JRS Ireland

The Jesuit Refugee Service (JRS) is an international non-governmental organisation, founded in 1980. The mission of JRS is ‘to accompany, to advocate and to serve the cause of refugees and forcibly displaced persons worldwide’. JRS programmes are found in over 50 countries, providing assistance to refugees in camps, to people displaced within their own country, to asylum seekers in cities and those held in detention.

JRS Ireland has a mission to accompany, advocate and serve the cause of forced migrants in Ireland. It has been serving asylum seekers residing in Direct Provision since 2002. At the present time it provides regular outreach and support to asylum seekers in 10 Direct Provision centres in Dublin, Kildare, Portlaoise, Meath, Clare and Limerick. JRS Ireland prioritises the need of children growing up in Direct Provision: by running Homework Clubs; supporting the delivery of crèche and afterschool services in Knockalisheen; organising a four week Summer Programme of activities; and providing other project supports for children in Direct Provision.

JRS Ireland was a member of the Government appointed, *Working Group on the Protection Process, including Direct Provision and Supports to Asylum Seekers*, under Judge Bryan McMahon, which published its Final Report on 30 June 2015. JRS Ireland has actively engaged with the Department of Justice on the implementation of key recommendations relating to the resolution of cases of long stayers who were 5 or more years in the system.

JRS Ireland aims:

- To promote improvements in the reception and integration of asylum seekers, refugees and migrants.
- To support non-Irish nationals who are in detention under immigration legislation.
- To advocate for a more just immigration system and asylum process.
- To foster a more positive public image of asylum seekers and migrants in Ireland and deepen public understanding of asylum and migration issues.
- To encourage the active engagement of volunteers and to support the work of JRS Europe, the JRS International Office and JRS projects on the ground worldwide.

JRS Ireland works principally in the areas of:

- *Asylum Seeker Support*: providing support to persons seeking asylum through direct outreach, language classes and psychosocial support.
- *Integration*: contributing to integration by providing language support, by running capacity building courses and sporting activities, by organising intercultural events and by developing intercultural services and resources for teachers and migrant parents.
- *Detention*: visiting immigration detainees in prisons, organising training for detention visitors and advocating for more just detention policies.
- *Advocacy*: working for fairer immigration and asylum systems through lobbying, submission of policy papers, education and media work and collaboration with other organisations.

In March 2017, JRS Ireland in partnership with the Peter McVerry Trust commenced the PATHS (Providing Asylum seekers in Transition with Housing and Support) Project to assist persons with status residing in Direct Provision to access suitable accommodation in the community and to provide integration supports following transition.

2. Background

2.1 RIA Accommodation Capacity

Since the beginning of 2017 the Reception and Integration Agency (RIA) has experienced acute accommodation pressures throughout the Direct Provision system. As can be seen in the tables below, while the capacity of the system has remained relatively steady for the past 5 years, occupancy and vacancy levels have reached a critical point:

	Jan	Feb	March	April	May	June	July	Aug
<i>Population</i>	4,427	4,532	4,519	4,617	4,652	4,691	4,680	4,727
<i>Capacity</i>	5,140					5,130	5,191	5,191
<i>% Occupancy</i>	86.1	88.2	87.9	89.8	90.5	91.4	90.2	91.1
<i>Vacancies - Total</i>	514	373	289	284	236	239	229	158
<i>Vacancies - Baleskin</i>	96	0						

	2012	2013	2014	2015	2016
<i>Population</i>	4,847	4,360	4,364	4,696	5,230
<i>Capacity</i>	5,458	5,047	5,084	5,449	4,425
<i>% Occupancy</i>	88.7	86.4	85.8	86.2	84.6
<i>Vacancies - Total</i>	548	576	601	375	570
<i>Vacancies – Baleskin</i>	125	41	69	0	97

In September 2017, letters were issued by the Department of Justice to a number of persons with deportation orders, informing them that RIA has “*no role in the provision of accommodation to persons once a decision has been made on their application*” and requesting they remove themselves from Direct Provision.

2.2. Aims of Policy Submission

In the course of delivering services on the ground in Direct Provision centres, JRS Ireland was approached by a number of residents with deportation orders who, in a departure with longstanding practice, were issued with a notice to quit. This policy submission aims to:

- *Place this policy shift in the wider context of accommodation demands on RIA.*
- *Explore RIA’s responsibility to provide accommodation to persons with deportation orders.*
- *Highlight the human cost of the proposed policy shift.*
- *Offer recommendations to address the structural issues underpinning RIA’s accommodation challenges.*

¹ Reception and Integration Agency (2017) ‘Monthly Statistics Report – August 2017’, Department of Justice and Equality.

² Reception and Integration Agency (2016) ‘Annual Report 2014’ and corresponding editions for 2012-2015, Department of Justice and Equality.

2.3 Distinct Accommodation Remits: RIA and IRPP

On 10 September 2015 the Irish Government approved the establishment of the Irish Refugee Protection Programme and agreed that Ireland would accept up to 4,000 persons seeking protection under the EU Relocation and Resettlement programmes.

Both resettled and relocated persons are accommodated initially in a network of Emergency Reception and Orientation Centres (EROCs). In these centres, residents will receive full board, meals and other services. It is also intended that persons awaiting a decision on their status will receive a weekly allowance for personal incidental expenditure on the same basis as the Direct Provision allowance.³

In a Statement to the Seanad on Direct Provision, Minister for Justice, Charlie Flanagan, TD, stated:

“Alongside the asylum process, we have significant commitments to welcoming refugees fleeing harrowing conflict in Syria and other regions. Refugees who come to Ireland under the Irish Refugee Protection Programme are initially provided with shelter at Emergency Reception and Orientation Centres (EROCs). Regrettably we have been experiencing some difficulties in identifying suitable Centres. My officials, who work in this area on a daily basis, are of the view that the blunt condemnations of the system of shelter is acting as a serious disincentive for people coming forward to offer their properties for rent to the state. This means that vulnerable refugees that we have already screened to come here under resettlement or relocation may remain in camps abroad this winter.”⁴

The distinction in terms of accommodation remit is important. RIA is responsible for accommodating protection applicants who arrive in Ireland of their own volition in Direct Provision centres. IRPP are responsible for accommodating relocated persons in EROCs.

JRS Ireland would challenge public statements by the Minister and Senior Officials that conflates the accommodation remits of RIA and IRPP. On the RTE Radio 1 Drivetime programme, Minister Stanton contended that a person with a deportation order (‘undeserving’) residing in RIA accommodation is preventing a family in Greece (‘deserving’) from being relocated to Ireland because there is insufficient bed space available. This is disingenuous at best, as any additional space in RIA accommodation will be for the benefit of new protection applicants presenting in Mount Street rather than relocated persons from Greece under an EU Programme. The barrier to relocating families from Greece is the inability in a difficult housing market for IRPP officials to find and secure ‘suitable centres’.

³ Source: Department of Employment Affairs and Social Protection, available at <https://www.welfare.ie/en/Pages/Irish-Refugee-Protection-Programme.aspx> [accessed on 11th October 2017]

⁴ Seanad Statements on Direct Provision, available at <http://www.inis.gov.ie/en/INIS/Pages/speech-minister-flanagan-direct-provision-041017> [accessed on 11th October 2017]

3. RIA Accommodation Crisis?

3.1 Defining RIA Accommodation Remit

In 2010 the Reception and Integration Agency (RIA) conducted a *Value for Money and Policy Review: Asylum Seeker Accommodation Programme*⁵. The review noted the remit of RIA to provide accommodation on the following basis:

“RIA accommodates all those who make a claim for asylum and seek accommodation until such time as they:

- a) leave voluntarily;*
- b) are removed - either by way of deportation or Dublin II removal;*
- c) are granted refugee status;*
- d) are granted subsidiary protection² or*
- e) are granted leave to remain, either through the 1999 Immigration Act or by way of a special scheme such as the 2005 IBC scheme.”*

Conclusion: *RIA’s remit to accommodate ceases where a person has been granted refugee status, subsidiary protection, leave to remain or where a deportation or other removal has been effected.*

3.2 Context of RIA Accommodation Capacity Challenge

One of the key findings of the McMahon Report highlighted that if decisions are not made in a timely manner then applicants will have to be accommodated on a long term basis.

The Single Procedure was seen as a key systemic reform that will lead to speedier decisions and the elimination of delays and backlogs in the system. It was recognised that it would take time for the new procedure to bed in and yield improvements in processing time. Throughout 2017 the International Protection Office has been building up to its current case processing capacity of 50 cases per week. Using an estimated recognition rate of around 15% this would result in a majority of 44 with negative decisions that will appeal and have a continued requirement for accommodation. It is worth noting that many of the positive decisions to date relate to relocated persons so fall outside RIA’s remit.

The deepening housing crisis is causing difficulty for persons with status to exit Direct Provision centres in Dublin and find suitable accommodation in the community. Despite enhanced resources through AMIF funded projects, this issue is still proving intractable. At the present time between 350 and 400 persons are in this situation. In the current housing market, irrespective of additional resources, it is likely that the inability of persons with status to move on will continue.

RIA has identified other categories who should not reside in its accommodation. Firstly, there are Dublin Take-back cases, which are persons who have sought asylum in another EU Member State and Ireland is seeking to transfer them on this basis. But equally it would have to be acknowledged there would be some Dublin Take-Charge cases that would be in the pipeline in other Member States. Roughly there in the range of 100-150 cases at the present time.

More controversially and one of the factors that prompted this policy submission; RIA is arguing that persons with deportation orders no longer have a right to stay in its accommodation. This is a significant policy shift and a departure from practice since the inception of the system in 2000.

⁵ Reception & Integration Agency (2010) ‘Value for Money & Policy Review - Asylum Seeker Accommodation Programme’, Department of Justice and Equality.

In total there are between 250-300 persons with DOs residing in RIA accommodation. It is accepted that if the person has a pending judicial review or has a family member in the protection process they will not be given a notice to quit. Thus only 100-150 persons with DOs may be deemed unencumbered and subject to the new policy. To date JRS Ireland understands that 23 persons with DOs have been issued a notice to quit.

Presently, the system capacity is 5,191 and outside Baleskin there are 158 available places. Essentially new applicants are arriving at the rate of around 50 per week. But few if any are exiting the Direct Provision system as the majority of IPO decisions will be appealed to IPAT and many of the positive decisions year to date relate to relocated persons. On the face of it the system should be losing bed spaces at the rate of around 40 per week. The saving grace is that the percentage of new applicants availing of RIA accommodation is at a historic low. In the past it was typically 80% but it appears to be under 50% at the moment.

RIA argue that there is sufficient existing capacity but essentially several hundred bed spaces, constituting 10-15% of capacity, are being occupied by persons it contends should not be there. The rest of this chapter will consider in detail the different cohorts that occupy RIA accommodation.

3.3 RIA Accommodation and Length of Time in the Asylum Process

Following the commencement of the International Protection Act (2015), a new International Protection Procedure commenced at the start of 2017. However, the failure to eliminate outstanding backlogs in advance of the introduction of the new procedure as recommended in the McMahon Report resulted in the transfer of 3,500 existing cases to the International Protection Office (IPO).

The transfer of this large cohort of existing cases has acted like ‘a handbrake’ on the new procedure. By June 2017, it was reported that there were more than 4,500 outstanding cases composed of: 1,400 former ORAC cases open; 1,900 former RAT cases open; 75 former SP cases open; 1,157 new cases open.

JRS Ireland understands the backlog has now grown to 5,000 cases and an estimated 18 months is required by the International Protection Office (IPO), subject to the recruitment of additional resources, to process the backlog transferred to the new system. During this period, the majority of asylum applicants will require access to Direct Provision accommodation.

Accommodation pressures are likely to continue beyond the first instance decision making process. Historically, protection appeals before the Refugee Appeals Tribunal also encountered substantial delays in processing. Inevitably, the locus of current backlogs under the Single Procedure before the IPO will, for unsuccessful applicants, move to the International Protection Appeals Tribunal (IPAT).

In the past, processing capacity was much less than the first instance body and the IPAT has not been allocated similar resources. Although steps have been taken by hiring fulltime members, it is unlikely to be sufficient to match the output from IPO, even discounting positive decisions.

Asylum applicants opting to vindicate their rights through recourse to the courts will have their stay RIA accommodation extended often by several years. Data supplied in the course of preparing the McMahon Report found that judicial reviews were taking in some cases in excess of four years to be completed. It is anticipated that there will be an upsurge in judicial review applications ‘testing’ the International Protection Procedure in the courts.

	2012	2013	2014	2015	2016
<i>New Applications</i>	440	385	187	164	458
<i>% of Judicial Review Caseload</i>	44%	40%	22%	23%	48%
<i>Waiting Time (Pre-Leave/ Post-Leave)</i>	37 months	34 months	10 months	13 months	8 months

Significant efforts have been made to reduce associated waiting times for judicial reviews and in 2015-16 many long stayers withdrew judicial reviews to avail of durable solutions under McMahon. However, it is noticeable that in 2016 there was a significant upsurge in persons initiating asylum related judicial review proceedings.

Conclusion: Reducing length of time in the asylum process will positively impact on demand for RIA accommodation. In the absence of the allocation and recruitment of additional resources for the IPO and IPAT existing backlogs will continue and the Single Procedure will not operate efficiently. Increasing recourse to the courts will exacerbate delays, with the result that ongoing accommodation pressures will remain.

3.4 Accommodating Persons with Status

Since 2009, as a result of structural failings within the Irish asylum determination process, RIA services became increasingly directed at accommodating persons living long term in Direct Provision.

The rapid fall in the number of people seeking asylum from a peak of 11,634 in 2002 had not resulted in a similar corresponding fall in the number people residing in Direct Provision. Although numbers in Direct Provision had fallen, the trend was much more gradual. People had gotten ‘stuck’ in the system, spending increasingly longer periods of time awaiting a final determination of their claim, with the average length of time in the asylum process increasing on a yearly basis.

Year	2009	2010	2011	2012	2013	2014
<i>Number of applications for asylum</i>	2,689	1,939	1,290	956	946	1,417
<i>Numbers living in Direct Provision</i>	6,494	6,107	5,423	4,841	4,360	4,364
<i>% of Direct Provision residents who first claimed protection 3 or more years previously</i>	33%	46%	58%	59%	68%	64%

The asylum process was not operating as intended. When the Working Group on the Protection Process was established in October 2014, more than 40% of Direct Provision residents had been waiting at least five years since they first applied for asylum in Ireland.

One of key recommendations of the McMahon Report was the resolution of cases more than 5 years in the system. This led to around 2,000 persons 5 or more years in the system receiving a protection status or leave to remain, including persons with Deportation Orders residing in Direct Provision. The most negative aspects of Direct Provision are a function of time and are exacerbated by length of time in the system. These include institutionalisation, poor physical and mental health, obsolescence of skills and the creation of dependency. The McMahon Report recognised that there was a duty of

⁶ Courts Service of Ireland (2017) ‘Courts Service Annual Report 2016’, and corresponding editions 2012-2015, Dublin: The Courts Service.

⁷ Reception and Integration Agency (2014) ‘Annual Report 2014’ and corresponding editions for 2009-13, Department of Justice and Equality.

care to assist this legacy group who had been granted status with the transition to life in the community after living long term in the institutionalised environment of Direct Provision. Early figures in the wake of McMahon showed a majority of persons with status departed Direct Provision within 6 months. But these statistics hid another story. There exists a vulnerable cohort of long stay residents who were struggling to move on. Furthermore, due to the housing crisis there was a structural issue for residents trying to leave Dublin centres.

It is also worth noting that in comparison with the supports provided to beneficiaries of international protection under EU Programmes, there is negligible assistance, other than an information booklet and Citizen Information meetings, to facilitate the transition of RIA residents with status into the community.

AMIF funding was granted to a number of NGO projects to assist the transition process. JRS Ireland and the Peter McVerry Trust established the PATHS Project to assist 43 households (circa 100 individuals) transition from the Clondalkin Towers centre. But this involved a relatively modest investment of human resources (2 additional staff) and financial resources (€60,000 AMIF, €20,000 Match Funding) when addressing such an intractable external housing environment. Although there has been significant work in this and similar projects, progress is slow. With the housing crisis deepening and Government initiatives faltering - despite the multimillion euro investment - the reality is that residents with status will struggle to transition into the community for the foreseeable future.

Conclusion: *RIA will need to factor into its accommodation requirements capacity for a significant population of residents with status. There is a need for additional supports to enable persons with status to transition from RIA accommodation into the community.*

3.5 Accommodating Dublin Transfer Cases

The Dublin system, i.e. the mechanism for determining which Member State is responsible for processing an asylum application, also imposes accommodation demands on RIA, as persons subject to transfer decisions may reside in Direct Provision whilst awaiting return to the relevant Member State. While the system has been the subject of proposed reform by the European Commission⁸ and was criticised as wholly inadequate during the height of the EU Refugee and Migrant Crisis, its inefficient operation is of greatest impact on RIA’s capacity to accommodate. As can be seen in Table 5, despite the significant increase in recent years in the number of outgoing transfer decisions issued, a negligible number of transfers were ultimately completed. In addition, the consistently higher number of takebacks facilitated by the State negates any vacancies created by such transfers.

	2012	2013	2014	2015	2016	Total
<i>Transfer Decisions</i>	144	160	21	302	594	1,221
<i>Transfers</i>	70	84	17	19	41	231
<i>Takebacks</i>	91	72	70	52	61	346

Conclusion: *As Dublin Transfers are dependent on the goodwill of other EU Member States, there will be an on-going need to reserve occupancy for accommodating asylum applicants subject to transfer decisions.*

⁸ European Commission, Towards a Reform of The Common European Asylum System and Enhanced Legal Avenues to Europe, Communication from the Commission to the European Parliament and the Council, Brussels, 6.4.2016 COM(2016) 197 final.

⁹ Office of the Refugee Applications Commissioner (2015) ‘Annual Report - 2015’, and corresponding editions for 2012-2014, Dublin: ORAC.

3.6 Accommodating Persons with Deportation Orders

Since its inception in 2000, RIA has provided accommodation to persons on deportation orders until removal or deportation has been effected. Such practice prevented this cohort of persons becoming homeless and destitute.

There has been a low execution rate of deportation orders, 22% on average in recent years, among rejected asylum seekers and irregular migrants. In Table 6, there can be seen a significant disparity in relation to signed and executed deportation orders. Further, there has been a consistent trend of revocation, which reached its highest level during implementation of the McMahon Report.

	2013	2014	2015	2016	2017¹¹	Total
<i>DO Signed</i>	1,777	733	765	1,196	362	4,833
<i>DO Implemented</i>	209	114	251	428	41	1,043
<i>DO Revoked</i>	298	331	487	340	49	1,505

Prior to the establishment of the Working Group on the Protection Process, there were 615 persons living in Direct Provision in excess of 5 years since applying for asylum and subject to a deportation order.¹² The median length of time from initial application to the date the deportation order was signed was 30 months.

The McMahon Report recognised that a significant number of persons with deportation orders in RIA accommodation were non-returnable in line with international experience. McMahon identified a durable solution to resolve the status of persons with deportation orders who were more than 5 years continuously in the system. This led to hundreds having their deportation orders revoked and being granted leave to remain during 2015 and 2016.

By the end of 2016, the total number of persons with deportation orders living in Direct Provision accommodation stood at 269.¹³

Conclusion: *The reality is that the Irish experience is consistent with other EU Member States - that only one in five deportation orders issued are executed. Thus RIA will always have a cohort of persons with deportation orders who require its accommodation to prevent homelessness and destitution.*

¹⁰ Frances Fitzgerald T.D., Parliamentary Question (21413/16), Wednesday 13 July 2016, Dáil Éireann Debate Vol. 918 No. 1, Unrevised.

¹¹ As of 18th May 2017. Frances Fitzgerald T.D., Parliamentary Question (24566/17), Tuesday 23 May 2017, Dáil Éireann Debate Vol. 951 No. 3, Unrevised.

¹² Private correspondence from Minister Alan Shatter TD in response to Parliamentary Question by Clare Daly TD (PQ 459), Tuesday, 25 June 2013, Dáil Éireann Debate, Unrevised.

¹³ Irish Naturalisation and Immigration Service (2017) 'Immigration in Ireland: Annual Review 2016', Dublin: Department of Justice and Equality.

3.7 Conclusion: Heading towards an Accommodation Crisis

- (a) RIA has a finite property portfolio with capacity of 5,191.
- (b) The trend since January is that available capacity is falling at the rate of 40 spaces per month.
- (c) Inflows: New applicants arriving at a rate of 40 per week in 2017 (excl. relocated persons).
- (d) RIA Inflows: A historic low percentage of new applicants are availing of accommodation otherwise available capacity would fall quicker. This is a significant risk factor.
- (e) At the present time the profile of new applicant has a higher proportion of single males. If this was to change and more families would arrive then the percentage availing of RIA accommodation would likely rise.
- (f) Outflows: The new International Protection Procedure has taken time to bed in. But even at the higher present output of 50 per week, only 6-8 persons will be granted status. Thus the potential number of persons exiting is far short of the numbers entering. Any further delays in case processing times will exacerbate the situation. The significant delay for persons with status vacating RIA accommodation has already been highlighted.
- (g) Transition Cohorts: RIA contends there are 700-800 persons who should not be in the system.

Transition Cohort	Approx No.	RIA Approach	Comment
<i>Persons with Status</i>	350	Majority no action. Watergate residents received notice to quit	Residents not in self-catering in different situation. PATHS experience is housing crisis worsening.
<i>Dublin Take Back Cases</i>	100	No action at present time	Requires international cooperation. Balance against Take Charge cases in other Member States
<i>Persons with DOs (JR or Trailing Family Member)</i>	100-150	Awaiting outcomes so no action	
<i>Persons with DOs (unencumbered)</i>	100	23 persons issued with notice to quit	Fundamental shift in policy. If enforced will result in homelessness and destitution
TOTAL	700-800		Inevitable in view of complexity of protection process and challenges of return

The short term focus on a specific cohort, for example persons with DOs, will not address the underlying trend or structural issues that prevent persons with status vacating RIA accommodation. Also it is clear that of the 700-800 persons in transition there are practical and legal constraints that limit the application of measures available to RIA, e.g. persons on DOs with judicial reviews or trailing family members will not be issued with a notice to quit.

In the McMahon Report deliberations, the population in Direct Provision was projected using assumptions for the key drivers, namely, new application and case processing numbers. If the key drivers show inflows outpacing outflows then the population will grow irrespective of short term fixes. The system capacity needs to be based on long term trends adjusted for short term fluctuations.

Historically, the capacity of the Direct Provision system has responded to fluctuations in application numbers. At the present time RIA has a finite number of available bed spaces and a growing demand. The key underlying trend of growing pressure, as increasing numbers join the system with few if any departing, will continue for the foreseeable future. Essentially RIA is experiencing in micro what is being played out in macro in the wider housing crisis. There is a perfect storm: (a) Increasing demand for bed spaces; (b) Inability of people with status to ‘move on’ from RIA accommodation; (c) Inability of RIA to add capacity to the system.

Conclusion: RIA is heading towards an accommodation crisis. Recourse to short term measures targeting specific cohorts will not work if key drivers of demand are growing. The only answer, in spite of the challenging housing crisis, is to add capacity to the system.

4. RIA Policy on Accommodating Persons with Deportation Orders

4.1 RIA Remit to accommodate Persons with Deportation Orders

In 2010 the RIAs Value for Money Review defines its accommodation remit to persons with deportation orders on the following basis:

“The RIA accommodates persons at every stage of the asylum process and beyond that to a point of resolution of the case. The RIA will accommodate persons who have effectively failed the asylum process but who have made applications for Subsidiary Protection, Leave to Remain in the State or who are engaged in a Judicial Review both within the asylum process and at the subsequent stages of the immigration system. RIA’s remit to accommodate ceases where a person has been granted refugee status, subsidiary protection, leave to remain or where a deportation or other removal has been effected.”

The Office of the Minister for Justice and Equality has also repeatedly highlighted (2012¹⁴, 2013¹⁵, and 2014¹⁶) the key objective of RIA to provide accommodation to persons who would otherwise be homeless. While JRS Ireland welcomed Minister Stanton’s public commitment that no asylum seeker on a deportation order would be made homeless¹⁷, this was not signalling a reversal of the policy shift.

Conclusion: *The established policy of RIA, since its inception in 2000, has been to accommodate persons until they have either been granted status or had their deportation or other removal effected.*

4.2 The Phenomenon of Non-Returnable Migrants

JRS Ireland recognises that the sensitive processes and procedures involved in effecting removals from the State are particularly challenging and is against the implementation of any fast-track processes to achieve that end. However, the State is still duty bound to ensure that applications, including those that are rejected and conclude with deportation, are resolved within a reasonable period of time.

There must be a point when the failure to execute a deportation order necessitates a re-examination of the original application and an alternative remedy to removal. A failure to do so results in significant numbers of asylum seekers living in the Direct Provision system with the spectre of deportation hanging over them for years.

This cohort of persons has effectively reached the end of the process but are left in limbo and without the ability to influence their position or access remedial services or mechanisms. From a legal point of view, they should not be here and there are no effective provisions for them to avail of as they can neither be considered “in” (granted protection) or “out” (removed from the State)¹⁸ despite the conclusion of the status determination process.

¹⁴ Alan Shatter T.D., Parliamentary Question (54474/12), Tuesday 11 December 2012, Dáil Éireann Debate, Vol 786 No. 1, Unrevised.

¹⁵ Alan Shatter T.D., Dáil Topical Issues Debate, Wednesday 9th October, Dáil Éireann Debate, Unrevised.

¹⁶ Francis Fitzgerald T.D., Parliamentary Question (44392/14), Tuesday 18th November 2014, Dáil Éireann Debate, Vol 858 No. 1, Unrevised.

¹⁷ Sorchá Pollak (2017) ‘Department denies issuing eviction letters to asylum seekers’, Irish Times, available at <https://www.irishtimes.com/news/social-affairs/departments-denies-issuing-eviction-letters-to-asylum-seekers-1.3230961> [accessed on Thursday 28th September].

¹⁸ Mathilde Heegaard Bausager, Johanne Köpfler Møller and Solon Arditis (2013), ‘Study on the situation of third-country nationals pending return / removal in the EU Member States and the Schengen Associated Countries’, prepared on behalf of the European Commission, at 4.

Table 6 in the previous chapter showed only one in five deportation orders signed were ultimately effected in recent years. This experience in respect of deportation is not exclusive to Ireland. Indeed, our nearest neighbour is faced with a similar challenge¹⁹ and the concept of non-returnable migrants is recognised as a Europe-wide phenomenon²⁰. While significant numbers of asylum seekers arrive in industrialised countries throughout the world, few are given refugee status and fewer still are forced to leave the country.²¹ Deportation remains a relatively rare occurrence and there are legal, humanitarian, technical and policy-related obstacles to enforcing removal²².

The reality that a majority of persons with deportation orders, which had not been effected within two years of issue, were in effect non-returnable was accepted in the McMahon Report. The implementation of recommendations resolving the status of long stayers with deportation orders between July 2015 and December 2016 was evidence that the State also acknowledged this reality.

The recent policy change highlighted that persons with deportation orders are required ‘to remove themselves from the territory. However, the evidence of Table 8 demonstrates that very few rejected asylum seekers voluntarily leave the jurisdiction, only 24% of the total assisted in recent years, despite the provision of State support:

Table 8: Voluntary Return Trends 2013 - 2017²³						
	2013	2014	2015	2016	2017²⁴	Total
<i>Rejected Asylum Seeker</i>	89	59	30	57	12	247
<i>Irregular Migrant</i>	337	183	102	130	41	793
<i>Total Voluntary Returns</i>						1,040

Enforcing return is expensive and difficult. In 2016, Ireland incurred €698,814.28 to effect 428 deportation orders. Tracking down individuals who may have gone underground is time consuming and resource-intensive. Even if an individual is detained prior to removal, normal carriers will often not take deportees, so additional chartered flights have to be arranged. A further constraint on return is the need for the agreement and cooperation of the country of origin. Many countries are unwilling to accept the return of their nationals and do not readily issue the required travel documents.

Finally, while the public may support removal conceptually, it tends to be ambivalent in practice in relation to individual cases where the only issue is a violation of immigration laws rather than reasons of public safety.

Conclusion: *The reality of non-returnable migrants, including rejected asylum seekers, is experienced across EU Member States. The result is that a significant percentage of persons with deportation orders will remain long term in RIA accommodation unless there is recourse to durable solutions, as happened following the publication of the McMahon Report.*

¹⁹ Amnesty International, ‘Down and out in London - The road to destitution for rejected asylum seekers’, London: 2006.

²⁰ European Union Agency for Fundamental Rights, ‘Fundamental rights of migrants in an irregular situation in the European Union’, Luxembourg: 2011 at 27.

²¹ Matthew Gibney and Randall Hansen, ‘Deportation and the liberal state: The forcible return of asylum seekers and unlawful migrants in Canada, Germany and the United Kingdom’, *New Issues in Research*, Working Paper No. 77, Geneva: UNHCR, February 2003, p. 4.

²² European Union Agency for Fundamental Rights, ‘Fundamental rights of migrants in an irregular situation in the European Union’, Luxembourg: 2011 at 27.

²³ Frances Fitzgerald T.D., Parliamentary Question (21413/16), Wednesday 13 July 2016, Dáil Éireann Debate Vol. 918 No. 1, Unrevised and Parliamentary Question (24566/17), Tuesday 23 May 2017, Dáil Éireann Debate Vol. 951 No. 3, Unrevised.

²⁴ As of 18th May 2017.

4.3 Legitimate Expectations

On the website of RIA it states that it was established in 2000 at a time when there was ‘a serious prospect of widespread homelessness among asylum seekers’²⁵. Thus, avoiding asylum seekers being made homeless was a function of RIA.

Since its inception RIA has permitted persons with deportation orders at the end of the asylum process to remain in Direct Provision to ensure that they do not become homeless and destitute. There is no statutory right to accommodation for this cohort. But this longstanding practice has been in place for 17 years.

A legitimate expectation exists for existing RIA residents issued with a deportation order with respect to continuing to obtain a substantive benefit, namely, bed and board in RIA accommodation. Also, all persons residing in RIA accommodation are entitled to a weekly direct provision allowance. If a person leaves RIA accommodation this entitlement is withdrawn.

For persons with deportation orders outside of RIA accommodation they would have no entitlement to any social welfare payment. This would have two consequences; firstly they would be destitute and secondly they would be denied ongoing access to homeless services.

The House Rules of RIA state it will not expel persons living in direct accommodation other than in ‘very serious circumstances’ in order to maintain ‘good order and the safe and effective management of the centre’ and, unless there are ‘extremely grave or urgent circumstances’. It will only do so on the direction of a RIA officer at senior level. Thus residents have a legitimate expectation of remaining in RIA accommodation unless their behaviour breached a certain threshold; this would not arise due to an external factor such as insufficient bed capacity which is outside their control.

Under the McMahon Report recommendations, the State recognised something should be done to resolve the situation of persons with a deportation order that had not been effected within two years of issue where a person had been five or more years continuously in the system.

The McMahon solution was, subject to specific conditions (no evading, no criminality, no judicial review, establishing identity and cooperation with the State), that the deportation order would be revoked and the person granted leave to remain. Essentially this approach recognised the reality of non-returnable migrants. If the State with all the resources at its disposal could not process and implement a final status decision, positive or negative, within five years it was unlikely to do so.

Thus, the situation during 2015-16 is that persons with a deportation order five or more years in RIA accommodation had their deportation orders revoked and were granted leave to remain. In September 2017 a similar person with a deportation order would be receiving a notice to quit.

The removal of a right to RIA accommodation could only be deemed proportionate and justifiable in the case of a compelling public policy interest being at risk. RIA’s diminishing bed capacity, which is foreseeable and preventable, would not meet that threshold.

Conclusion: JRS Ireland believe that persons with deportation orders have a legitimate expectation to be continued to be provided with RIA accommodation based on: longstanding practice; RIA’s representation of their responsibilities; that the removal of this substantive benefit will lead to homelessness and destitution; and that there is no compelling public policy interest served by this change in policy.

²⁵ Source: Reception and Integration Agency, available at <http://www.ria.gov.ie/en/RIA/Pages/Background> [accessed on 11th October 2017]

4.4 Human Cost of Compelling Persons with Deportation Orders to leave RIA Accommodation

Since the inception of the Direct Provision system, the Department of Justice and Equality has successfully managed to avoid the creation of a homeless cohort of asylum applicant. While this has been a commendable response to the realities of forced migration, the apparent shift in policy has the potential to force vulnerable persons into homelessness and effective destitution.

The reality is that many of the asylum seekers currently subject to deportation orders, residing in Direct Provision centres, will never be deported or voluntarily leave the State.

Among the persons with deportation orders who have contacted JRS Ireland having received a notice to quit are nationals of Somalia and Sudan. These are not deemed safe countries. If the Irish State cannot deport these persons through established immigration channels (embassies, consuls, etc.), is it realistic to expect individuals who have spent more than 8 years in Direct Provision to do so?

Previously we have referred to the negative impact of living long term in Direct Provision in terms of institutionalisation, poor mental health, loss of skills and dependency. Also these persons with deportation orders will have had no right to work at any stage of the process. Although the protection claims of this cohort of forced migrants have been rejected - and also their application for leave to remain - they have not committed a crime by being unsuccessful in applying to the Irish state for protection.

Persons issued with deportation orders have no entitlements to social welfare, so they will not be able to access homeless services if excluded from Direct Provision. In addition, by leaving the accommodation centre, albeit under duress, they will also no longer be entitled to the €21.60 weekly allowance. It is also likely that persons with a deportation order will be excluded from any right to seek work that the State grants in response to the Supreme Court judgment in *N.V.H -v- Minister for Justice & Equality*.²⁶

The consequences of being removed from RIA accommodation are very severe:

- (i) Destitution: On leaving RIA accommodation entitlement to the weekly Direct Provision allowance of €21.60 will be lost. As they will be illegally on the territory they will have no right to any other social welfare payment. Also they will not be permitted to work. Thus they will be destitute with no legal means to provide for themselves.
- (ii) Homelessness: Once outside RIA accommodation they will be homeless. With no entitlement to any social welfare payment they will be unable to access ongoing homeless services.

A resident from Mount Trenchard who discussing the impact if he is forced to leave the centre said:

“I will leave with only my shirt and pants. I will have nowhere to go and no money. What will I do? Do they [RIA] want me to become a thief?”

The future for the 23 people on deportation orders if they are compelled to leave RIA accommodation is bleak. Institutionalised and deskilled after years in Direct Provision they will find themselves homeless and destitute. The impact of the policy shift on RIA accommodation capacity will be minimal; by contrast the human cost for the individuals impacted by this change will be enormous.

Conclusion: *Human costs for persons with DOs will be immense, namely destitution and homelessness, while the benefit in terms of increased accommodation capacity will be minimal.*

²⁶ [2017] IESC 35.

5. Recommendations

Recommendation 1:

Reversal of Policy Change with respect to accommodating Persons with Deportation Orders.

- Retraction of the *notice-to-quit* letters issued to date and reversion to policy whereby RIA provides accommodation to persons with deportation orders.

Recommendation 2:

Secure additional financial resources to enable RIA to secure suitable accommodation and expand its capacity in line with need and to develop models to project future need.

- The evidence of this paper demonstrates that short term fixes will be not be adequate when underlying trends show inflows to exceed outflows from RIA accommodation for the foreseeable future.
- Essentially, the IPO has reported 18 month delays in processing new applicants due to legacy backlogs transferred in. These delays will almost inevitably be replicated when cases are appealed to the IPAT
- RIA will always need to factor in additional capacity (15-20%) within its portfolio to meet the on-going temporary accommodation needs of transitional categories including: persons with status/permission to remain; persons with outstanding judicial review proceedings; persons subject to deportation orders; and persons subject to Dublin transfer decisions.
- Develop projection models for RIA accommodation needs, scenario test based on key drivers (i.e. new applicant numbers and case processing capacities of decision making bodies).

Recommendation 3:

Proactive resolution of legacy cohorts, including persons with deportation orders, utilising mechanisms developed in the McMahon Report to eliminate backlogs and put in place required resources to enable the Single Procedure operate efficiently in a reasonable timeframe.

- Failure to address legacy cohorts in line with McMahon recommendations meant 3,500 persons were transferred into the IPO. As a consequence, the Single Procedure rather than reducing length of time and eliminating delays has seen them grow again. JRS Ireland believes there is considerable scope to resolve legacy cohorts within IPO and INIS. In addition, mechanisms could be developed to proactively resolve new emerging long stay cohorts. Although the benefits in terms of additional freed up accommodation capacity may take longer to realise from this approach due to the ongoing housing crisis.
- The application of the same principle and mechanisms, recommended by the McMahon Report to address the situation of persons in the system for five years or more, to individuals living for lesser durations in Direct Provision.
- The full allocation and recruitment of the required additional resources for the International Protection Office and the International Protection Appeals Tribunal to eliminate existing backlogs and to enable the Single Procedure operate efficiently as soon as practicable.

Recommendation 4:

Implement the McMahon Report recommendation to establish a Transition Taskforce to assist persons with status exit Direct Provision and secure additional resources to facilitate the transition of persons from Direct Provision consistent with beneficiaries from EU Programmes.

- Persons with status leaving Direct Provision receive an information booklet and maybe a presentation from the Citizens Information. Although AMIF have funded a number of NGO initiatives, it is small in scale relative to the need (especially when contrasted with the State's funding of housing and homelessness). A Transition Taskforce as recommended in McMahon should be established and given the required resources to assist persons transitioning from Direct Provision to independent living in the community.
- Beneficiaries of the Irish Refugee Protection Programme arriving in Ireland under EU Programmes receive systematic support in securing accommodation, accessing education and employment and developing links with the wider community. All persons granted status or leave to remain, on programmes or not, should be provided with a consistent level of supports for transition and integration.