Mercy Law Resource Centre

MINORITY GROUPS AND HOUSING SERVICES: **BARRIERS TO ACCESS**

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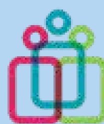

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ABOUT MERCY LAW RESOURCE CENTRE

Mercy Law Resource Centre (MLRC) is an independent law centre, registered charity and company limited by guarantee. MLRC provides free legal advice and representation for people who are homeless or at risk of becoming homeless. It also seeks to advocate for change in laws, policies and attitudes which unduly and adversely impact people who are at the margins of our society.

VISION OF MERCY LAW RESOURCE CENTRE

Mercy Law Resource Centre's vision is of a society where each individual lives in dignity and enjoys equal rights, in particular the right to a home, which is fundamental to each human being. MLRC's vision is also of a society where every individual enjoys equal access to justice and legal recourse in order to vindicate those rights.

In that context, MLRC's clients are local authority tenants, people who are homeless or at risk of becoming homeless and people in receipt of social housing support. They include people trying to move away from homelessness who may be struggling with issues often linked to homelessness such as addiction, leaving prison, mental illness, relationship breakdown and domestic violence.

MLRC provides five key services: free legal advice clinics; legal representation in the areas of homelessness, housing and related social welfare law; legal support and training to organisations working in the field of homelessness; policy advocacy arising from our casework; and a client befriending service.

MLRC's ethos recognises the dignity of each person. MLRC seeks to ensure that all people are treated with respect and compassion and are enabled to achieve their full potential as human beings. MLRC is committed to the principles of human rights, social justice and equality.

MLRC has built strong working relationships with organisations working in the field of homelessness and housing. Partnership and working in collaboration with others is at the heart of MLRC's approach.

INTRODUCTION

MLRC has provided legal advice and representation to individuals and families facing housing difficulty since 2009. Over the last ten years, MLRC has provided legal assistance to over 11,000 individuals, including 1,611 in 2019 alone. In 2020, our solicitors responded to an average of 25 new legal queries each week. MLRC has provided advocacy support and legal information and advice to those clients. MLRC has also frequently provided full legal representation in public law cases, acting for clients in their legal challenges of decisions made by public bodies, most frequently housing authorities. MLRC uses this casework experience to inform our policy positions and recommendations.

In the course of this work, and particularly since 2015, MLRC has noted the increasing numbers of individuals and families from minority groups accessing our service. This includes Irish nationals who are of ethnic minority and non-Irish nationals from both EU and non-EU countries. We have provided legal advice and representation to members of the Traveller community and the Roma community, who have presented with the most acute and urgent legal issues. As of October 2020, 65% of those clients to whom MLRC is providing legal representation were from minority groups.

This report is based on our extensive casework experience working with individuals and families from minority groups. It includes our own analysis of the legal framework that applies to issues of housing and homelessness in Ireland, based on our wide-ranging experience and expertise in that niche area. For the purposes of this report, minority groups includes non-white Irish and encompasses non-Irish nationals, naturalised Irish nationals, members of the Traveller community and those of Roma ethnicity.

This report examines several existing legal barriers for minority groups in Ireland in accessing housing services, whether viewed in terms of admission to the social housing list or access to emergency accommodation for homeless persons. It also considers the potential impact and benefits of the Public Sector Equality and Human Rights Duty to effect change in this area.

MLRC is grateful to the Irish Human Rights and Equality Commission (IHREC) for supporting our research and publication of this report.

CONTEXT

The rate of homelessness in Ireland has increased dramatically in recent years. In November 2019, a record 10,514 people were identified as homeless in Ireland,[1] and in June 2019, at an Oireachtas Committee on Housing, it was reported that the housing crisis is expected to get worse over the coming four years.[2] The latest statistics indicate that 8,484 people were identified as homeless in Ireland, including 1,034 families; 2,452 of these were children.[3]

In responding to these issues, successive governments have developed procedures to regulate access to both social housing and emergency accommodation which, as will be shown, have an adverse effect on the housing interests of minority groups in particular. This is in an overall context where minority groups are disproportionately impacted by homelessness and housing adversity.

As highlighted in MLRC's recent publications, ethnic minorities face specific barriers to access housing and homeless services.[4] This finding is also reflected in a recent study conducted by the Irish Human Rights and

Equality Commission and the Economic and Social Research Institute.[5] This 2018 IHREC study found that black people are five times more likely to report housing discrimination than white people.[6] Furthermore, non-white Irish nationals are 1.7 times more likely to experience housing deprivation than Irish nationals, and 2.5 times more likely to live in overcrowded housing than Irish nationals.[7]

Non-Irish nationals are particularly susceptible to homelessness. A report by the Dublin Region Homeless Executive on families who entered homelessness in Dublin in 2016 and 2017 highlighted that 33% entering homelessness during 2017 were headed by a non-Irish national.[8] This compares unfavourably with the fact that non-nationals make up 11.6% in the general population.[9] The 2016 census found that 14% of the homeless population comprised of non-Irish nationals.[10] The strong reliance of migrant-headed households on the private rented sector has been considered one explanation for this over-representation.[11]

Reports also confirm that members of the Traveller Community are over-represented in the homeless population, and face discrimination in respect of accessing adequate housing. One 2018 report published by IHREC noted:

> "while they represent less than 1 per cent of the Irish population they make up 9 per cent of the homeless population. Travellers also experience the highest levels of discrimination: they are almost ten times as likely to report discrimination in access to housing as the White Irish population, even after education and labour market status are held constant."[12]

Similarly disquieting statistics for the Roma Community document that 6% of the Roma population in Ireland is homeless and almost 45% have had a previous experience of homelessness.[13]

This report will expand upon and analyse the barriers faced by ethnic minority groups in accessing housing provision, and will make relevant recommendations for policy and legal change to improve housing access for these groups. With regard to accessing social housing, the impact of Circular 41/2012, the 'local connection' test, 'normal residency' and 'alternative accommodation' tests in the Social Housing Assessment Regulations 2011 will be discussed. In regard to provision of emergency accommodation to homeless persons, three forms of accommodation where access of minority groups can be particularly challenging will be examined, namely: one-night only accommodation, self-accommodation, and family hub accommodation. Following this, we explore the potential for the Public Sector Equality and Human Rights Duty to affect change in this area, and ensure greater efforts are taken to make the housing services accessible to all.

CIRCULAR 41/2012

In this section, we examine the impact of Departmental Housing Circular 41/2012.[14] This Circular was issued by the Department of Housing, Planning and Local Government in December 2012,[15] to all housing authorities in the State, to provide 'advice when considering whether to accept an application for social housing support from a non-Irish national.'[16] Under the Housing Act 2009, housing authorities are empowered to provide social housing, subject to an eligibility assessment.[17] The specifics of this assessment was expanded upon in the Social Housing Assessment Regulations 2011.[18] The purpose of the Circular is to provide further advice to housing authorities, specifically on applications for social housing support by non-Irish nationals.

(a): What does the Circular say?

The Circular advises that Irish and UK nationals should be considered for social housing support without any residency or employment requirements.[19] For EEA nationals however, the Circular recommends that housing authorities consider applicants for assessment only if they are currently employed in the state, unable to work due to illness or accident, or currently registered as a job-seeker after having been employed for longer than one year.[20]

For non-EEA nationals, the Circular proposes adopting several criteria, depending on the circumstances of the applicant. For a non-EEA spouse of an Irish citizen, their application should be joined to that of their Irish spouse. Further, for a non-EEA spouse of an EEA citizen, if their spouse satisfies the criteria proposed above, they ought to also be considered for social housing provision.[21]

The Circular recommends that asylum seekers are not considered for social housing support during their period in the asylum process.[22] Refugees or persons granted subsidiary protection are recommended for consideration for social housing, alongside their spouses and family members approved for family reunification.[23] Further, if a non-EEA national parent of an Irish citizen child that is emotionally and financially dependent upon the parent applies for social housing assistance, the Circular advises that the housing authority accept their application provided the non-EEA national has a Stamp 4 visa.[24]

Finally, the Circular advises housing authorities on how to process applications for social housing by non-EEA national applicants who do not satisfy the above criteria. For this group, the Circular advises that housing authorities should only process applications where the applicant has either:

An aggregate of five previous years of reckonable residence, with a current valid stamp **OR**

Any length of previous valid residence in Ireland over the last five years, with a current valid stamp that would permit their continued residence for five of the previous eight years.[25]

(b): Difficulties arising from the Circular

There are two significant and related problems with this Circular which have made it a barrier for minority groups seeking to access social housing. Firstly, in content it does not provide accurate and sufficient guidance to housing authorities on how to process social housing claims by non-Irish nationals because it is out of date and does not cover all immigration categories. Secondly, and more significantly, the Circular is not law, and yet it is often relied on by housing authorities as justification for refusing to accept social housing applications from non-Irish nationals and also, troublingly, from accessing emergency accommodation. Both of these issues will be examined in turn, with case studies to illustrate the problems arising.

In the first place, changes to Irish immigration law since 2012 are not reflected in the Circular. Non-EEA nationals who have had either a Stamp 1G or a Stamp 4 permission under the Immigrant Investor or Start Up Entrepreneur Programmes, to reside in the state, are not mentioned in the Circular. Furthermore, non-EEA nationals that entered Ireland as a result of human trafficking undergo a discrete procedure for determining residence which is not referred to in the Circular.[26]

As a result, the Circular cannot provide guidance on whether the duration to which they were entitled to reside in Ireland under these schemes should be considered when determining whether to accept an application to the social housing scheme.

On the matter of EEA nationals, there are further issues with the Circular. It grounds its advice for processing claims from EEA nationals in secondary legislation which was repealed and replaced in 2015.[27] It also advises that only EEA nationals who are either working in Ireland at the time of application or who have previously worked for a period of 12 months and are no longer capable of doing so due to illness or involuntary unemployment should be considered for social housing.

These criteria concern the right of residence in the State and are not identified as criteria for qualification for access to social housing support in the 2006 legislation which the Circular is meant to supplement. They are also at variance with EU law, including the Directive with which the Circular is alleged to be complying.

That Directive guarantees EEA nationals that have exercised their free movement rights and become lawfully resident in another Member State the right to equal treatment with regard to entitlement to social assistance as nationals of that Member State for a minimum of three months (longer upon compliance with listed criteria).[28]

Additionally, the circular fails both to recognise the rights of EEA national family members to reside alongside an EEA national who is working,[29] and of EEA nationals studying in Ireland to reside in the country, along with their family members, for the duration of their education.[30]

These issues with the content of the Circular would not be as problematic as they are if it were not for the second issue: the manner in which the Circular is being applied. Arguably, the Circular does not have a firm legislative basis. It is advice from the Department of Housing to housing authorities on how they may consider exercising their lawful discretion when processing social housing applications.[31]

Whilst Section 4 of the Housing (Miscellaneous Provisions) Act 2009 provides that the Minister *may* 'give general policy directions in writing to a housing authority in relation to the performance by the housing authority of any of its functions under the Housing Acts 1966 to 2009', the Circular does not cite this Act or any legislation, nor was the Circular published by the Minister.[32] Therefore, it is at best *unclear* whether or not the Circular is legally binding. Nevertheless, it has frequently been applied inflexibly, akin to primary legislation.[33] It should be noted that a circular cannot fetter the discretion of a statutory body as has been determined in the context of social welfare law.[34]

This inflexible application of the advice in the Circular has led to non-Irish nationals being excluded from the social housing list without legal justification. In addition to persons with lawful rights of residence in the State who are affected by the Circular, those who have lived in Ireland unlawfully without regularising their immigration status for years are also precluded by this Circular from accessing the housing list. These examples raise concerns that housing authorities or the Minister for Housing are making decisions on access to housing supports based on the immigration status of an applicant notwithstanding the Minister for Justice acquiescing to the presence of these residents in Ireland.

Mercy Law Resource Centre has frequently encountered cases of non-Irish nationals being refused admission to the social housing list based upon this Circular. Cases arise most frequently in relation to EU nationals. In practical terms, MLRC has noted that when an applicant does not fit clearly within one of the categories of the Circular they are simply turned away at the desk without their social housing application being properly assessed. This is contrary to the statutory obligation on local authorities to assess *all* applications for social housing support.[35] Such a practice of turning applicants away without proper consideration is therefore unlawful, highlighting a further problem with the day-to-day application of the Circular.

CASE STUDY

MLRC represented a family of five who were non-Irish nationals and who had lived in the State for 14 years. The head of the household had resided in the State on Stamp 2 immigration permission and in that capacity had worked part-time and been entirely financially self-sufficient. She subsequently regularised her status to Stamp 4 permission through the student probationary extension scheme but did not have the requisite five years Stamp 4 permission as referenced in Circular 41/2012 at the point of making an application for social housing support. The application was refused and it was only after detailed legal submissions were made on behalf of the family that they were accepted as eligible for social housing support. This finding of eligibility subsequently enabled the family to exit homelessness and move on with their lives after a traumatic period of instability and uncertainty.[36]

In MLRC's casework experience, EEA nationals are refused access to the social housing list for various reasons. Some are refused admission to the social housing list due to not being in employment for one year, or while having children in full-time education within the State.[37] In another case, a non-EEA national who had been

lawfully resident for over 13 years was refused admission to the list due to not having residency status for five years as advised by the Circular.

These cases were ultimately resolved in favour of MLRC's clients, but the fact that these issues arose is reflective in itself of the problems arising from applying the advice of the Circular inflexibly. The applicants themselves are hugely disadvantaged in circumstances where they must rely on specialist legal intervention to enable them to overcome these barriers to access social housing.

CASE STUDY

MLRC acted for an EU national and her family whose housing application was refused on the basis of the Circular, despite the fact that she had resided lawfully in the State for twelve years and had previously been on the housing list on the basis of a joint application with her husband. Our client had arrived in the State as a minor and was a dependent on her mother, who was living and working in Ireland. Our client subsequently married and had two children with her husband, who was also an EU national. The family made a successful application to go on the housing list; at that stage, the husband was in employment. The relationship subsequently broke down due to domestic violence. Our client made an application to go on the housing list in her own name, but was refused on the basis that she did not have sufficient Pay Related Social Insurance (PRSI) contributions and by extension, sufficient work record. The decision ultimately relied on the Circular and in its decision letter, the housing authority contended that it was bound to apply the provisions of the Circular and could not exercise any discretion. Legal proceedings issued, with the matter settling in our client's favour, such that she was deemed eligible to go on the social housing list and was able to access social housing supports.[38]

The Circular has also been relied upon to refuse access to emergency accommodation for non-Irish nationals, notwithstanding that its legal force is unclear nor applicable to emergency accommodation provision, which is governed by section 10(1) of the Housing Act 1988.[39] Instances of this problem are explained and explored below.

It is evident from MLRC casework and these particular examples that both the content and application of the Circular 41/2012 have obstructed non-Irish nationals accessing the social housing list. The overall premise of the Circular is lawful residence and it pre-supposes such a right of residence by stipulating certain categories of immigration status. However, the Circular's outdated and inaccurate content undermines that overall premise. A number of measures may redress these issues.

If this Circular is to remain in place a starting point for addressing the concerns raised in this report should be to update its contents in such a manner as to ensure its overall accuracy. Further consideration should be given to the purpose the Circular serves and its overall legislative authority, given that there is no clear statutory basis for the application of such a policy.

The absence of a clear statutory basis gives greater impetus to the need for clear guidance to and training of housing authorities so they are better equipped to properly apply the Circular as a guidance-only document, and to exercise their discretion when appropriate. Until this happens, this Circular will continue to operate as a barrier to accessing housing for applicants who are unlawfully precluded from admission to the social housing list and left in a position of serious housing vulnerability.

THE 'NORMAL RESIDENCY' REQUIREMENT WITHIN SOCIAL HOUSING PROVISION

Housing authorities are authorised under the Housing (Miscellaneous Provisions) Act 2009 to regulate, maintain, and facilitate the provision of social housing.[40] The Social Housing Assessment Regulations 2011 provide legal instructions for how housing authorities are to assess applicants for social housing. Regulation 5 stipulates that a household applying for social housing support shall either apply to the authority for the functional area in which the household normally resides, the authority in which the household has a local connection, or the authority that agrees at its discretion to assess the household's application.

The requirement to show that an applicant 'normally resides' in a local authority area has, on occasion, created difficulties for minority groups. It is noteworthy that there is no definition of what constitutes normal residence. In some cases, in the experience of MLRC, applicants are required to provide excessive evidence of their residence in the functional area of the local authority, over and above what might be reasonably required. For example, housing authorities have previously not accepted a period of six months' residence in the functional area as sufficient to evidence normal residence.

Such an approach has the effect of excluding certain applicants in a local authority area from accessing the social housing list.[41] In the experience of MLRC, this disproportionately affects Traveller applicants who are seeking to access social housing, particularly those residing in caravans who may be criminalised under trespass legislation.[42]

If a housing authority refuses to accept that Travellers who are living in an unauthorised site are 'normally resident' in the functional area of the housing authority where that site is located, the effect of that refusal is to potentially make Traveller applicants not 'normally resident' anywhere. This completely excludes such applicants from one of the three categories under Regulation 5 of the 2011 Regulations.

The 'local connection' requirement within social housing provision

If an applicant is not normally resident in the functional area of the housing authority, Regulation 5 stipulates that a household applying for social housing support can apply in the authority in which the household has a local connection. To determine whether a 'local connection' exists, the housing authority shall, per Regulation 6, consider whether:

(a) a household member resided for a continuous 5-year period at any time in the area concerned, or

(b) the place of employment of a household member is in the area concerned or is located within 15 kilometres of the area, or

(c) a household member is in full-time education in any university, college, school or other educational establishment in the area concerned, or

(d) a household member with an enduring physical, sensory, mental health or intellectual impairment is attending a medical or residential establishment in the area concerned that has facilities or services specifically related to such impairment, or

(e) a relative of a household member resides in the area concerned and has resided there for a minimum period of 2 years.

The rationale of a 'local connection' test is to spread the responsibility for providing social housing around the state, to thereby avoid overloading housing authorities in areas with already high populations, such as Dublin and Cork.

Such tests are common, but not universal, across Europe. Thirteen European countries contain some form of local connection rules for social housing, according to the European Observatory on Homelessness.[43] The duration of stay necessary to show a local connection vary both between states and within states. For example, 'in Austria, there is marked variation in the time required to establish a local connection, literally ranging from one day to five years, dependent on the region in which a homeless person seeks social housing.' In Denmark, by contrast, no local connection is necessary to access the social housing list if the applicant is in urgent need of accommodation. Germany and Portugal are moving away from a reliance upon local connection tests.[44]

As noted by FEANTSA during its successful challenge before the European Committee of Social Rights to the Dutch usage of a local connection test in regard to emergency accommodation:

> 'migrants of all kinds, regardless of whether regular or irregular, are often not able to establish a local connection [and] the criterion is frequently unfulfilled by Roma and members of other marginalised groups, if they do not possess the necessary identity documents.'[45]

While housing authorities have a discretion to assess applications if the local connection test is not satisfied, the *expectation* of a local connection to the housing authority area to which the applicant applies constructs a barrier to non-Irish nationals and to ethnic minority Irish nationals, including Travellers.[46]

This cohort, therefore, faces particular barriers under the social housing assessment where the housing authority does not exercise its discretion properly. Ethnic minority applicants are less likely than a white Irish applicant to have lived in any housing authority area for five continuous years; they are also less likely to have relatives or household members living in a housing authority area for the previous two years. This cohort, therefore, faces particular barriers to accessing the social housing assessment and, in some instances these barriers have led to minority groups being excluded from accessing the social housing list.[47]

Discrimination by public authorities on the basis of race or membership of the Traveller community, among other grounds, is unlawful, under Article 40.1 of the Constitution, and, more specifically, under the Equal Status Acts 2000-2018 (Equal Status Acts).[48] Discrimination can be both direct – ` where someone is treated less favourably than another person on the basis of their race; or indirect – where a racial group is placed at a particular disadvantage compared with other racial groups due to a provision which purports to apply to every racial group in the same way but has a worse effect on a particular racial group than the others and the provision cannot be considered as objectively justifiable.[49]

The Court has held that race, for the purposes of the Equal Status Acts, includes groups with a common culture, a common geographical origin, or being a minority or dominant group within a wider community.[50] By this standard, discrimination against non-Irish nationals and ethnic minority Irish nationals constitutes discrimination on the basis of race.

Given that these groups are placed at a particular disadvantage by the local connection test, due to their ethnic origin being outside of Ireland or, in the case of the Traveller community, due to their nomadic lifestyle, the local connection test contained in Regulation 5(b) of the 2011 Regulation appears to be the type of policy that the concept of indirect discrimination in the Equal Status Acts is designed to combat.

Furthermore, the Equal Status Acts states that 'a person shall not discriminate in providing accommodation or any services or amenities related to accommodation,'[51] unless there is an 'enactment or rule of law regulating the provision of accommodation.'[52] Additionally, the Equal Status Acts does not apply to any action required under any enactment.[53] As such, it does not appear that the Equal Status Acts provide a remedy to applicants for social housing support who, because of their ethnic origin or membership of the Traveller community are less likely to meet the local connection test.

It is of note that the local connection test is not a conclusive barrier to applications for social housing support. Whilst housing authorities *must* accept applications where the applicant normally resides or has a local connection to the authority, housing authorities also have *discretion* to accept an application where these conditions are not met. It is in exercising this discretion that the Equal Status Acts precludes the local authority from discriminating.[54]

Recently, the Court of Appeal in the United Kingdom held that a ten-year local connection requirement in a council's allocation scheme indirectly discriminated against Travellers and non-UK nationals, as both groups are placed at a disadvantage in satisfying this requirement due to recency of arrival in the jurisdiction, or the nomadic nature of their culture.[55] It should be noted that the local connection test in this case was contained in the allocation scheme and not the governing secondary legislation. Under the Equal Status Acts in Ireland, only the former could be challenged since the latter constitutes an enactment.[56]

As well as the Equal Status Acts, Article 40.1 of the Constitution guarantees non-discrimination on the basis of protected characteristics including race ethnic origin.[57] In *Fitzgerald v Tipperary North Riding County Council*, Hanna J indicated that treating Travellers in some way differently from other citizens in relation to the allocation of public housing would infringe Article 40.1.[58] It has recently been affirmed that non-citizens can avail of the protection guaranteed by Article 40.1,[59] and that the Article proscribes indirect discrimination.[60]

In as much as the local connection test *in its application* treats different groups differently on the basis of ethnic origin, provided this can be shown with the use of a comparator, an arguable case that the test is unconstitutionally discriminatory can be made.[61]

MLRC has observed the detrimental impact of a strict application of the local connection requirement on ethnic minority clients.

CASE STUDY

MLRC recently represented a family of eight who were non-Irish nationals, refused access to the housing authority's social housing list on the basis that they did not have a local connection to the authority's functional area. MLRC challenged this, arguing that the father of the family worked as a contract worker consistently within the functional area of the local authority from the date of the submission of the housing needs assessment form. Payslips were provided in support of this. MLRC made legal submissions to the local authority when the matter could not be resolved informally. In those submissions, MLRC argued that the housing authority's decision amounted to an error of law and fact, and a breach of the family's right to fair procedures. It was primarily argued that there was a clearly established local connection, and even if the local authority did not accept that, it could exercise its discretion to conduct a social housing assessment under Article 5(c), Social Housing Regulations 2011. It was argued that an exercise of discretion was particularly appropriate in the case, given that the housing authority had been providing the family with access to emergency accommodation and that the family were forced to endure many months of chronically unstable emergency accommodation even when they had a new-born infant. Following these representations from MLRC, the housing authority reversed its earlier refusals and determined that the family did meet the local connection test. The family were deemed eligible for the housing authority's social housing list, with their time on the list backdated to when they first made their application.

MLRC has further noted that, on occasion, applicants have been denied access to emergency homelessness accommodation because they have no connection to the housing authority. This occurs notwithstanding the fact that the legislation relating to emergency accommodation has no comparable statutory local connection or residency requirements or test. This issue is explored further below.

There is a recognisable rationale of a local connection test to enable a beneficial distribution of social housing provision across housing authorities in the state. However, its rigid application and the reluctance of housing authorities to exercise discretion when the test is not met presents as an obstacle to minority groups accessing both social housing and even emergency accommodation. The apparently neutral test may be found to be unlawfully discriminatory against these groups to the extent that it disproportionately affects members of minority groups, either due to their recent arrival in Ireland or their nomadic culture.

It is therefore recommended that the test be clearly and consistently treated by housing authorities as discretionary rather than conclusive. Consideration should be given to issuing of guidance to housing authorities on the proper exercise of discretion, and that such guidance should highlight the particular burden that this test can impose on minority groups.

THE 'ALTERNATIVE ACCOMMODATION' REQUIREMENT WITHIN SOCIAL HOUSING PROVISION

Regulation 22 of the Social Housing Assessment Regulations 2011 provides that an applicant is ineligible for social housing support if they have alternative accommodation (other than accommodation currently occupied by the household)[62] that could reasonably be expected to be used to meet the housing need, either through occupation or by selling the accommodation and using the proceeds to secure suitable accommodation for the applicant. This seeks to ensure the social housing stock is not reduced by providing accommodation to applicants who can source their own accommodation.

Whilst this Regulation serves a merited purpose, a practice has developed such that the manner in which it is applied disproportionately and unfairly affects non-Irish national applicants and presents an obstacle to accessing the social housing list. This barrier arises from a practice whereby non-Irish nationals or applicants from ethnic minority backgrounds are frequently required to provide evidence in relation to non-ownership of property abroad, which would not be asked of a white Irish applicant. This evidence is sought by the housing authority apparently in relation to this regulation and in order to satisfy the housing authority that there is no alternative accommodation available to that applicant.

From MLRC's casework experience, it appears that from around 2015, social housing applicants who were non-Irish nationals or who were naturalised Irish nationals were requested by some housing authorities to provide evidence that they did not own property in their country of origin. This arose even in circumstances where the applicant had not declared any property ownership on the original application form, which includes a question specifically on this aspect.

The application of Regulation 22 in this manner therefore imposes a barrier to accessing social housing for non-Irish nationals and ethnic minority applicants. It can be distinguished from a situation where an applicant in fact owns property; here, an applicant must procure documentation proving a negative: showing that they do *not* own property.

It would be difficult, if not impossible, to source such a document in Ireland, for example from the Property Registration Authority. Sourcing such documentation for some minority applicants is onerous and financially demanding for an applicant, particularly for applicants from countries with poorly functioning administrative systems. Sourcing such documentation may be impossible for other minority applicants.

A housing authority frequently requests what is described as 'an affidavit' from an applicant to state the position in relation to non-ownership of property abroad, particularly in circumstances when the applicant has informed the housing authority that no other evidence is available. Such a statement is in fact made by way of statutory declaration. An applicant then faces an additional barrier to resolving this issue as they are likely to then require the support of an advocate or support worker to draft the declaration and a practicing solicitor to swear the document.

It is open to housing authorities to determine an applicant qualified for limited forms of social housing support even when they are unable to establish for the moment whether or not alternative accommodation is available to that household.[63] MLRC has only seen that provision relied on in respect of Irish national applicants.

It is noteworthy that in MLRC's experience, Irish nationals applying for social housing have rarely been required to provide documentation to the housing authority evidencing non-ownership of property, notwithstanding that they too may own property, either in Ireland or overseas. For Irish nationals, such ownership ordinarily arises in the context of relationship breakdown and shared ownership of a family home, which has yet to be resolved through family law proceedings. It is only in these instances that MLRC has seen housing authorities rely on the provision permitting the authorities to provide social housing support to an applicant notwithstanding that he or she owns property.

This trend thus does not impose an onerous burden on *all* applicants to demonstrate they do not have alternative accommodation, but affects non-Irish nationals or naturalized Irish citizens exclusively, on the ground of their nationality and/or race. By including this condition not specified in the legislation in order to access the social housing list, the local authorities are potentially acting *ultra vires* and imposing a new criteria on non-Irish national applicants without lawful basis.

CASE STUDY

MLRC provided legal assistance to a homeless family refused access to homeless accommodation. The household members were naturalized Irish citizens. In the course of resolving the refusal of homeless accommodation to the family, MLRC also provided advice with respect of the application for social housing support. The housing authority's response to the housing application was to request that the applicant provide a letter from her country of origin, which was Nigeria, confirming that she did not own any property there. MLRC advised the family in relation to the absence of any statutory basis for requesting such a document. Anxious, however, to resolve this further obstacle preventing the family from accessing social housing support, the main applicant contacted a lawyer in Nigeria to obtain an affidavit in relation to her non-ownership of property. The affidavit was entitled 'affidavit of no asset' and was sworn by her sister, confirming that the main applicant did not own any property or assets in Nigeria. It was stated to be sworn to at the High Court Registry in the main applicant's home state. The applicant paid a fee to facilitate the affidavit and incurred considerable stress in obtaining the document. The housing authority subsequently determined the applicant's housing application favourably, despite the probative value of the affidavit being unclear. Meanwhile, the applicant bore the significant logistical and financial burden of obtaining the document.

There has been little consideration of this aspect of the regulations by the courts. Last year, however, the High Court held that if non-Irish nationals possess property overseas, this will only be reckonable as 'alternative accommodation' if this property is in their current possession and if its sale could ensure *secure* alternative accommodation, not merely cover a short term rent.[64] This judgment indicates that a factual assessment of the value and other factors in relation to the property is required in order to assess fairly if it constitutes alternative accommodation for the purposes of the regulations.

MLRC's casework experience is that if a non-Irish national declares that they own property overseas on their application for social housing support, a housing authority will routinely issue a refusal of that application with little or no consideration of whether or not, in law, such a property would constitute alternative accommodation for the purposes of the regulations and would therefore render the applicant ineligible for such social housing support.

CASE STUDY

MLRC acted for a single mother of three children who was at risk of homelessness because she could not afford to pay her rent. She was not in receipt of any rent support or subsidy. She made an application for social housing supports but was refused on the basis that she owned an apartment in her country of origin; no further reasons or explanation for the legal basis of the decision was provided. The apartment was valued at €12,000 and was occupied by her elderly and infirm grandmother. The position in the country of origin was that it would not be legally permissible to evict the grandmother in order to effect vacant possession and consequent sale of the property, and therefore provide funds to the applicant to secure her own accommodation. Furthermore, even if she had been able to realise the asset, the proceeds would not have provided sufficient funds to sustain the family's housing for more than six months. Crucially, it would have breached the applicant's free movement rights as an EU citizen to be obliged by the housing authority to return to her country of origin in order to reside in the property and meet her housing need through that route. MLRC drafted detailed legal representations on behalf of the applicant and submitted a further appeal on her behalf. The matter resolved favourably following this intervention. The applicant was accepted on to the housing list, able to access social housing support and averted homelessness.

The factual circumstances of the applicant and of the particular property ownership are highly relevant to whether or not that property constitutes alternative accommodation for the purposes of the regulations but these are not routinely interrogated and assessed by housing authorities. Complications frequently arise for EU nationals in relation to ownership of land or property in EU states which, in MLRC's casework experience, is assumed by a housing authority to constitute alternative accommodation even when such land or property is evidenced to be uninhabitable, inaccessible, or unrealisable as an asset.

As this case study illustrates, the application of Regulation 22 by housing authorities in some cases can present specific challenges to non-Irish national applicants. It seems practices have developed that arguably place an unfair and disproportionate evidential burden on non-Irish national applicants and naturalised Irish nationals.

In many instances observed by MLRC, where non-ownership of property is raised, the evidence provided by the applicants in response to requests from housing authorities is often of little evidential and probative value. It nonetheless 'ticks the box' and resolves any concerns of the housing authority. It does, however, impose an extraordinary burden on the applicants, both in practical and financial terms and potentially constitutes indirect discrimination on grounds of nationality.

The substantial concerns set out here could be addressed through a careful and proper application of Regulation 22 by housing authorities. They should appropriately apply Regulation 22 and conduct fact-sensitive assessments in individual cases. Such an approach should not include requests for non-specific and burdensome 'affidavits' from minority applicants. In cases of property ownership abroad, housing authorities should conduct fact-sensitive assessments and provide reasoned decisions, in line with standards of good administration. Careful and considered adherence to fair procedures will ensure applicants are aware of the reasons and basis for decisions of the housing authority and will be in a position to better overcome any barriers to access that arise on the basis of Regulation 22.

ISSUES WITH EMERGENCY ACCOMMODATION

The final barrier addressed in this report, identified through MLRC's casework for minority groups accessing housing services, concerns access to and provision of emergency accommodation for those experiencing homelessness within this group.

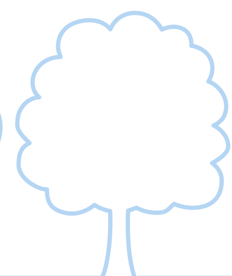
Under the Housing Act 1988, a person is homeless if there is no accommodation which they can reasonably occupy or remain in occupation, or they are living in a hospital, night shelter or other such accommodation because they have no accommodation they can occupy, and they are unable to provide accommodation from their own resources.[65] Where someone satisfies this definition of homelessness, the housing authority has discretionary power to provide temporary accommodation for the homeless applicant.[66] Housing authorities are empowered under the Housing Act 1988 to either provide temporary accommodation itself, to make arrangements with private sector bodies to provide accommodation, or to provide financial assistance whereby the homeless person can find their own accommodation.[67]

This section looks at three mechanisms by which housing authorities provide emergency accommodation, and the problems which these mechanisms cause for members of minority groups who are experiencing homelessness. It highlights specific challenges faced by minority groups in accessing homeless services and barriers to their proper and appropriate engagement in the homeless assessment.

Provision of chronically unstable emergency accommodation

A particularly troubling form of temporary emergency accommodation, particularly for homeless families, is the provision of emergency accommodation on a 'one night only' basis only, known as 'ONO'. This form has received welcome scrutiny over the course of the last year and fortunately appears to have been phased out over the course of the last eight months.[68] MLRC previously highlighted the dire impacts of this form of emergency accommodation particularly on minority applicants both in its submission to the Joint Oireachtas Committee on Housing in June 2019, and in its 2019 report on the Lived Experience of Homeless Families.

In November 2019, the Joint Committee on Housing, Planning and Local Government recommended the immediate cessation of provision of one night only emergency accommodation.[69] It appears this recommendation has been implemented during the course of 2020, as is considered further below.



When placed on this form of one night only emergency accommodation by the housing authority, homeless families must move their accommodation each day with all their belongings. They cannot access the emergency accommodation placement ordinarily until 6pm in the evening and must leave by 9.30am; this is despite the booking or arrangements for their accommodation being made much earlier in the day. Homeless families placed on this provision ordinarily have no secure place to go during the day, and spend prolonged periods in shopping centres, in parks, on buses, and walking the streets. They have no access to cooking or laundry facilities. As detailed in our previous report on the experiences of homeless families, those families placed on ONO provision are often unable to register their children for school or access primary care healthcare due to the chronic instability in their emergency accommodation.

It is noteworthy that there has, at no stage, been a published policy that confirms in what circumstances a particular family will be placed on ONO emergency accommodation. MLRC has previously acted on behalf of both families who are on the social housing list and families not yet on the social housing list which have been afforded this provision. MLRC has been unable to identify any discernible pattern of why this provision is made to some families and not others.

It is clear, however, that a disproportionate number of non-Irish national and ethnic minority families have previously been placed on this provision. MLRC also notes that it has frequently been a *fall-back* form of emergency accommodation provision for larger families, many of which are from ethnic minority groups, including the Traveller community or Roma community.[70]

In 2019, MLRC sought data from the Dublin Region Homeless Executive (DRHE) on the prevalence of ethnic minority applicants placed on ONO emergency accommodation provision. DRHE could not provide this data. We were able to source data from Crosscare Advocacy Service who collated data from their interactions with homeless families in late 2019. Of the 381 families that presented to Crosscare in 2019, 123 of these families (32%) had at some point accessed one night only accommodation. Within this, 123 families, 17 had Irish citizenship, 23 were non-EEA nationals, and 82 (two thirds) were EEA nationals. Furthermore, 57 of the 123 (almost half) were Roma.

The Covid-19 pandemic has given impetus to policy recommendations to end use of ONO emergency accommodation provision. The response to the pandemic has instead focused on providing consistent and stable access to emergency accommodation placements: 'For the duration of Covid-19, all residential accommodation for families and singles has moved to 24 hour access to allow the implementation of the Covid-19 HSE Guidelines, thereby reducing the public health risks to homeless persons.'[71]

The response to the pandemic by housing authorities appears to have inadvertently progressed the recommendation of the Oireachtas Committee on Housing to cease provision of ONO emergency accommodation, which had been in the process of being implemented by the DRHE.[72]

CASE STUDY

MLRC recently assisted a mother and her three children, including a child with severe autism. The family were naturalised Irish citizens and of ethnic minority. They had been residing in the UK and returned to Ireland following a relationship breakdown precipitated by domestic violence. The family returned to Ireland in crisis and presented as homeless to the housing authority. The housing authority provided emergency accommodation to the family on a one night only basis, which caused enormous distress to the family, particularly in the absence of any reasons or explanation for such unstable accommodation provision. The mother was unable to register the children for schools and access health services, including special supports for the child with a disability. MLRC intervened and made representations to the housing authority, the result of which secured a secure and consistent emergency accommodation placement for the family. The family were also prioritised for supported accommodation and moved into that long-term accommodation following MLRC's engagement.

The practice of placing homeless families on ONO emergency accommodation instead of a rolling booking of emergency accommodation may constitute indirect discrimination by disproportionately disadvantaging groups on the basis of race. As data collated by Crosscare showed, 85% of those who had accessed ONO emergency accommodation were non-Irish nationals, and non-Irish nationals spent on average more than twice as long in such accommodation as Irish nationals.

The absence of a full data set on the ethnic breakdown of those on ONO makes any legal challenge on the basis of discrimination very difficult; it also impacts negatively on the implementation of appropriate policy responses. The related practice, discussed below, of placing applicant families not yet on the social housing list into one night only accommodation may arguably also be a further instance of indirect discrimination.

Provision of 'self-accommodation'

The second emergency accommodation approach is the 'self-accommodation' option. As noted above, under the Housing Act 1988, housing authorities are empowered to provide financial assistance to homeless persons so that they can access emergency accommodation themselves. Homeless families from minority ethnic groups, predominantly larger families and families with English literacy difficulties, are particularly poorly served by being asked to self-accommodate.[73]

While the absence of translation services acts as a barrier to ethnic minority applicants accessing all forms of housing provision, the adverse effects of a lack of translation services is particularly pronounced for those expected to source their own accommodation.[74] Resulting from these limitations on their ability to self-accommodate, homeless minority families often fail to find adequate temporary accommodation for themselves, and are at risk of relying on the one night only provision, or sleeping rough or in Garda stations.[75]

As with ONO emergency accommodation, there is no legal regulation or written policy determining when a person presenting as homeless should be given financial assistance to self-accommodate. MLRC is not aware of any assessment that is undertaken as to the suitability of this form of emergency accommodation for individual families. This is despite the previous Government's policy statement and action plan on housing: *Rebuilding Ireland*, specifically stating that families require a *separate and distinct response* when presenting as homeless.[76]

Discrimination in accommodation provision on the basis of possession of rent supplement or housing assistance is unlawful under the Equal Status Acts.[77] However, discrimination against persons in receipt of funds from local authorities to access hotels or hostels under the self-accommodation option is not unlawful. Thus, hotel or hostel owners can refuse applicants on the basis of them being in receipt of self-accommodation subsidy. This affects all homeless persons, but particularly those from an ethnic minority background, homeless as refusal on the basis of receipt of the self-accommodation subsidy can often be used as a proxy for refusal on the basis of nationality, which is potentially unlawful.[78]

CASE STUDY

MLRC acted for a Traveller family of eight, who presented as homeless to the housing authority and were placed on 'self-accommodation'. The family made extensive attempts to source a hotel booking for their large family but for three months were unable to secure any booking beyond a night at a time on a very intermittent basis. During this period, the family had no alternative accommodation and resorted to dividing up the family such that the children stayed at different relatives' houses and the parents slept in the car. MLRC made legal representations on behalf of the family arguing that the accommodation provision was of such an inadequate standard that it failed to meet the Council's obligations under the Housing Act 1988 and infringed on the family's right to family and private life. The family were placed in a family hub following the issuing of legal proceedings that challenged the inadequate homeless provision to the family.

It is entirely inappropriate to place the obligation of sourcing emergency accommodation on individual families, particularly when those families are of ethnic minority and face particular challenges to sourcing appropriate accommodation. The former Minister for Housing, Planning, and Local Government expressed a similar view, acknowledging in January 2019 that 'it is completely unacceptable that people still have to go to hostels for emergency accommodation'.[79]

MLRC welcomed the recommendation of the Joint Committee on Children and Youth Affairs in November 2019 that 'the Government should instruct local authorities to end self-accommodation by families and restrict the practice of one-night-only accommodation for families with children so that it cannot be used on more than two consecutive nights.[80]

In the context of the current pandemic, as the UN Special Rapporteur on the Right to Adequate Housing has noted, 'a lack of access to adequate housing is a potential death sentence for people living in homelessness and puts the broader population at continued risk.' In light of this, the Special Rapporteur advised that states must 'immediately provide accommodation to all homeless people living 'rough' or on the streets with a view to transitioning them to permanent housing so that they do not return to a situation of homelessness once the pandemic is over.[81]

The DHRE reports its 'self-accommodation team has negotiated considerable reductions in commercial hotel room rates and are also concentrating on moving families from hotels to self-contained accommodation (if long term housing is not an immediate option).'[82] The DRHE further reports that significant progress has also been made in reducing the number of families self-accommodating in hotels. Such progress is welcome; particular focus and priority should be given to vulnerable families of ethnic minority status.

Family hub homeless provision

The third and final form of emergency accommodation provision for those presenting as homeless from minority groups considered here is family hub accommodation. This form is generally available when the homeless household includes dependent minor children. The provision of family hubs is a priority policy of the Department of Housing, highlighted in its *Rebuilding Ireland Action Plan*.[83] The stated aim in the Action Plan of 'family hubs' is to provide a form of emergency accommodation that offers greater stability for homeless families, facilitates more coordinated needs assessment and support planning, including on-site access to required services (such as welfare, health and housing services), and provides appropriate family supports and surroundings.[84]

MLRC shares concerns over the suitability of family hubs as congregated settings that risk institutionalising homelessness.[85] Notwithstanding these concerns, MLRC clients have generally seen family hubs as a 'least worst' form of emergency accommodation that is generally preferable to hotels or B&B accommodation. Similar to the preceding forms of temporary accommodation, there are no clear criteria prescribing when homeless families should be provided with family hub accommodation.

In the casework experience of MLRC, families from minority groups (often with limited literacy competences and language skills) are particularly disadvantaged in advocating for placement within a family hub, and thus are at a greater likelihood of being overlooked for such provision.[86] Additionally, such hubs are usually configured for relatively small family sizes, and so minority groups with larger families are placed at a pronounced disadvantage.[87]

For reasons highlighted in the preceding sections, ethnic minority groups, such as non-Irish nationals and ethnic minority Irish nationals including Travellers, face particular barriers to accessing the social housing list. While the housing authority has a minimum of 12 weeks to assess and determine a social housing application, this can be extended up to a maximum period of 26 weeks. As evidenced in a recent High Court case, there are frequently long delays in finally determining social housing applications from such applicants.[88] This potentially becomes an issue in accessing adequate homeless accommodation when the homeless assessment is erroneously linked to the social housing assessment.

When engaging on individual cases, MLRC has in some instances been advised orally by housing authorities that an applicant may be afforded a lesser form of one night only emergency accommodation provision until he or she is on the social housing list. More recently and in the context of the pandemic, MLRC has seen refusals of emergency accommodation on the basis that the applicant does not meet the criteria of the social housing assessment, in particular, the local connection test. There is however no legal basis for conflating the tests for social housing provision and for emergency accommodation.[89] These refusals have placed ethnic minority families in very precarious positions and at risk of rough sleeping.

CASE STUDY

MLRC recently assisted a homeless family being denied access to emergency accommodation. The family were members of the Roma community and had recently arrived in the State to pursue employment here. They sought access to emergency accommodation within their first three months in Ireland. The local authority to whom the request was made for emergency accommodation denied the family access to emergency accommodation on the basis that they did not have a local connection to the authority's functional area. The request for emergency accommodation was made to this specific local authority as the father of the family worked within the authority's functional area and the family were seeking to make an application for social housing supports with this local authority. MLRC highlighted to the local authority that under Section 2 of the Housing Act 1988, there is no local connection test in defining homelessness and that they were potentially unlawfully conflagrating the tests for social housing supports and access to emergency accommodation. Following MLRC's engagement with the local authority, the family were placed in emergency accommodation for a two-week provisional period, pending the completion of a homeless assessment.

Overall, in MLRC's experience, minority groups are significantly disadvantaged in their ability to advocate for a change in the emergency accommodation provision due to language barriers and challenges accessing advocacy advice and support, compounded by the insecurity of their day-to-day situation. They are also disadvantaged in progressing their social housing applications and may rely heavily on advocacy services that are not accessible (easily or at all), particularly in the context of Covid-19 restrictions. Practical and logistical obstacles therefore compound the legal barriers to accessing homeless services.

Given the scale of the issues highlighted in this section, it is arguable that housing authorities are failing to provide appropriate emergency accommodation for minority groups. Clarity is needed in relation to procedures and practises applied in the homeless assessment. The criteria applied to determine what form of emergency accommodation homeless persons receive must be clearly regulated, be transparent, and be assessed as the best suited to meet the needs of that individual family or person.

The position of minority applicants would be improved if the recommendations of the Joint Committee on Housing, Planning and Local Government were fully implemented, in particular that 'the Housing Act 1988 be amended [or regulations passed] to place a limit on the time that families and vulnerable individuals may spend in homeless emergency accommodation.'[90] It is essential that related recommendations in relation to cessation of self-accommodation and one night only emergency accommodation provision be acted on and that the recommendations, if implemented, be maintained.[91] [92] In this manner, barriers to minority groups accessing housing services when they are in most urgent need could be significantly reduced.

There is considerable scope for the issuing of regulations under Section 10 of the Housing Act 1988. Such regulations could address concerns in relation to the suitability of emergency accommodation provided to minority and/or vulnerable applicants.

The absence of data with respect of the profiles of those minority groups accessing homeless services is another noteworthy aspect that could be rectified by proper data collection by housing authorities. Accurate and adequate data would better inform any strategy implemented to improve access to homeless services for minority groups.

THE POTENTIAL OF THE PUBLIC SECTOR EQUALITY AND HUMAN RIGHTS DUTY

This paper has noted several existing barriers for minority groups accessing housing services in Ireland. In this final section, the potential for the Public Sector Equality and Human Rights Duty (PSEHRD) to contribute towards making housing services more accessible to minority groups will be considered.

S42(1) of the Irish Human Rights and Equality Commission Act 2014 imposes an obligation on public bodies to 'in the performance of its functions, have regard to the need to –

(a) eliminate discrimination,

(b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services and,

(c) protect the human rights of members, staff, and the persons to whom it provides services.'[93]

This duty applies to all public bodies, including, for present purposes, the Department of Housing, Planning and Local Government, councils, housing authorities, and also private parties to which such bodies delegate responsibility, such as B&Bs and hostels funded to provide emergency accommodation.[94] The objective of the duty is to 'mainstream' human rights and equality considerations within public bodies, so that human rights and equality protection can be provided without the need for litigation.[95]

In addition to the ongoing functional duty to 'have regard' under s.42(1), there is also an obligation, under S42(2), on public bodies to complete a three-stage review of their functions for the purposes of giving effect to the duty under s.42(1). First, the body must **assess what equality or human rights issues may arise** from the performance of their public function. For the human rights assessment, the public body should assess how its performance complies with the Constitution, the European Convention of Human Rights ("the Convention"), and other incorporated international human rights treaties.[96] The Constitution and Convention guarantees of dignity and non-discrimination, amongst others, should be considered at this stage.[97] For equality purposes, the assessment should consider how the public body's performance affects groups that share a protected characteristic under the Equal Status Act 2000, including, for present purposes, race, and membership of the Traveller community. Second, public bodies are to **set out the policies, plans and actions in place or proposed** to address the issues that were identified during the assessment. Actions to address such issues are to be included within the body's strategic plan or annual report, which implicates the third stage: the duty to **report**.

Efforts to further the elimination of discrimination and promotion of equality and human rights should, therefore, be incorporated into the strategic and annual planning of public bodies. The Irish Human Rights

and Equality Commission (IHREC) is empowered under S42(5) to invite public bodies they consider to be in default of their duty to carry out a review or implement an action plan to advance the equality and human rights compliance of its performance.[98] The IHREC is empowered to (and where requested by the Minister must) review the operation of the public sector duty by such a public body.[99] It is through this process that enforcement of the PSEHRD is expected to be policed.

In April 2018, IHREC invited Dublin's four local authorities to carry out Equality Reviews specifically focused on non-Irish nationals' access to social housing and homeless services.[100] According to the IHREC, the completed Equality Reviews raised serious concerns about the application of Circular 41/2012, and stated that, due to equality concerns, the practice of requiring people applying for social housing to reside in a housing authority for one year on top of the statutory criteria for eligibility has ceased.[101] The IHREC's concerns, arising from these Equality Reviews, as to the implementation of the Circular amounting to discrimination on the ground of race, led the Commission to write to the Department of Housing, Planning, and Local Government.[102]

The fact that this resulted from undertaking a review of the compliance of these housing authorities' compliance with equality standards demonstrates the potential of the PSEHRD, if performed in good faith, to draw attention to how minority groups can be affected by public bodies, and its potential to positively lead to a correction of these adverse effects.

In 2019, IHREC 'worked closely with the Department of Housing, Planning and Local Government to include the Public Sector Duty into their Guidelines for Local Authorities in the Preparation of Corporate Plans 2019- 2024.'[103] Also in 2019, in the context of consistent underspend of funds for Traveller accommodation by local authorities, IHREC invited every local authority in the State to conduct an equality review specifically in relation to provision of Traveller accommodation by each local authority. As noted by Crowley:

'Twenty-one (68%) local authorities have published their corporate plans for the next four to five-year period, four in draft form and one adopted but not published. Nineteen of the twenty-one local authorities make commitments to implementing the Duty (90%) [...] While this is significant, no local authority appears to have actually implemented the Duty, with none pointing to a completed assessment of equality and human rights issues in relation to their functions. While significant commitment to the Duty is evident, local authorities are at an early stage in its implementation. The commitment established by most of these twenty-one local authorities is general in nature, focused on a broad commitment to implement the requirements to assess, address, and report.'[104]

Great Britain and Northern Ireland introduced public sector equality duties over 20 years ago, and provide illustrative examples of the progressive impact that positive sector equality duties can have.[105] The duties differ from those in Ireland in both the requirement to have 'due regard' as opposed to simply 'regard' as in Ireland, and in the objectives which the duty seeks to pursue. Nevertheless, a consideration of their public sector equality duties and the role of those duties in bringing about positive change for minority groups with respect to housing, can inform the comparatively underutilised PSEHRD in Ireland.

Where self-regulation is unforthcoming, the public sector equality duty is enforced either statutorily through the Equality and Human Rights Committee (the British equivalent to the IHREC),[106] or through a judicial review application made either by a party to the case with sufficient interest or the the Equality and Human Rights Committee. As Sigafoos has noted, 'it is the judicial review route, rather than the statutory powers, that has been used on a number of occasions and this has allowed the courts to 'flesh out' what the duty entails and in particular what the authority, or other body exercising public functions, must do in order to be found to have due regard to its obligations.'[107]

It was found in Great Britain that 'formal enforcement may not be used very often, but the potential for its use is necessary for the more indirect forms of regulation [such as human rights commissions] to operate effectively.'[108]

Among the noteworthy developments in these jurisdictions is that, alongside bodies similar to IHREC that are empowered to review the compliance of public bodies,[109] it is also possible to seek judicial review of public bodies where it is arguable than there has been insufficient regard for equality.[110] This development has made 'the PSED [...] an extremely valuable tool in the toolkit of public lawyers and radically altered the parameters of 'discrimination law' in British law.[111]

The public sector equality duty has been used in England to successfully seek judicial review of social housing allocation policies on the ground that insufficient regard was paid to the impact of its housing policy on members of a protected group.[112] While most frequently engaged where insufficient regard is paid to disabled groups, housing policies have also been successfully challenged where insufficient regard has been paid to ethnic minorities.[113]

In a similar way, future actions by public bodies in Ireland that fail to have regard to the equality and human rights considerations contained in S42 of the Irish Human Rights and Equality Commission Act could be declared unlawful.[114] By this means, the enforceability of the duty could be further explored and increased, ensuring the existing housing policies or practises do not discriminate or adversely affect human rights.

It is expected that the PSEHRD will become of increasing significance to human rights and equality protections in Ireland in coming years. Where local authorities are presented with applications for social housing from applicants without a local connection to the area, for instance, they need to to be mindful of the equality and human rights implications of their decision in exercising their discretion in these cases.

Furthermore, as Crosscare has observed, the PSEHRD has the potential to hasten the rollout of translation services to advance the promotion of equality of opportunity.[115]

A likely precondition for changes occurring is some threat of enforcement, whether through IHREC enforcement mechanism, judicial review, or both. By the compliance of public bodies such as housing authorities, local authorities more generally, and government departments with the PSEHRD, the interests of minority ethnic groups in accessing housing services should take on an amplified importance within administrative decision-making. It is anticipated that this route will be one method of removing the barriers faced by these groups in accessing key housing services.

CONCLUSION AND RECOMMENDATIONS

This paper has highlighted several serious barriers that currently exist for minority ethnic groups accessing housing services, whether social housing or emergency accommodation. Examples have been shown to illustrate the effects these barriers have on members of minority groups, and recommendations for lifting these barriers have been proposed.

The potential for the public sector equality and human rights duty to emerge as a significant feature of administrative decision-making has been highlighted as a particularly promising means by which discrimination within housing provision can be addressed in the future. It is hoped that, if proposals similar to those presented in this paper are implemented, the barriers shown to currently be in the way of minority groups accessing the services to which they are entitled will be removed and a fairer housing scheme for all will develop.

The recommendations, in summary form, are as follows:

In relation to Circular 41/2012:

1. Application of the Circular as a 'guidance only' document by housing authorities, underpinned by proper training for the relevant decision-makers. This is needed as the Circular lacks the legal certainty of legislation.

2. If the Circular remains in place it must be updated to ensure that it accurately reflects the relevant changes in Irish immigration law, such as the European Communities (Free Movement of Persons) Regulations S.I. 2015/548.

In relation to the 'normal residency' and 'local connection' requirements within social housing provision:

1. The 'local connection test' used as part of the social housing supports application be clearly and consistently treated by housing authorities as discretionary, rather than conclusive, so as to prevent potentially unlawful discrimination against minority groups, particularly those who have recently arrived in Ireland or those who have a nomadic culture.

2. Housing authorities should be issued with guidance on the proper exercising of their discretion to conduct an assessment under the Social Housing Assessment Regulations 2011.

In relation to the 'alternative accommodation' requirement within social housing provision:

1. Appropriate and proportionate application of Regulation 22 of the Social Housing Assessment Regulations 2011 by housing authorities, particularly in the area of property ownership abroad.

2. An ending by housing authorities of requesting minority applicants for burdensome 'affidavits' in relation to property ownership abroad, whose evidential and probative value is unclear.

In relation to issues with emergency accommodation:

1. Collation of reliable data in relation to minority groups and their access to various forms of emergency accommodation.

2. Issuing of Regulations by the Minister of Housing, Planning and Local Government, under Section 10(11)(a) of the Housing Act 1988, specifying and restricting the type of emergency accommodation that individuals and families may be accommodated in, ensuring therefore its suitability and adequacy. This will ensure that the criteria applied to determine what form of emergency accommodation homeless persons received is clearly regulated and transparent.

3. Amendment to Section 10 of the Housing Act 1988 (or regulations made under Section 10(11)(a)) to place a limit on the time that families and vulnerable individuals may spend in emergency homeless accommodation.

4. In accordance with the recommendations of the Oireachtas' Joint Committee on Housing, Planning and Local Government's report on Family and Child Homelessness (November 2019) that the practice of one night only emergency accommodation and self-accommodation is ended and remains so.

5. Transparency in relation to policies applied in relation to homeless assessment and homeless accommodation provision to all homeless persons, including minority groups.

In relation to the potential of the Public Sector Equality and Human Rights Duty:

1. Housing authorities to fully implement the PSEHRD by having due regard to the need to eliminate discrimination, promoting equality and protecting the human rights of those who access their services.

2. Housing authorities complete the three-stage review of their functions under Section 42(2) of the Irish Human Rights and Equality Commission Act 2014.

ENDNOTES

1. Focus Ireland, 'Latest Figures on Homelessness in Ireland' <https://www.focusireland.ie/resource-hub/latest-figures-homelessness-ireland> [accessed 12 October 2020].
2. Tim O'Brien, 'Housing crisis to continue to get worse until 2023, Oireachtas told' (*The Irish Times* (12 June 2019) <https://www.irishtimes.com/news/social-affairs/housing-crisis-to-continue-to-get-worse-until-2023-oireachtas-told-1.3923682> [accessed 12 October 2020].
3. https://www.gov.ie/en/publication/73d33-homeless-report-november-2020/ (accessed 19 January 2020).
4. Mercy Law Resource Centre, 'Report on the Lived Experiences of Homeless Families' (December 2019). <https://mercylaw.ie/wp-content/uploads/2019/12/MLRC-Child-and-Family-Homelessness-Report-5.pdf> (accessed 25 July 2020) Also see Mercy Law Resource Centre, 'Statement to the Joint Oireachtas Committee on Housing Planning and Local Government in respect of family homelessness' (June 2019). <https://mercylaw.ie/wp-content/uploads/2019/06/mlrc-statement-to-the-joint-committee-on-housing-planning-and-local-government-family-child-homelessness-07.06.19-1.pdf> (accessed 25 July 2020).
5. Rafelle Grotti, Helen Russel, Éamonn Fahey and Bertrand Maître, 'Discrimination and Inequality in Housing in Ireland.' *Irish Human Rights and Equality Commission* (June 2018) <https://www.ihrec.ie/app/uploads/2018/06/Discrimination-and-Inequality-in-Housing-in-Ireland..pdf> (accessed 12 October 2020).
6. Ibid, 36 and 53.
7. Ibid, 36.
8. https://www.homelessdublin.ie/content/files/A-report-on-the-2016-and-2017-families-who-experienced-homelessness-in-the-Dublin-Region.pdf (accessed 12 October 2020).
9. Census of Population 2016 – Profile 7 Migration and Diversity <https://www.cso.ie/en/releasesandpublications/ep/p-cp7md/p7md/p7anii/> accessed 4 December 2020.
10. https://www.cso.ie/en/releasesandpublications/ep/p-cp5hpi/cp5hpi/ (accessed 12 October 2020).
11. https://www.focusireland.ie/non-irish-homelessness-dublin/ (accessed 12 October 2020) .
12. Rafelle Grotti, Helen Russel, Éamonn Fahey and Bertrand Maître, 'Discrimination and Inequality in Housing in Ireland.' Irish Human Rights and Equality Commission (June 2018) <https://www.ihrec.ie/app/uploads/2018/06/Discrimination-and-Inequality-in-Housing-in-Ireland..pdf> (accessed 12 October 2020).
13. Pavee Point Traveller and Roma Centre and Department of Justice and Equality (2018). *Roma in Ireland: A National Needs Assessment* <https://www.paveepoint.ie/wp-content/uploads/2015/04/RNA-PDF.pdf> (accessed 25 July 2020) 90.
14. Department of Environment, Community and Local Government, 'Housing Circular 41/2012: Access to social housing supports for non-Irish national – including clarification re Stamp 4 holders' (December 2012) <https://www.focusireland.ie/wp-content/uploads/2016/03/FileDownLoad29412en.pdf> [accessed 28 July 2019].
15. Then the 'Department of the Environment, Community and Local Government.'
16. Circular 41/2012 para [1].
17. Housing (Miscellaneous Provisions) Act 2009, s19 – 20.
18. Social Housing Assessment Regulations 2011, SI 84/2011.
19. Circular 41/2012 paras [2], [4].
20. Circular 41/2012 para [5].
21. Circular 41/2012 para [7.1].
22. Circular 41/2012 para [7.2].
23. Circular 41/2012 para [7.3].
24. Circular 41/2012 para [8].
25. Circular 41/2012 para [7.4.2].
26. Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking' <http://www.inis.gov.ie/en/INIS/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf/Files/Administrative%20Immigration%20Arrangements%20for%20the%20Protection%20of%20Victims%20of%20Human%20Trafficking%20-%20March%202011.pdf> (accessed 29 July 2019).

27. Ibid [13] is 'guided by the provisions of SI 656 of 2006, European Communities (Free Movement of Persons) (No. 2) Regulations 2006.' These Regulations were revoked by European Communities (Free Movement of Persons) Regulations SI 2015/548.

28. Council Directive (EC) 2004/38 on the rights of citizens of the Union and their family members to move and reside freely within the territory of the Member States [2004] OJ L158/77 (Citizen's Rights Directive) art 24.

29. Citizen's Rights Directive art 7(1)(d).

30. Citizen's Rights Directive art 7(1)(c). In *Teixiera v Lambeth LBJ* C-480/08, the CJEU held that an EU national who is employed in another Member State in which their child is in education may claim, in the capacity of primary carer for that child, a right of residence in the host Member State for the duration of the child's education, even where the parent has not sufficient resources as to avoid becoming a burden on the social assistance system of that Member State.

31. See Gerard Hogan, David Gwynn Morgan, and Paul Daly, *Administrative Law in Ireland* (5th edn, Round Hall 2018) 2-180.

32. The Circular was published by Ruth Murray of the Social Housing Section of the Ministry for the Environment, Community, and Local Government.

33. Further details of this and other cases are detailed in Mercy Law Resource Centre Blog "Right to reside' restrictions on accessing social housing – Circular 41/2012 outlining the test for right to reside is overly broad and its strict application is resulting in unfair and potentially unlawful decisions.' (30 September 2016) <https://mercylaw.ie/right-to-reside-restrictions-on-accessing-social-housing-circular-412012-outlining-the-test-for-right-to-reside-is-overly-broad-and-its-strict-application-by-local-authori/> (accessed 11 November 2020).

34. The State (Kershaw) v Eastern Health Board [1985] ILRM 235.

35. This has been recently affirmed by McGrath J in *VH v South Dublin County Council* [2019] IEHC 250 at [69]: 'The [Social Housing Assessment] Regulations therefore imposes an obligation on the local authority to make a determination.'

36. See n 33.

37. See n 4.

38. See detail on previous cases in Mercy Law Resource Centre Blog, 'MLRC client, EU citizen, given entry onto housing list – local authority initially refused on basis that applicant did not have a record of having 52 weeks employment in Ireland – local authority overturned initial decision after submissions by MLRC for client. (17 October 2014) <https://mercylaw.ie/mlrc-client-eu-citizen-given-entry-onto-housing-list-local-authority-initially-refused-on-basis-that-applicant-did-not-have-a-record-of-having-52-weeks-employment-in-ireland-loca/> (accessed 29 July 2019).

39. The Irish Human Rights and Equality Commission found that 'the application of Housing Circular 41/201 [...] has also been reported as precluding many Roma people from accessing a range of housing supports, including homeless supports. For Roma who do not meet the requirements relating to employment, a housing assessment cannot be completed.' IHREC, 'Ireland and the Convention on the Elimination of Racial Discrimination: Submission to the UN Committee on the Elimination of Racial Discrimination on Ireland's Combined 5th to 9th Report,' October 2019. <https://www.ihrec.ie/app/uploads/2019/11/IHREC_CERD_UN_Submission_Oct_19.pdf> (accessed 25 July 2020) Refusing state support and thereby exposing applicants to the risk of homelessness in this way potentially infringes Article 3 of the European Convention on Human Rights per *R (Limbuela) v Secretary of State for the Home Department* [2005] UKHL 66.

40. Housing (Miscellaneous Provisions) Act 2009, s19 – 20.

41. Mercy Law Resource Centre Blog, 'Vulnerable Client Overcomes Barriers to Accessing the Housing List with MLRC Intervention' (1 July 2019) <https://mercylaw.ie/vulnerable-client-overcomes-barriers-to-accessing-the-housing-list-with-mlrc-intervention/> (accessed 8 May 2020).

42. S10 of the Housing Act 1992 and S19 of the Criminal Justice (Public Order) Act 1994. See Traveller Accommodation Expert Review: <https://rebuildingireland.ie/news/minister-english-publishes-the-report-of-the-expert-review-group-on-traveller-accommodation/> (accessed 25 July 2020), at 6.2.5.

43. According to the European Observatory on Homelessness report 'Local Connection Rules and Access to Homelessness Services in Europe' (2015) Austria, Bulgaria, France, Germany, Greece, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Slovakia, and the United Kingdom. <https://www.feantsaresearch.org/download/feantsa-studies_05_web7437249621511918755.pdf> (accessed 29 July 2019) 52 – 53.

44. Ibid. See also: OECD 'Key Characteristics of Social Rental Housing' <https://www.oecd.org/els/family/PH4-3-Characteristics-of-social-rental-housing.pdf>(accessed 29 July 2019).

45. See Complaint No. 86/2012 FEANTSA v The Netherlands [65] See also Michel Planjie and Mathjis Tuynman, 'Homelessness Policy in the Netherlands: Nationwide Access to Shelter Under Pressure from Local Connection Criteria?' (2013) 7:2 *European Journal of Homelessness* 183.

46. As the European Observatory on Homelessness notes, local connection tests mean 'homeless people who are geographically mobile are blocked from applying for social housing.' See n 49, 54.

47. Grotti et al note: 'The 2014 equality module showed Travellers were 22 times more likely than other White Irish respondents to report that they had been discriminated against in access to housing in the preceding two years.' Grotti et al, 36. The Equality and Human Rights Commission in the UK came to a similar conclusion in relation to the local connection test in that jurisdiction, finding that the test 'had the potential, unintentionally, to discriminate against migrants and settled ethnic minorities who may have few relations in the UK or a shorter period of settlement.' Jill Rutter and Maria Loterre, 'Social housing allocation and immigrant communities' *Equality and Human Rights Commission Research Report 4* (2009) 36.

48. Equal Status Act, 2000 ss3(2)(h) and 3(2)(i).

49. Equal Status Act, 2000 s3(1). To prove indirect discrimination however may 'require statistical analysis to assess whether a provision gives rise to a particular disadvantage in respect of a protected group.' Stokes v Clonmel [2015] 2 IR 509, 555.

50. *Fitzgerald v Minister for Community, Equality and Gaeltacht Affairs* [2011] IEHC 180 [10] quoting approvingly Lord Fraser in Mandla v Dowell-Lee [1983] AC 548, 562.

51. Equal Status Act, 2000 (as amended) s6(1)(c).

52. Equal Status Act, 2000 (as amended) s6(1A)(a).

53. Equal Status Act, 2000 (as amended) s14(1)(a)(i).

54. It further bears noting that Circular 41/2012 is not an 'enactment' for the purposes of the Equal Status Act, 2000 either, as it is not law. Thus, inasmuch as the application of the Circular may constitute direct discrimination by treating applicants less favourably on the basis of their race (due to their ethnic origin being overseas), discrimination on this basis may also be unlawful under this Act.

55. *R (on the application of Ward & Ors) v London Borough of Hillingdon* [2019] EWCA Civ 692.

56. Interpretation Act 2005 s2(1).

57. *Re Article 26 and the Employment Equality Bill 1996* [1997] 2 IR 321; *Murphy v Ireland* [2014] IESC 19.

58. *Fitzgerald v Tipperary North Riding County Council* [2009] IEHC 211; See also *Doherty v South Dublin County Council* [2007] IEHC 4.

59. *NHV v Minister for Justice and Equality* [2017] IESC 82.

60. Fleming v Ireland [2013] IESC 19. It is arguable that Fleming is a case of secondary discrimination, not indirect discrimination – see O'Donnell J's explanation of the difference between these two concepts in *Michael v Min for Social Protection* [2019] IESC 82.

61. *R v An tArd Chláraitheoir* [2013] IEHC 91.

62. Reg.3(1) and 22 of Social Housing Assessment Regulations 2011 (SI 84/2011).

63. The Housing (Miscellaneous Provisions) Act 2014, s49 (2) (e).

64. *Zabiello v South Dublin County Council* [2019] IEHC 863 [34].

65. Housing Act, 1988 s2.

66. Housing Act, 1988, s10.

67. Housing Act, 1988, s10.

68. See both the Report on the Impact of Homelessness on Children from the Joint Committee on Children and Youth Affairs, and the Report on Family and Child Homelessness from the Joint Committee on Housing Planning and Local Government, and the submissions of the Mercy Law Resource Centre to these Committees.

69. Joint Committee on Housing, Planning and Local Government report (2019) https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/joint_committee_on_housing_planning_and_local_government/reports/2019/2019-11-14_report-on-family-and-child-homelessness_en.pdf.

70. As IHREC noted 'Traveller households have on average 5.3 persons per household in comparison to 4.1 persons per household for the general population [with] one in four Traveller households have six or more people living there in comparison to one in twenty households for the general population.' Irish Human Rights and Equality Commission, 'Comments on Ireland's 17th National Report on the Implementation of the European Social Charter,' <https://www.ihrec.ie/app/uploads/2020/06/Comments-on-Irelands-17th-National-Report-on-the-Implementation-of-the-European-Social-Charter-June-2020-v2.pdf> (accessed 25 July 2020) see also n 45.

71. As the DRHE report noted, 'the provision of social distancing and other Public Health guidelines meant that most hostels in the system required to be "thinned out" urgently and a total of 288 beds had to be vacated with alternative emergency accommodation sourced. In addition, three existing hostels were closed [...] representing 149 beds and alternative emergency accommodation had to be also sourced for them. (Overall 437 new beds had to be sourced).' <https://www.homelessdublin.ie/content/files/Cllrs-Covid-19-Update-April-15-2020.pdf≥ (accessed 25 July 2020).

72. Mercy Law Resource Centre, 'Statement to the Joint Committee on Housing, Planning, and Local Government' (7 June 2019) 4.2 <https://mercylaw.ie//wp-content/uploads/2019/06/mlrc-statement-to-the-joint-committee-on-housing-planning-and-local-government-family-child-homelessness-07.06.19-1.pdf> (accessed 29 July 2019).

73. As RTÉ reported last year: 'although Travellers make up just around 1% of the entire population, they comprise 8% of adults living in emergency accommodation and 12% of children. Outside of Dublin, 25% of all homeless children are Travellers.' RTÉ: Travellers: Lives on the Fringes (26 Sept 2019). <https://www.rte.ie/news/investigations-unit/2018/1217/1017612-travellers-in-local-authorities-data/> (accessed 25 July 2020). The European Committee of Social Rights in *European Roma Rights Centre* (ERRC) v Ireland Complaint No. 100/2013 found Ireland in violation of Article 16 of the European Social Charter due to the insufficient provision of accommodation for Travellers.

74. As CrossCare noted, 'the need for Department of Employment Affairs and Social Protection interpreter services is evidentially higher than reported.' CrossCare, 'Do you Speak English? A Study on Access to Interpreter Services in Public Social Welfare Offices in Ireland' (December 2018) <https://www.migrantproject.ie/wp-content/uploads/2018/12/Do-You-Speak-English.-A-Study-on-Access-to-Public-Social-Welfare-Offices-in-Ireland.-Crosscare.2018.pdf> (accessed 8 May 2020) 30.

75. As noted in the MLRC 'Report on the Lived Experiences of Homeless Families'Since 2015, MLRC has frequently engaged with families who have been refused emergency accommodation and who are therefore roofless, with their only options to sleep in parks, cars and uninhabitable caravans, chronically overcrowded or unsafe conditions, or Garda stations. These include families with infants and with children who have special needs. MLRC has seen first-hand the devastating impact of improper refusals of emergency accommodation on parents and their children. See n6, 9. See also Jack Power, Half of families sleeping in Garda stations are Travellers or Romanians' (13 August 2018) <https://www.irishtimes.com/news/social-affairs/half-of-families-sleeping-in-garda-stations-are-travellers-or-romanian-1.3594025> (accessed 25 July 2020).

76. Government of Ireland, Rebuilding Ireland: Action Plan for Housing and Homelessness (2016) 34 <http://rebuildingireland.ie/wp-content/uploads/2016/07/Rebuilding-Ireland_Action-Plan.pdf" Rebuilding-Ireland_Action-Plan.pdf>.

77. Equal Status Act 2000 (as amended) s6(1)(c).

78. See n 4.

79. Dáil Éireann, 'Seanad Éireann debate' (30 January 2019) available at <http://oireachtas.ie/en/debates/debate/seanad/2019-01-30/12> accessed 29 July 2019.

80. See n 68.

81. UN Special Rapporteur on the right to adequate housing, 'Covid 19 Guidance Note: Protecting those Living in Homelessness'< https://www.ohchr.org/Documents/Issues/Housing/SR_housing_COVID-19_guidance_homeless.pdf> (accessed 25 July 2020).

82. see n 71.

83. See n 76.

84. See n 68.

85. Ombudsman for Children, *No Place Like Home; Children's views and experiences of living in Family Hubs'* (April 2019) available at <https://www.oco.ie/app/uploads/2019/04/No-Place-Like-Home.pdf> (accessed 29 July 2019); IHREC, 'The provision of emergency accommodation to families experiencing homelessness, p.5 (IHREC, July 2017) available at <https://www.ihrec.ie/app/uploads/2017/07/The-provision-of-emergency-accommodation-to-families-experiencing-homelessness.pdf> accessed (29 July 2019).

86. As the Values Lab report commented, 'Language diversity is not accommodated [in housing or homeless provision] with interpretation or translation'. also Values Lab Irish Homeless Policy Group, 'Assessment of Equality and Human Rights Issues for Minority Families Experiencing Homeless and Housing Insecurity' (accessed 18 February 2020) 3.

87. As the Traveller Accommodation Expert Review found, 'more than one in four Irish Traveller households had six or more persons according to Census 2016, compared with fewer than one in twenty households in the State overall.' n45 , at 7.

88. Regulation 12, Social Housing Assessment Regulations 2011. *VH v South Dublin County Council* [2020] IEHC 20.

89. However, there is a reference to alternative accommodation in the definition of homelessness in s.2 of the Housing Act 1988, and so some leeway was afforded to the analysis undertaken by housing authorities in *Middleton v Carlow County Council*. [2017] IEHC 528.

90. See n 69.

91. See n 69.

92. Dublin Regional Homeless Executive, 'Homeless Action Plan Framework' for Dublin 2019 – 2021 Report No 135/21016, <https://www.homelessdublin.ie/content/files/Homelessness-Action_Plan-2019-2021.pdf> (accessed 25 July 2020) at 2.5.

93. Irish Human Rights and Equality Commission Act 2014, s42(1).

94. Irish Human Rights and Equality Commission Act 2014, s2(1).

95. Irish Human Rights and Equality Commission, 'Implementing the Public Sector Equality and Human Rights Duty' (2019) available at <https://www.ihrec.ie/app/uploads/2019/03/IHREC_Public_Sector_Duty_Final_Eng_WEB.pdf>.

96. Irish Human Rights and Equality Commission Act 2014, s29.

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97. Article 40.1 of the Constitution of Ireland 1937 and Article 14 of the European Convention of Human Rights 1950.

98. Irish Human Rights and Equality Commission Act 2014, s42(5).

99. Irish Human Rights and Equality Commission Act 2014, s42(6).

100. Irish Human Rights and Equality Commission Act 2014, s32.

101. Irish Human Rights and Equality Commission Annual Report 2018 (2019) 27 – 29 < https://www.ihrec.ie/app/uploads/2019/06/IHREC_2018_AR_English_Digital.pdf> (accessed 29 July 2019). The equality reviews produced by the local authorities are not at present available.

102. Ibid, 29.

103. Irish Human Rights and Equality Commission Annual Report 2019 (2020) <https://www.ihrec.ie/app/uploads/2020/07/IHREC-Annual-Report-2019-English-version.pdf> (accessed 25 July 2020).

104. Niall Crowley, 'Ensuring a Home for All; Using the Public Sector Duty to Improve Access to Housing and Homelessness Supports for Migrant Households: Report to the Irish Homeless Policy Group.' *Values Lab*, 16.

105. Equality Act 2010, s149 and the Northern Ireland Act 1998, s75 respectively. See Christopher McCrudden, 'Mainstreaming and Human Rights' in Colin Harvey (ed) *Human Rights in the Community: Rights as Agents for Change* (Hart 2005) 9; Aileen McColgan, 'Litigating the Public Sector Equality Duty: The Story So Far' (2015) 35:3 OJLS 453. Note however these duties are to mainstream *equality*, and not *human rights* compliance, within public bodies.

106. Equality Act 2006 s30(1). Where the EHRC suspects an authority is not complying with the PSED, it has a power to conduct an assessment and, if necessary, serve a compliance notice on the authority requiring it to set out in writing setps it proposes to take to address this non-compliance.

107. Jennifer Sigafoos, 'Using Equality Legislation as a Sword' (2016) 16:2 *International Journal of Discrimination and the Law* 66, 69.

108. Simonetta Manfredi, Lucy Vickers and Kate Clayton-Hathway, 'The Public Sector Equality Duty: Enforcing Equality Through Second Generation Regulation' (2018) 47:3 *Industrial Law Journal* 365, 396. McColgan's recent analysis of the PSED case law found that challenges to funding cuts had a nearly 40% success rate, which she classified as 'an impressive figure in view of the general judicial reticence when it comes to interfering with socio-economic decision making' Aileen McColgan, 'Litigating the Public Sector Equality Duty: The Story So Far' 35:3 (2015) OJLS 453,478. However, as Sigafoos noted, 'the PSED is more useful than the number of cases suggests. If half of the disputes that are resolved early do so in favour of the complainant, then many positive outcomes will not appear in the reported cases.' Ibid, 70.

109. The Equality and Human Rights Commission in Great Britain and the Northern Irish Human Rights Commission in Northern Ireland.

110. *R (Elias) v Secretary of State for Defence* [2006] EWCA 1293; *Bracking v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345. See Jennifer Sigafoos, 'Using Equality Legislation as a Sword' (2016) 16:2 *International Journal of Discrimination and the Law* 66; *Luton Community Housing v Durdana* [2020] EWCA Civ 445.

111. Aileen McColgan, 'Litigating the Public Sector Equality Duty: The Story So Far' 35:3 (2015) OJLS 453, at 456.

112. *London Borough of Hackney v Haque* [2017] EWCA Civ 4; Stephanie Lovegrove, 'A Bridge too Far: The Role of the PSED in Homelessness Cases' (2017) 20:2 *Journal of Housing Law* 30.

113. *R (Baker) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 141; *Isaacs v Secretary of State for Communities and Local Government* [2009] EWHC 557 (Admin) See also *R (Harris) v Haringey LBC* [2011] PTSR 931, in which the Court of Appeal quashed a planning permission that would have been likely to lead to the loss of Latino traders serving the local community. It was held that s71(1)(b) of the Race Relations Act 1976 – the forerunner of s125 of the Equality Act 2010 – required the decision maker to apply the statutory criteria to the specific facts of the case. *R (Harjula) v London Councils* [2011] EWHC 448 (Admin).

114. This could include evictions of Travellers unlawfully residing within a local authority area, as in *Mayor of Bromley v Persons Unknown* [2020] EWCA Civ 12.

115. See n 74.

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