



## **Transitioning to the Single Procedure: Oldest Cases First**

### **1. Context**

Following the commencement of the International Protection Act (2015) on 31<sup>st</sup> December 2016 and the introduction of a Single Application procedure, transitional arrangements have been put in place which impact on the investigation and determination of roughly 3,500 existing asylum applications.

The three main<sup>1</sup> categories of legacy cases affected are:

- 1,400 persons with an application for refugee status before ORAC (Category 1)
- 1,850 persons with an application for refugee status on appeal before the RAT (Category 2).
- 300 persons with an application for subsidiary protection before ORAC (Category 3).

and a fourth category

- 239 relocated persons in 2016<sup>2</sup> and an additional 100 persons relocated persons arriving each month up to September 2017 who are intended to have accelerated processing.

An estimated 12 – 18 months is required by the International Protection Office (IPO), subject to the recruitment of additional resources, to process the backlog of cases transferred to the new system.

### **2. JRS Ireland Proposal**

JRS Ireland is calling for a systematic approach to the determination of legacy cases which prioritises persons longest in the asylum process. This would mean the prioritisation of cases according to the following order: Category 3; Category 2; Category 1. The principles underpinning this proposal are:

- Equity
- Policy Coherence
- Procedural Efficiency.

For Category 4 specific extra resources for the case processing of relocated persons should be in place to ensure that there is no adverse impact on the waiting times for decisions under the new single procedure for existing applicants.

#### **2.1 Equity**

Equity would suggest that those longest in the system should be dealt with first. In the interests of natural justice and fair procedures, it is incumbent on the State, with all the resources at its disposal, to complete a final determination of an applicant's claim for protection within a reasonable period of time. When the State has failed to do so, it is fair that prioritisation be afforded to prevent further unreasonable delays ensuing.

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<sup>1</sup> As of the end of January 2017, it is understood that 130 new applications for protection had been received.

<sup>2</sup> As of 16<sup>th</sup> December 2016.

Applicants move through the system at different speeds. However, as the year of asylum application is part of every applicant's ID number, it is easy to determine who is longest in the system. Accelerated procedures exist for certain identified groups which means they will progress through the case processing quicker. Applicants who access the High Court to vindicate the rights will progress slower, but should not be disadvantaged as a consequence once the High Court has delivered its decision.

In category 2 the number of cases in hand at RAT increased to 1,850 at 31.12.16 compared to 1,675 cases in hand at 31.12.15. Many of these cases would have waited in excess of a year for a hearing before the RAT but will now be returning to the IPO. Essentially all that time will have been lost, the only equitable way to recognise this reality is to ensure these cases are prioritised by the IPO.

Significant work was done to eliminate many of backlogs in processing Subsidiary Protection applications before ORAC by the end of 2016. However, in Category 3 there was still 300 cases transferred to the IPO to be processed. These cases would have experienced significant delays in the existing system and similarly should be prioritised by the IPO.

## ***2.2 Policy Coherence***

The single most important issue which the Government appointed Working Group on the Protection Process was tasked with addressing was the length of time that many persons in the system had to wait before their cases were finally determined.

Key elements of the recommendations made to address length of time have already largely been successfully implemented, including the long stayer solutions for persons 5 or more years in the system awaiting decisions at the protection process and leave to remain stages; comparable solutions to resolve the situation of long stayers in the system with deportation orders; and the early enactment and implementation of a single procedure.

All applicants that benefited from the long stayer solutions were prioritised on the bases of oldest cases first.

However, to avoid a repeat of the circumstances which gave rise to the establishment of the Working Group, it was also recommended that the same principle and mechanisms aimed at addressing the situation of persons in the system for five or more years should apply to applicants of lesser durations once the single procedure was operational (Recommendation 3.166, McMahon Report, p. 98).

Prioritising the investigation and determination of the cases of persons within categories 2 and 3 is therefore consistent with the implementation of Working Group recommendations resolving the situation of long stayers adopted over the past 18 months.

In a High Court judgement<sup>3</sup> published at the start of February 2017, Mr Justice White found: *Administrative authorities should be conscious of the length of time applicants seeking asylum in this country spend in direct provision whether by way of seeking refugee status, subsidiary protection or other consent mechanisms. The direct provision system meets the basic needs of the applicants but is far from ideal.*

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<sup>3</sup> <http://www.flac.ie/news/2017/02/03/flac-welcomes-high-court-judgment-finding-excessiv/>

He also stated that very lengthy periods in direct provision are undesirable for those applying for refugee status or subsidiary protection, and that it was incumbent on the Department of Justice and Equality to ensure that their applications are processed within a reasonable time.

### ***2.3 Procedural Efficiency***

A failure to fully implement and adequately resource the long stayer solutions as recommended in the McMahon Report has resulted in larger backlogs than anticipated being transferred over to the new system and has the potential to undermine the single procedure before it is fully operational.

The single procedure was not designed to determine legacy cases and this bounded cohort will act as an effective drain on resources until all cases are concluded. It is appropriate to prioritise longest cases first in order to clear the backlog and to enable the single procedure operate efficiently.

The stated Government intention is to eliminate delays and deliver a final determination within 12 months. By prioritising oldest cases this will be the most effective way of reducing average processing times.

### **3. Risks and Concerns**

While it is acknowledged that there are risks and concerns associated with any form of prioritisation, there are factors which mitigate any adverse consequences of prioritising according to length of time:

- The IPO will initially determine cases on a first-come-first-served basis until such time as a significant number of questionnaires are submitted by legacy applicants.
- The IPO retains the right to prioritise on a case-by-case basis when representations are made regarding any individual applicant.
- Persons living long term in Direct Provision are widely recognised as a vulnerable section of the asylum seeking population and therefore have an additional need for prioritisation.
- Categories 2 and 3 are bounded cohorts which cannot grow or reoccur following the commencement of the International Protection Act (2015).

### **4. Conclusion**

**JRS Ireland is calling for a systematic approach to the determination of legacy cases which prioritises persons longest in the asylum process. This would mean the prioritisation of cases according to the following order: Category 3; Category 2; Category 1.**

**Additional case processing resources must be in place to ensure that honouring IRPP commitments, in particularly, determining the status of those persons relocated from Greece and Italy, does not adversely impact the processing of existing applicants transferred to the new Single Procedure.**

**JRS Ireland also maintains its call for the 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, that is, delivering final determinations within 12 months for new applicants.**