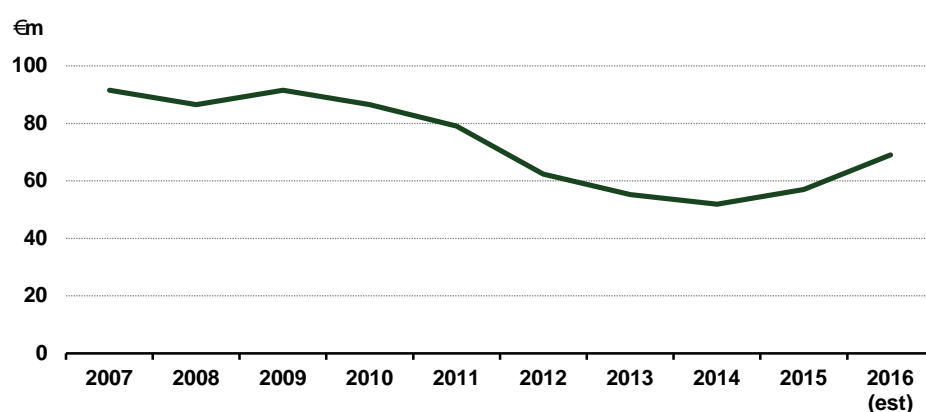


## 6 Procurement and Management of Contracts for Direct Provision

- 6.1 International and European law provides for the granting of international protection to those who cannot return to their country of origin because they have a well-founded fear of persecution or are at risk of being ill treated or subjected to other serious harm. Individuals who apply for international protection and are awaiting a decision on that application are referred to as asylum seekers.
- 6.2 There are two types of international protection in the EU
- **refugee status** is given to persons who demonstrate a fear of persecution in their home country due to certain aspects of their identity, such as religion or political opinion
  - **subsidiary protection status** derives from European law and is given to persons who do not qualify as refugees but who, nevertheless, cannot return home because they risk facing serious harm, such as torture or inhuman or degrading treatment or punishment, or generalised violence in a war.
- 6.3 The possible outcomes of an application for international protection are
- grant of **refugee** or **subsidiary protection status**
  - refusal of refugee or subsidiary protection status but the applicant is granted **leave to remain** in Ireland on other grounds
  - a **deportation** order is issued.
- 6.4 The State is obliged to make provision for the material needs of asylum seekers while their applications and appeals of decisions are being processed. Direct provision is the means by which the State meets that obligation.<sup>1</sup> This involves the provision of accommodation and food as well as a weekly cash allowance. While all asylum seekers are entitled to avail of direct provision, there is no obligation to do so. It is estimated that just over half of all asylum seekers live in direct provision.
- 6.5 There are 35 direct provision centres located around the country. At end December 2015, there were 4,696 people accommodated in direct provision centres. In 2015, the Department of Justice and Equality (the Department) incurred expenditure of €57 million on direct provision (see Figure 6.1).

<sup>1</sup> Direct provision centres also provide accommodation to victims of suspected human trafficking and to certain destitute EU citizens.

**Figure 6.1 Expenditure on asylum seekers' accommodation, 2007 to 2016**

Source: Department of Justice and Equality

**6.6** In addition to asylum seekers accommodated in direct provision centres, two emergency reception and orientation centres cater for

- refugees relocated to Ireland directly from refugee camps under the United Nations Resettlement Programme
- refugees relocated in response to the migration crisis in central and southern Europe.

**6.7** This report

- reviews demand for direct provision accommodation
- examines whether contracts in relation to direct provision centres were awarded in accordance with public procurement rules
- examines the management of those contracts.

### Requirement for direct provision places

**6.8** The level of direct provision accommodation required is demand-led and difficult to predict. Demand is influenced by a number of factors including

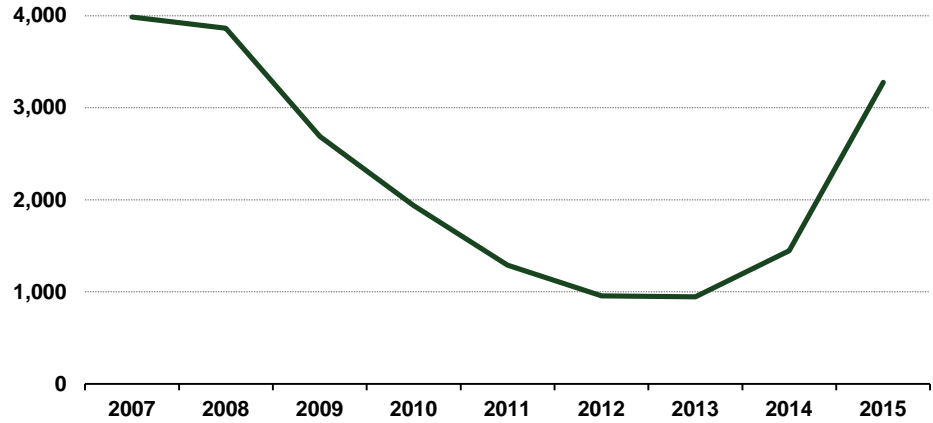
- the number of asylum seekers who may come to Ireland
- the number who avail of direct provision at any given time
- the length of stay in direct provision, which is mainly dependent on the time taken to process an asylum seeker's application and regularise their status, and on their ability to move on to alternative accommodation when refugee or subsidiary protection status, or leave to remain, is granted.

Of these, the length of stay in direct provision is the factor over which the State can exercise most control.

**6.9** The Department has stated that dealing with a demand-led, unpredictable volume of service users is particularly challenging where the provision of accommodation can quickly become politically fraught and contested.

**6.10** The number of people seeking asylum in Ireland fell from just under 4,000 in 2007 to just under 1,000 in 2013. The number of applications has risen swiftly since then increasing to over 3,200 in 2015 (see Figure 6.2).

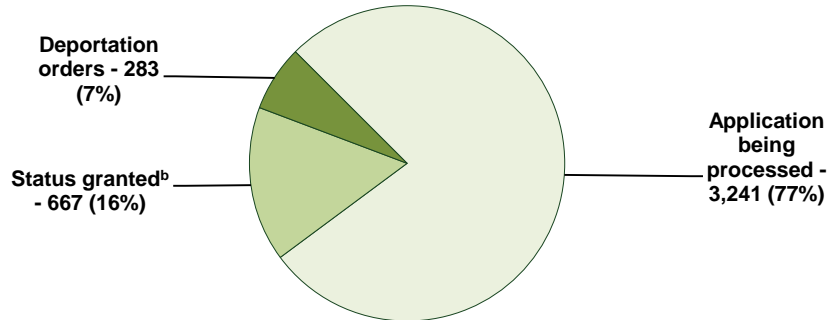
**Figure 6.2 Number of asylum applicants, 2007 to 2015**



Source: Department of Justice and Equality

**6.11** It should be noted that not all of those in direct provision are awaiting decisions. As at August 2016, 23% of residents had either been granted refugee status, subsidiary protection status or leave to remain, or were subject to deportation orders (Figure 6.3).

**Figure 6.3 Status of direct provision residents, August 2016<sup>a</sup>**



Source: Department of Justice and Equality

Notes: a Does not include children who are resident in direct provision but have not applied for protection.

b Granted refugee status, subsidiary protection status or leave to remain.

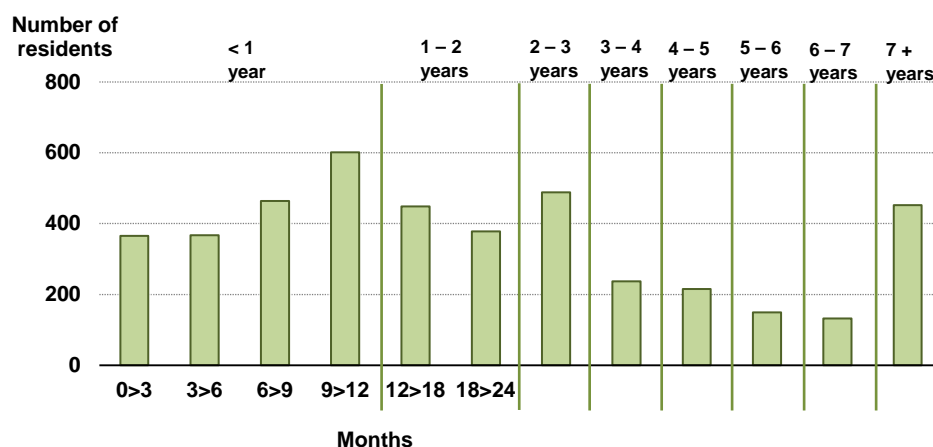
**6.12** One in six residents in direct provision has been granted refugee or subsidiary protection status, or leave to remain. While firm information is not available as to why they continue to reside in direct provision centres, difficulties in accessing accommodation outside of direct provision is likely to be a significant factor.

- 6.13** The Department has stated that finding accommodation in the housing market is currently very challenging, particularly for those who are vulnerable. There is no value in forcing individuals or families to leave direct provision accommodation. Such people continue to reside in direct provision and are supported in the process of obtaining permanent accommodation. In his reply to this examination, the Accounting Officer reported that an analysis in 2015 of those granted leave to remain found that 87% had left direct provision within six months of the decision.
- 6.14** A deportation order requires a person to leave Ireland by a specified date. Where they do not do so, they are required to present themselves to An Garda Síochána, generally monthly, until such time as they leave or are removed. The Department has stated that there are multiple reasons why persons served with deportation orders continue to reside in centres.
- 6.15** At July 2016, the average length of stay of those in direct provision was 38 months. Some 450 people — 10% of the total — have been residents of direct provision for more than seven years (Figure 6.4).

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**Figure 6.4 Length of stay in direct provision at July 2016<sup>a</sup>**

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Source: Department of Justice and Equality Reception and Integration Agency, monthly statistics report, July 2016

Note: a The length of stay is calculated by the Department based on each resident's latest entry date into a direct provision centre.

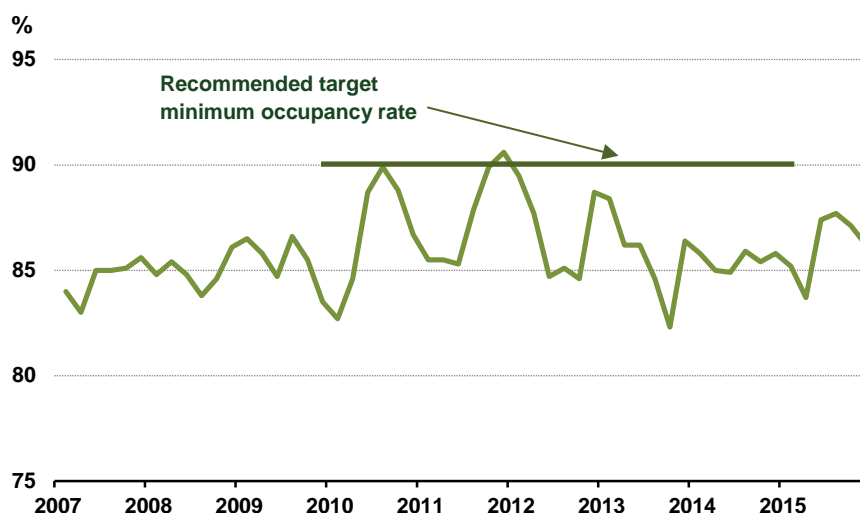
- 6.16** An IT system — the asylum and immigration strategic integration programme — became operational in 2012. This examination sought to use data from that system to analyse the processing of asylum applications over the last ten years to identify issues affecting length of stay in direct provision. From the introduction of the new IT system in 2012, each asylum seeker is given a unique identification number for all stages of their application, including appeals and judicial reviews. Prior to that, the different systems used for some stages of each application assigned different identification numbers to the same applicant, and so, the information before 2012 from the different systems cannot be linked. As a result, an analysis of system data would not provide an accurate indication of processing times because the majority of applications for which full information is available are at the early stages of the application process.

- 6.17** The Department stated that it recognises that the sequential processing of cases leads to delay and increases the time spent by applicants in direct provision. Streamlining the application process was the core objective of the single application procedure provided for in the International Protection Act 2015 which will be implemented later in 2016.
- 6.18** The Department has pointed out that there are other reasons for the length of time spent in direct provision. For example, where possible, the applications of all family members are processed together but in a number of cases individual family members may lodge an appeal or a judicial review. This delays the processing of the applications of remaining family members. In other cases, parents may not make an application for a child until their own applications have been decided, resulting in the process starting over again. Other reasons include delays in responding to correspondence by applicants and judicial reviews being taken.
- 6.19** The Department stated that a concerted effort was made, in line with the recommendations of a working group report in 2015, to process cases over five years in the system.<sup>1</sup> It further stated that almost all of these cases have now been dealt with and have either been granted leave to remain, are party to an ongoing judicial review or have been served with a deportation order.

### **Occupancy rates**

- 6.20** The Department faces a significant challenge in ensuring accommodation is available for those who need it while at the same time minimising unnecessary expenditure on accommodation that is not used.
- 6.21** The rate of occupancy of direct provision accommodation between 2007 and 2015 is shown in Figure 6.5. The average rate of occupancy over the period was 86%. A 2010 value for money and policy review of the direct provision programme recommended that the occupancy rate should be in excess of 90%.<sup>2</sup> This would provide a reasonable level of spare capacity to cope with sudden increases in demand.

**Figure 6.5 Direct provision accommodation, occupancy rate, 2007 to 2015<sup>a</sup>**



<sup>1</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015.

<sup>2</sup> Value for Money and Policy Review, Asylum Seeker Accommodation Programme, Department of Justice and Equality, May 2010.

Source: Department of Justice and Equality

Note: a The data above represents the occupancy rate as reported every two months.

## Contracts for direct provision centres

- 6.22** The Department has stated that the 2010 value for money review considered a number of alternatives to direct provision — allowing asylum seekers to claim social welfare, accommodating asylum seekers in self-catering and allowing asylum seekers to apply for local authority housing. The review found that those alternatives would be more expensive than direct provision.
- 6.23** At December 2015, there were 35 direct provision centres with capacity to accommodate over 5,400 people.
- 6.24** Summary details of the 35 centres are set out in Annex A. Seven are State-owned with two companies contracted to provide services. The other 28 centres are owned and operated by 22 commercial suppliers.
- 6.25** One of the centres (Balseskin) is a reception centre where asylum seekers who have opted for direct provision are accommodated temporarily (a number of weeks) before being dispersed to one of the other centres. The majority of the centres are premises that were originally designed and used for other purposes and include former hotels, boarding schools and hostels. Three were purpose built. Food is provided by the centre operators on a full board basis in almost all the centres — just two are self-catering.
- 6.26** Commercial providers of centres have been paid a total of €251 million over the five years to 2015. Providers of services in State-owned facilities have been paid €36 million over the same period (Figure 6.6).

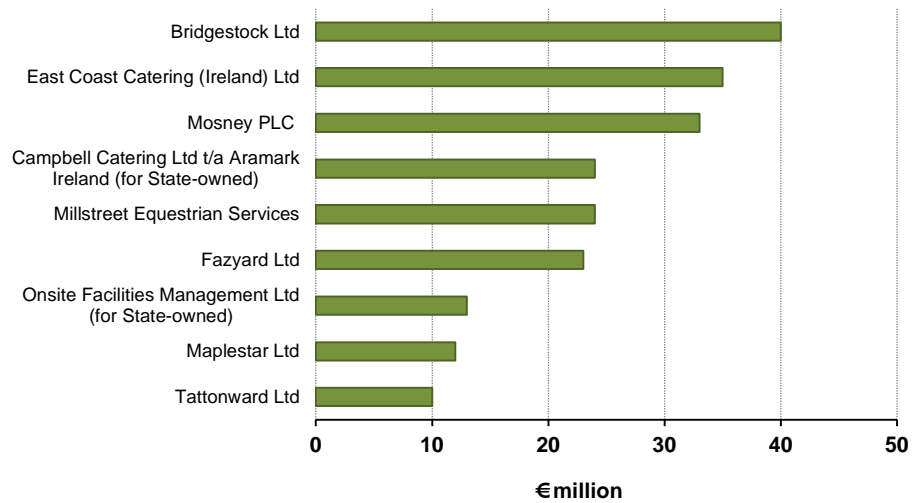
**Figure 6.6 Payments to direct provision contractors, 2011 to 2015**

Year	State owned €million	Commercial €million	Total €million
2011	8.3	59.5	67.8
2012	7.0	53.0	60.0
2013	6.9	46.4	53.3
2014	6.9	44.2	51.1
2015	7.0	47.9	54.9

Source: Department of Justice and Equality

- 6.27** Over the five years to 2015, nine companies have each been paid in excess of €10 million (Figure 6.7).

**Figure 6.7 Commercial suppliers of direct provision services paid in excess of €10 million each in period 2011 to 2015**



Source: Department of Justice and Equality

### **Procurement issues**

- 6.28** It is a basic principle of public procurement that a competitive process is used. This is intended to ensure that goods and services acquired by public bodies are procured in an open, objective and transparent manner and in a way that achieves best value for money. Contracts above certain value thresholds must comply with EU procurement rules which also stipulate the use of a competitive process and, in particular, widespread advertising of the competition throughout the EU.
- 6.29** The procurement methods used differ between the engagement of contractors to provide services for State-owned centres, and the award of contracts for commercially owned and managed centres. Competitive processes were followed for service contracts for State-owned centres with the two current contracts in place both advertised on eTenders.<sup>1</sup> The Department has stated that, in association with the Office of Government Procurement, it is currently involved in an EU wide competitive process for the provision of services for State-owned centres.
- 6.30** The Department does not use formal competitive processes, as set out in public procurement rules, for suppliers of commercial centres. It uses its website to seek 'expressions of interest'. Advertisements were also placed in national newspapers. The notice stated
- that the Department is drawing up a list of suppliers interested in providing accommodation and services
  - the type of premises required includes "hotels, hostels, guesthouses, etc. which can accommodate upwards of fifty persons and which should be reasonably close to all services e.g. shops, schools, transport, etc."
  - that suppliers who expressed interest would be contacted if they were needed.

<sup>1</sup> eTenders is a website managed by the Office of Government Procurement and is a central facility for all public sector contracting authorities to advertise procurement opportunities and award notices.

- 6.31** The Department did not provide evidence to show how it evaluated those who responded to the notice. However, the Department has indicated that it evaluated expressions of interest received based on the following criteria
- the minimum standard of accommodation as detailed in the Housing Act 1966
  - a site visit which includes checks on toilet facilities, cooking facilities, recreation facilities, play rooms, outdoor play areas, and location of and proximity to services.
- 6.32** The Department then negotiates a price with selected providers and agrees a contract. Contracts are typically agreed for a one year period.
- 6.33** The Department has pointed out that the notice does not state that there is an on-going need for accommodation but that accommodation may be required. Neither does the notice seek the offer of specific property as that would be unreasonable because there may be no requirement for accommodation. It has pointed out that there were 27 responses to the most recent call for expressions of interest.
- 6.34** The Department considers that the procurement procedure used has been appropriate in the circumstances. It considers that its procurement method equates to the 'negotiated procedure' provided for in EU procurement rules. However, it has not complied with key requirements of the negotiated procedure, including publication of award criteria and award notices.
- 6.35** In a negotiated procedure, the contracting authority negotiates directly with suppliers to agree a contract. Under EU rules, negotiated procedures can only be used in limited circumstances, mainly where
- no tenders or no suitable tenders were submitted in response to a request for tenders
  - there is only one supplier
  - because of extreme urgency not attributable to the contracting authority and brought about by events unforeseeable by the contracting authority, and where there is insufficient time for an open competition or one of the other competitive procedures permitted.
- 6.36** The procurement of direct provision centres does not fall within these limited circumstances. A request for tender has never been issued, there are many potential suppliers and the Department has been procuring these services continuously over a 15 year period which by any reasonable interpretation gave sufficient time to hold an open competition. In relation to urgency, the Department has stated that because of the demand-led nature of direct provision, it is not economically efficient or feasible to retain a stock of unused accommodation in anticipation of an increase in demand.
- 6.37** The Department stated that it had detailed discussions with the Office of Government Procurement (OGP) during 2015. To date, no procurement methodology has been identified which would replace the current procedure. Taking account of the issues set out by the Department and OGP's procurement expertise, it has not been possible to pursue the prospect of delivering a successful open tender.



### ***Reporting of non competitive procurement***

- 6.38** Government departments are required to prepare an annual statement of contracts awarded without a competitive process where the value of the contract exceeded €25,000 (excluding VAT), and to submit the statement to the Office of the Comptroller and Auditor General, and to the Department of Public Expenditure and Reform. The Department has not included the contracts with commercial suppliers of accommodation in this return.
- 6.39** The Department does not accept that these contracts should have been included in the annual return as it considers that the procurement method used equates to the negotiated procedure provided for in EU procurement rules.

### ***Extension of contracts***

- 6.40** Since 2005, the key changes to contracts have been as a result of negotiation one month in advance of the end of an expiring contract. Changes negotiated generally related to bed capacity and payment rates. Since 2010, contracts with ten commercial providers were not renewed.
- 6.41** For some centres, new contracts were agreed with a different company. However, in a number of those cases, at least one director was common to both companies. Annex A indicates cases where a number of companies providing different centres are linked by common directors, and cases where successive contractors providing individual centres have common directors.
- 6.42** The Department has stated that it is not currently aware of any contentious issue on the part of any director or company associated with contracts for the provision of services for persons seeking international protection. Changes in companies providing services may occur where, for example, a director dies, or where business partners decide to go their separate ways. The Department has also stated that there are sound business and logistical reasons, as well as humanitarian reasons such as linkages to education, health and other social services, why it seeks to ensure that established centres continue in use. The Department continues to ensure that the highest standards apply in all of its dealings with companies and directors, and will examine, and where possible, improve due diligence in this area. The Department noted that all payments are subject to appropriate tax clearance procedures.

### ***Contract payment terms***

- 6.43** The contracts for commercially-owned centres provide for payment based on the agreed centre capacity, regardless of the level of occupancy. Most contracts set out a rate per person per day for the spaces provided and a lower daily rate for the availability of a small number of additional spaces, if required. This gives an overall daily rate for each centre. Payment is made every four weeks in advance, based on this rate.
- 6.44** The contractor is required to ensure that the stipulated capacity is available at all times. Where this is not the case, the contractor can be penalised at a rate of €50 for each space less than the capacity for each day. The Department has stated that there were no instances of such payments being required in the last five years.

- 6.45** The effective daily rate for commercial centres varies between €20.70 and €35.50 per contracted space. The Department has pointed out that the lower rate relates to a self catering-facility where meals are not provided by the contractor as residents receive financial supports to allow them to cater for themselves. Excluding self-catering facilities, the effective daily rate ranges from €27.00 to €35.50.
- 6.46** The daily rate for the provision of services in State-owned centres is less because it does not include the costs associated with the provision of the accommodation itself. That rate varies between €11.27 and €17.37 per person.
- 6.47** Some centres have on occasion accommodated more people than was contracted for by the Department with no additional payment.

### ***Setting performance standards***

- 6.48** One of the most critical elements of any contract is the definition of the services to be provided. It is essential that a contract clearly specifies what should be delivered, to what standard, in what timeframe and/or with what frequency.
- 6.49** Direct provision contracts require that accommodation and services shall be provided “to a standard which is reasonable having regard to the daily needs of asylum seekers”. The contract does not define what is considered to be reasonable.
- 6.50** The contracts refer to the accommodation, catering and other services that should be provided. Just over half of these deliverables are stated in such a way that they are measurable, usually by defining a standard and frequency. However, the remaining deliverables are set in less concrete terms - such as ‘appropriate’, ‘adequate’ or ‘as required’- that make measurement difficult, or are stated in such a way that the matter is left to the discretion of the contractor. Examples of the deliverables referred to in the contracts are shown in Figure 6.8.

**Figure 6.8 Examples of specification of contract deliverables – commercial providers**

<b>Specific deliverable</b>	<b>Non-specific/vague deliverable</b>
The contractor agrees that the centre shall be reserved entirely for the reception and care of asylum seekers.	The contractor will ensure that the accommodation is provided with adequate heating.
Each resident shall be supplied with 2 towels on arrival, which will be replaced as required, but at least on a weekly basis.	When a unit is vacated, it must be deep cleaned and painted, where required, by the contractor before being assigned to a new resident.
It shall be the responsibility of the contractor to ensure that a food safety management system incorporating the principles of Hazard Analysis and Critical Control Points (HACCP) is in place in keeping with the European Community (Hygiene of Foodstuff) regulations, 2000 (SI no 165 of 2000).	The menus offered shall reflect (i) the reasonable needs of the different ethnic groups accommodated at the centre and (ii) the reasonable prescribed dietary needs of any person accommodated at the centre.
	The contractor will also ensure that a reasonably adequate supply of soap, shampoo, toothpaste and toilet paper is available in each room and that these are replenished as necessary.

Source: Analysis of sample of contracts by Office of the Comptroller and Auditor General

- 6.51** The contracts do state that the centre should comply with all relevant statutory requirements giving examples of those requirements such as planning, building regulation, hygiene and industrial relations.
- 6.52** A contract should also contain provisions for monitoring performance. The contract should set out who is responsible for collecting and analysing performance data, who will monitor performance, the frequency of monitoring and the reporting arrangements.
- 6.53** References to performance information and monitoring in the contracts for the commercially owned centres are limited to
- a requirement to maintain a daily register of residents with a copy to be submitted to the Department each week
  - the Department's right to inspect the centre at all times
  - the submission to the Department of a 28 day menu cycle when requested
  - a requirement to provide the Department with details of staffing arrangements and any changes to those arrangements
  - provision for quarterly service delivery meetings.
- 6.54** Other than this, the contracts do not specify the nature and frequency of management information to be provided. No performance measures are set in the contracts and there is no provision in the contract for penalties for under-performance, other than failure to provide the contracted capacity.

### **Monitoring service delivery**

- 6.55** Service delivery is monitored in a number of ways — physical inspection of centres, information clinics held in centres, and review of complaints by residents. The Department has stated that it is actively working towards improving the living conditions of those in direct provision by providing increased living space, and self or communal catering facilities where possible, especially for families. This work is ongoing and will be completed as soon as possible.

### ***Inspections***

- 6.56** Inspections seek to record a 'snapshot' of the physical conditions of a centre and to ensure the services contracted for are being delivered. The Department's aim is to inspect each centre three times annually — twice by departmental staff and at least once by an independent company with expertise in fire and food safety. Reports on all inspections carried out since late 2013 are published.<sup>1</sup>
- 6.57** The total number of inspections decreased from 100 in 2013 to 89 in 2015. All centres were inspected at least once in each year. In 2015, 22 of the 35 centres were inspected three times. This is a decline in the inspection coverage achieved in 2013. (Figure 6.9).

<sup>1</sup> Inspection reports are published on the Reception and Integration Agency's website – [www.ria.gov.ie](http://www.ria.gov.ie).

**Figure 6.9 Inspections of direct provision centres, 2013 to 2015**

Number of inspections in year	2013	2014	2015
	<b>Number of centres</b>		
Four inspections	5	1	–
Three inspections	24	18	22
Two inspections	3	14	10
One inspection	2 <sup>a</sup>	1	3
<b>Number of centres</b>	<b>34</b>	<b>34</b>	<b>35</b>

Source: Department of Justice and Equality

Note: a One of these centres was closed for renovations during 2013.

- 6.58** The results of the inspections are communicated in writing to the supplier who is requested to respond to any matters raised within two weeks. However, no timescales are set in the contracts for the completion of required actions. The Department has stated that setting timescales in the contract would not work as the timescale would be dependent on the actions necessary to address the particular issue. However, the Department will consider including in the contract a provision that deadlines will be agreed between the Department and contractor.
- 6.59** A sample of five inspection reports were reviewed as part of this examination. The majority of findings related to maintenance issues and there was evidence that such matters were remedied by suppliers. Other issues included fire safety (which were dealt with on the day of the inspection) and issues in relation to how tidy rooms were. The Department has stated that the tidiness of a room is a matter for the resident once it is not a health and safety, or a fire risk.
- 6.60** On occasion there was a difference of opinion between the Department and the supplier. For instance, one inspection identified a need to change the floor covering in a room. However, the supplier was of the opinion that it was of a satisfactory standard and did not change it.
- 6.61** In the sample examined, the inspections did not identify issues with the food provided. However, in the development of a working group report which was published in June 2015, residents reported a number of concerns in relation to food, including a lack of healthy food choices, lack of consultation in relation to menus and hygiene standards.<sup>1</sup> Contracts require that the menus offered reflect dietary requirements as well as the needs of different ethnic groups. There is also a requirement in the contract for the contractor to meet with residents in relation to the food provided.

### ***Information clinics***

- 6.62** The objective of information clinics is to allow residents to discuss issues directly with departmental staff. They also provide an opportunity to examine the centre and its general operation.
- 6.63** The Department aims to conduct information clinics at least twice a year in each centre. In 2015, this objective was achieved, and three clinics were held for the majority of centres. In the case of the largest centre, at Mosney, clinics were held on a monthly basis.

<sup>1</sup> Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers, Final Report June 2015.

- 6.64** Management information on the issues raised by residents or identified by departmental staff is not formally maintained and analysed.

### **Complaints**

- 6.65** The standard rules and procedures for direct provision centres include the provision of a local complaints procedure. This involves residents initially seeking to resolve the issue with the centre manager, either informally or in writing. If not satisfied, the resident can refer the matter to the Department in writing. The resident can bypass the centre manager in the first instance in “very exceptional and serious circumstances”, and bring a complaint directly to the Department.
- 6.66** There is a very low level of complaints to the Department. Over the four years to 2015, there were just 38 such complaints in total.
- 6.67** The Department’s complaints procedure — revised in 2015 — provides for an appeal to an independent appeals officer if the complainant believes that the complaint has not been handled satisfactorily.<sup>1</sup>
- 6.68** An independent appeals officer has not been appointed yet. The Department has stated that in attempting to identify an independent person, discussions were held with the Irish Prison Service where the complaints procedure was being reviewed and there was a likelihood that an independent final arbiter would be introduced. Prior to the Prison Service review being concluded, the Tánaiste and Minister for Justice and Equality agreed that both the Ombudsman and the Ombudsman for Children should have their remit extended to include persons living in direct provision. The implementation of this will require an order to be signed by the Minister for Public Expenditure and Reform. The Department is in advanced discussions with the Department of Public Expenditure and Reform, and the Office of the Attorney General in relation to such an order. It is envisaged that the relevant ombudsman will become the independent appeals officer.
- 6.69** Consultation with residents conducted as part of the 2015 working group review, identified a wide range of concerns. Most were related to the length of the application process and the fact that they were living in direct provision. However, a number of concerns were expressed about the standard of services provided in direct provision centres. The consultation process also identified a lack of confidence on the part of residents in the complaints procedure and the inspection process.

### **Conclusions and recommendations**

- 6.70** Asylum seekers can avail of accommodation and services in direct provision centres. Many residents remain in direct provision centres for prolonged periods while their applications are being processed. However, data prior to 2012 cannot be readily analysed to identify the causes of delay (they can be identified by manual review of individual files). The introduction of a new IT system in 2012 should allow for better analysis of the processing of applications and identification of causes of delays.

<sup>1</sup> Direct Provision Reception and Accommodation Centres, House Rules and Procedures, 2015.

### ***Accommodating persons granted status***

- 6.71** At August 2016, a significant number of people whose cases have been finalised continue to reside in direct provision centres. One in six direct provision residents have been granted status permitting them to remain in Ireland. It is not clear that using direct provision accommodation for such individuals is in the best interests of the State, the individuals or the intended users of direct provision. The Department has pointed out that its analysis found that of those granted leave to remain, 87% move out of direct provision within six months.

#### **Recommendation 6.1**

The Department should engage with other stakeholders to assess the most appropriate way to accommodate those granted status permitting them to remain in Ireland.

#### **Accounting Officer's response**

Agreed. While it is not the responsibility of the Department to provide housing for those legally entitled to remain in the State, the Department will continue to provide whatever assistance it can to help persons move to permanent accommodation.

### ***Procurement of direct provision services***

- 6.72** Competitive procurement processes were used for the provision of services at State-owned centres and the Department is currently engaged in an EU wide competition for these services. The majority of direct provision accommodation is in commercially owned and operated centres. Suppliers of such accommodation have been paid €251 million over the five years to 2015. Formal competitive procurement processes were not used for the award of these contracts. This increases the risk that the best price and quality of accommodation and services is not being obtained. While it is the Department's view that the procurement method used was equivalent to the negotiated procedure provided for in EU rules, the circumstances permitting recourse to that procedure do not appear to exist and certain procedural requirements were not observed. This could potentially leave the Department open to claims.

#### ***Views of the Accounting Officer***

- 6.73** The Department accepts that in an ideal world there would be more open procurement. In the Department's view, the advertising for expressions of interest and subsequent evaluation methodology used for commercial suppliers of accommodation equates with the negotiated procedure provided for in EU procurement rules. Due to a decrease in demand, no new advertisements were published between 2009 and July 2015. At that stage, demand was such that there was a real danger that the existing stock of places in direct provision would not meet requirements. For example, the number of asylum seekers increased by 1,000 in the four month period from April to August 2015, and by a further 400 in September 2015. This increase demanded an urgent response which resulted in the Department opening a new centre and managing its bed capacity across all other centres.
- 6.74** The alternative to this negotiated process is to leave asylum seekers who by definition are vulnerable persons, homeless while the Department goes through a lengthy procurement process.

- 6.75** The procurement procedure used affords flexibility compared to the rigidity of an open tender process which leaves little or no scope to make reductions in costs when a critical downturn in the economy takes place. Rates paid to contractors compare very favourably with those paid historically. Indeed, it is understood that these are at a substantial discount compared to what other State authorities are paying for broadly similar services for the homeless. There are also particular challenges that would be difficult to capture in an open tender — unpredictability of demand, dispersal, local opposition, children settled in schools, availability of school places, etc.
- 6.76** The experience gained during the current EU wide competitive process for the procurement of services for State-owned centres will inform the Department's considerations in the procurement of commercial centres. The objective will remain that proper procedures are followed at all times and that best value for money is obtained taking into account the particular nature of the services at direct provision centres.

### ***Contract management***

- 6.77** Effective management of direct provision contracts is difficult because quantified or measurable standards and timelines have not been set for many of the contract deliverables. This increases the risk that the standard of accommodation and services provided will not meet the needs of asylum seekers. It also creates the risk that different standards of services are provided in different centres.

### **Recommendation 6.2**

The Department should review the standard contract and ensure that

- standards and timelines are set for all deliverables
- performance information necessary to assess whether the deliverables contracted for have been provided is clearly set out
- the implications of failure to provide deliverables are specified.

### **Accounting Officer's response**

Agreed. All contracts are reviewed and updated as necessary in light of experiences and the provisions of this recommendation will feed into that process with immediate effect.

This issue has also arisen in the context of the implementation of the recommendations of the working group report. The Department is in discussion with EU partners and non government organisations about how best this issue can be addressed in a way which ensures the continued delivery of the highest possible standard of service while at the same time providing sufficient flexibility to meet the individual needs of persons seeking protection.

Care is needed not to set standards or requirements that may be counterproductive having regard to human rights and individuals' preferences. At all times, it must be remembered that individuals' specific needs and requirements cannot always be met with a 'one-size-fits-all' solution. It is to the advantage of the individual concerned that some standards are less prescriptive and more adaptable to the specific needs of that person. This includes issues such as the nature and supply of food or flexibility of meal times around religious observance.

### ***Assessing service delivery***

- 6.78** Information from inspections, clinics and complaints by residents is a potentially useful source of information to assess service delivery. However, this information is not formally collated and used to assess the performance of individual centres or suppliers. There is a low level of complaints by residents to the Department. While this may indicate satisfaction with the service being delivered or with the resolution of issues by local centre management, information from other sources, including the results of a public consultation by a working group, suggests there is a significant level of dissatisfaction among residents.

#### **Recommendation 6.3**

The Department should collate the results of inspections and information clinics, and details of complaints by residents. The information should then be used to inform an assessment of the performance of individual centres as well as suppliers who are delivering services across a number of centres.

##### **Accounting Officer's response**

Agreed. At present the results of inspections and clinics feed into general knowledge of the operation and management of centres which in turn informs contract discussions, inspection preparations and overall policy development. Formal procedures will be implemented in the future so that learning from inspections and clinics will be recorded against each centre and will in turn inform subsequent discussions with centre managers and owners.

#### **Recommendation 6.4**

The Department should review the complaints process and identify whether there are factors which may prevent residents from raising issues.

##### **Accounting Officer's response**

Agreed. This recommendation has in fact already largely been implemented. A new complaints procedure was implemented in 2015. The Department will also examine ways in which the complaints process can become more open and transparent.



**Annex A Direct provision centres**

Contractor	Centre	Capacity	Direct provision centre since
<b>Commercial suppliers of accommodation and services</b>			
Mosney PLC	Mosney	600	December 2000
Bridgestock Ltd	Old Convent, Abbey Street, Ballyhaunis	267	August 2001
	Globe House, Chapel Hill, Sligo	226	August 2004
Old George Ltd/Fazyard Ltd/Mint Horizon Ltd <sup>a</sup>	The Towers, Clondalkin	225	October 2006 <sup>b</sup>
	Georgian Court, Dublin 1	110	January 2005 <sup>b</sup>
	The Montague, Emo, Co Laois	202	October 2007
	The Richmond Court, Co Longford	80	July 2015
Barlow Properties/Bideau Ltd/Stompool Investments Ltd/Baycaster Ltd/D and A Ltd <sup>a</sup>	Ashbourne House, Glounthane	95	June 2000
	Glenvera, Wellington Rd, Cork	107	December 2001 <sup>b</sup>
	Birchwood, Ballytuckle Rd, Waterford	125	May 2001
	Mount Trenchard, Foynes, Co Limerick	85	January 2007
	Clonakilty Lodge, Clonakilty, Co Cork	108	November 2007
East Coast Catering (Ireland) Ltd	Balseskin, St Margaret's, Co Dublin	310	December 2001
	Hatch Hall, 28A Lower Hatch St, Dublin 2	175	February 2005
	Carroll Village, Dundalk (SC)	60	April 2005
Millstreet Equestrian Services	Millstreet	237	November 2000
	Bridgewater House, Carrick-on-Suir	95	December 2001
	Viking House, Waterford	82	May 2001
Tattonward Ltd/Mo Bhaile Ltd <sup>a</sup>	Staircase, 21 Aungier St, Dublin 2	33	May 2012
	St. Patricks, Monaghan	200	December 2001
Maplestar Ltd	Eglinton, Salthill, Galway	200	January 2000
Shaun Hennelly	Great Western House, Galway	152	September 2000
Birch Rentals Ltd	Hanrattys, Glentworth St, Limerick	112	June 2009 <sup>b</sup>
Westbourne Holiday Hostel Ltd	Westbourne, Dock Rd, Limerick	90	June 2001
Peachport Ltd	Eyre Powell, Newbridge	90	April 2003
Maison Builders Ltd	Watergate House, Dublin 8 (SC)	68	April 2003 <sup>b</sup>
Ocean View Accommodation Ltd	Ocean View, Tramore	65	April 2007
Atlantic Blue Ltd	Atlantic House, Tramore	80	May 2007
<b>State-owned centres managed by facilities management providers</b>			
Campbell Catering Ltd t/a Aramark Ireland	Kinsale Road	275	April 2000
	Knockalisheen	250	October 2001
	Athlone	300	May 2000
Onsite Facilities Management (OFM)	Johnson Marina	90	April 2001
	Atlas Tralee	110	August 2001
	Atlas Killarney	90	January 2002
	Park Lodge	55	April 2001

Source: Department of Justice and Equality and analysis by Office of the Comptroller and Auditor General

Notes: a One or more directors common to the companies, according to Companies Registration Office records.

b Change in company providing centre since 2010, but with one or more common directors, according to Companies Registration Office records.

