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Vulnerable Childhood, Vulnerable Adulthood: Direct Provision as Aftercare for Aged-Out Separated Children Seeking Asylum in Ireland

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Abstract

Ireland's approach to after-care for 'aged-out' separated children is problematic. Currently, upon reaching the age of 18, most separated young people are moved to 'direct provision', despite the fact that the State can use discretionary powers to allow them to remain in foster care. Direct provision is the system Ireland adopts providing bed and board to asylum seekers, along with a weekly monetary payment. Separated young people in Ireland are in a vulnerable position after ageing out. Entry into the direct provision system, from a legal and social work perspective, is concerning. Utilising direct provision as a 'form of aftercare' emphasises Governmental policy preferences that privilege the migrant status of aged-out separated children, as opposed to viewing this group as young people leaving care. In this article, utilising a cross disciplinary approach, we provide the first systematic exploration of the system of aftercare for aged-out separated children in Ireland. In

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doing so, we posit two core reasons for why the aftercare system for aged-out separated children has developed as it has. First, doing so ensures that the state is consistent with its approach to asylum seekers more generally, in that it seeks to deter persons from claiming asylum in Ireland through utilisation of the direct provision system. Second, while the vulnerability of aged-out separated children is well-documented, the State (and others) ignore this vulnerability and are reluctant to offer additional aftercare supports beyond direct provision. This is due, we argue, to viewing aged-out separated children as having a lesser entitlement to rights than other care leavers, solely based on their migrant status.

Keywords: aftercare, asylum seekers, direct provision, separated children, unaccompanied minors

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Introduction

Separated children can be defined as those children or young people under the age of 18 who are living outside of their country of origin and separated from their legal or customary caregiver (SCEP, 2010). This article, while considering Ireland, and the loss of protection and support for aged-out separated children - separated children who have turned 18 - will be interesting to a pan-European readership in highlighting

the divergence between good practice in caring for separated child asylum applicants in comparison to the treatment they receive when they turn 18. This article provides one of the first legal and social work practice analysis of aftercare provision for aged-out separated children living in Ireland. In analysing the intersections of law and social work practice, we argue that Ireland's approach to aged-out separated children, with such limited civil, political, economic and social rights can only be understood by acknowledging two core factors at play: first, the utilisation of the system of "direct provision" as a deterrence mechanism for limiting asylum claims, which impacts, we argue, even more significantly on aged-out separated children, in comparison to the asylum seeking population more generally. Second, we situate and dissect the State's implicit justification for placing aged-out separated children in direct provision accommodation- that all asylum applicants must be treated equitably. Therefore upon reaching 18 years, the now aged-out separated child must suffer the equity of inequity in dealing with asylum seekers.

Our analysis is contextualised by using data from a qualitative study of the experiences of these children, a study which was conducted by the first author (see Ní Raghallaigh, 2013 and Ní Raghallaigh & Sirriyeh, 2015). This study (henceforth referred to as 'the foster care study') involved qualitative interviews with separated children and young people, foster carers and other key stakeholders. While the majority of the children in this study were in foster care, some had reached eighteen and were living in direct provision. Sixty-nine people took part in total, including 21 children and young people. Twenty-nine separated children under the age of 18 were identified as living in foster care at the time of the study. Permission was sought from social workers to approach these young people to take part in the study and the young people were then

approached, with 17 taking part. Purposive sampling was used to recruit a further 4 young people who had turned 18 and who had experience of living in foster care. The foster carers of all of the young people who participated in the study were invited to take part. Sixteen carers took part in total. Regarding stakeholders, individuals working in the sector were invited to participate in a short telephone interview. The 32 stakeholders who participated included state and private sector social workers and members of non-governmental organisations and advocacy groups. The study received ethical approval from the Ethics Committee in University College Dublin.

Before going on to discuss after-care provision for aged-out separated children, it is important to reflect on the care rights that separated children, those under 18, have within Ireland.

Separated Children in Ireland 1996-2015: Contextual Considerations of Care Policy

From 12,540 separated child asylum applications across the European Union in 2012 to over 88,000 applications in 2015 (Eurostat, 2016), the rights of separated children claiming asylum will continue to pose challenges for all member states within the European Union. These headline figures however mask the inequitable distribution of separated child asylum applicants throughout the EU. Two countries, Sweden and Germany, hosted 56% of all separated child asylum applicants made in the European Union in 2015. By comparison, Ireland has a relatively minor role *vis-à-vis* separated children, yet it presents as an interesting case study in policy and practice terms. Records suggest that the first separated child to arrive independently in Ireland for the

purpose of seeking asylum came in 1996 (Mac Neice and Almirall, 1999). In the Irish context, while not all separated children seek asylum, the majority do so (Quinn et al., 2014; Arnold et al., 2014). The numbers of separated children seeking asylum in Ireland has decreased significantly over the last 15 years, from 1,085 children in 2001 to only 33 applications in 2015 (Eurostat, 2016; ORAC, 2016; Child and Family Agency, 2014). The majority of separated children arriving in Ireland are 16 or 17 years of age (McMahon Report, 2015). Between 2010 and 2015, there were 424 separated children placed in the care of the Child and Family Agency (*Dáil Debates*, 20 April 2016).

While accepting that separated children and aged-out separated children can display significant resilience (Abunimah & Blower, 2010; Ní Raghallaigh & Gilligan, 2010), legal and social vulnerabilities for both cohorts remain. For separated children in Ireland, some of these vulnerabilities have significantly lessened over the last number of years. Until 2011, the majority of separated children lived in unsupervised hostel accommodation (IRC, 2006; Ní Raghallaigh, 2013), with some evidence of exposure to violence, conflict and sexual assault within the hostel and its environs (Abunimah & Blower, 2010). Fifty-eight separated children had gone missing from the care of the HSE from January 2000 to June 2009, without any significant attempts by the State to trace most of these children (OCO, 2009). The huge differences in care provision for separated children as compared with other children in care in Ireland had been criticised as racist by the (former) national assistant director for children and families at the Health Service Executive, the organisation then responsible for the care of separated children (Smyth, 2010). The concern within Ireland (IRC, 2006; Mullally, 2011) about the rights of separated children in State care, together with concerns

expressed by European and international human rights bodies (Committee on the Rights of the Child, 2009), increased pressure on the Irish government to change tack. By 2011, the Department of Children and Youth Affairs had confirmed that the long-standing practice of placing separated children in hostels had ceased (DCYA, 2011). Within the international context, Ireland is now one of only a few countries which primarily uses foster care for separated children (de Ruijter de Wildt et al., 2015). This is not to say that there are not problematic aspects to the care system for separated children.

The vast majority of separated children who are not reunited with family members are brought into 'voluntary care' by the Social Work Team for Separated Children Seeking Asylum (Social Work Team), based in Dublin (McMahon Report, 2015; Child Care Act 1991, s 4 (as amended)).[1] Irish law demands that consent from a parent is necessary in order to use the 'voluntary care' provision (*O'H v Health Services Executive* [2007] 3 IR 117). However, in the case of most separated children, parents are both absent and often uncontactable, yet voluntary care is still utilised. The use of the voluntary care provision means that judicial scrutiny as regards the type, form and duration of the care placement for separated children is largely missing, with inevitable negative impact, we argue, upon aftercare decision-making. Other commentators have also expressed concern about this practice (Arnold and Kelly, 2012). Given the vulnerable nature of separated children, who will be without any legal or social parent, utilising improper legislative powers in order to take the separated child into care, underlines the poor understanding and appreciation of legal obligations upon the Child and Family

[1] There are no teams with this specific remit outside of the capital given that the vast majority of separated children present themselves to the authorities in Dublin.

Agency. At the same time, it has to be acknowledged that the changes to care provision post 2011 for separated children, have been enormously beneficial to them.

The participants in the foster care study, noted the challenges that arose which related to the recruitment of foster families, appropriate matching of children and families, challenges within relationships, cultural misunderstandings between carers and young people and occasional placement breakdown. However, the majority of the young people spoke about feeling included in families and feeling a sense support:

> *Marie, she's so kind you know, she's so caring, loving … She's like my mum. … You can talk to her; you can just say anything … that's what makes me feel like I'm welcomed …*

Like the young people, many carers spoke about the relationships they developed with the foster children:

> *I'm just blessed, I think I am anyway and so does my husband, that …we have the kids, we got the kids we got, because it all just kind of melted in together, became a family very quick.*

Stakeholders welcomed the fact that children were no longer living in institutional settings but were experiencing family life again, usually with individuals who not only cared for them but also encouraged, advocated and guided the young people. So, while the experiences of foster care seemed to be primarily positive, at age 18 the young people became 'care leavers'.

Internationally, evidence suggests that care leavers are at risk of adverse outcomes, including low educational achievement, unemployment, mental health problems and

homelessness (Mayock and Vekic, 2006; Stein, 2006). Aftercare planning and quality aftercare provision is of crucial importance in ensuring best outcomes for care leavers, including separated children (Wade, 2011). Research elsewhere has noted that once the separated child 'ages out', s/he may lose previous supports that had been granted while under 18 (House of Lords, European Union Committee, 2016). It is well recognised at an international level that while in a legal sense childhood may end at 18, most young people continue to need support from significant others well into adulthood. This is likely to be even more the case for care leavers given their vulnerability. Indeed, research in the UK found that amongst separated children, increasing age was associated with increased post-traumatic symptoms (Hodes et al., 2008; House of Lords, European Union Committee, 2016). Yet, Ireland's equity of care approach to all children in care, including separated children, ends once the separated child turns 18 and moves into the system of 'direct provision', thus increasing their vulnerability as care leavers.

Direct Provision as Aftercare for Aged-Out Separated Children

'Direct provision' is the phrase used to describe the system Ireland utilises to provide minimum support to those claiming refugee or other protection status in Ireland. An aged-out separated child will leave foster care and be dispersed to one of thirty-five accommodation centres located throughout Ireland (RIA, 2016). These accommodation centres can often be in rural locations, with limited access to social

outlets and state services. For over 16 years, the system of direct provision for asylum seekers has existed on an extra-legislative basis (Thornton, 2016). Legislatively prohibited from seeking or entering employment, for the duration of their asylum claim (International Protection Act 2015, s 16(3)(b)), asylum seekers are provided with bed and board, along with a weekly payment, direct provision allowance of €19.10 per week, with generally no entitlement to any other form of monetary supports (Social Welfare and Pensions (No. 2) Act 2009, s 15). The non-legislative and discretionary nature of the direct provision system has survived a human rights legal challenge before the courts (Thornton, 2015b). The harm caused by the direct provision system has been highlighted by asylum seekers, in numerous reports by international bodies, NGO's and academics (Reid and Thornton, 2014). These reports and testimony suggest that the system has a detrimental impact on mental and physical health and on family life, that it impedes integration, that children's development is impaired, that child protection issues arise because of the nature of the accommodation, and that the human rights of individuals living within the system are violated (Arnold, 2012; Ní Raghallaigh et al. 2016).

In Ireland, a discretionary system of aftercare for those leaving care has been in place since 1991 (Child Care Act 1991), although it did not become formally operationalised until 2006 (HSE, 2006). In the Irish context, aftercare can consist of visiting a care-leaver, arranging for the completion of education, entry into a trade or profession, arranging "hostel or other forms of accommodation" (Child Care Act, s 45(2)). However, in the case of aged-out separated children, many of these elements of aftercare are extremely limited. For example, the potential for the Child and Family Agency to arrange that a person leaving the care system enters a business or

profession, is prevented by the legislative prohibition on asylum seekers seeking or entering employment. Furthermore, this prohibition, coupled with the small monetary allowance received by asylum seekers, means that practically speaking asylum seekers are excluded from most further education or training options, although separated young people who are in secondary school when they turn 18 are permitted to complete their secondary education. Section 45(2)(d) of the Child Care Act 1991 permits the Child and Family Agency to arrange hostel accommodation, which arguably can be provided through the system of direct provision. Arranging for the provision of "other forms of accommodation", as referred to in the 1991 Act, in general does not occur for aged-out separated children. The discretionary nature of the Child and Family Agency's powers (*LH v Child and Family Agency* [2014] IEDC 08, para 12), and the limited applicability to children who have spent less than 12 consecutive months in care (Health Service Executive, 2011), has been criticised as "*inconsistent and ad hoc*" (Holt and Kirwan 2012) and as "*arbitrary*" (*LH v Child and Family Agency* [2014] IEDC 08). While the Dublin Social Work Team for Separated Children has stated that this 12 consecutive month policy has never been applied by them, this 12 month in care requirement will be given legislative effect once the Child Care (Amendment) Act 2015 is commenced. This will significantly impact upon the Social Work Team's ability to provide aftercare planning for separated children who will not meet the 12 consecutive month in care requirement.

Since 2011, the HSE *National Policy and Procedure Document for Aftercare Service Provision* has purported to limit the discretion of the Child and Family Agency in stating categorically, that aged-out separated children will be accommodated under the direct provision system. According to the document, asylum seekers leaving the care system

should have their '*specific complex needs*' considered in an aftercare plan. The wording of the policy suggests that while needs may be considered, this does not mean that needs will be met. It is clear that aftercare is to consist of placement within the direct provision system (Health Services Executive, 2011). The Child and Family Agency policy towards aftercare for aged-out separated children, limits the ability of social workers to explore accommodation, educational or other support needs for separated young people, beyond what is provided within the direct provision system. Coupled with uncertainty as regards the aged-out separated child's legal and residency status within Ireland, the discretionary legal regime for aftercare, adds to the vulnerability of aged-out separated children. In early 2015, of the 82 aged-out separated children in receipt of aftercare support, all of those who did not have a form of residency status upon reaching 18, "in line with Government policy..." were "…required to transfer from care to a Direct Provision accommodation centre" (McMahon Report, 2015). Of the 82 young adults receiving aftercare supports, 32 had some form of residency status. The remaining 50 aged-out separated children were required to go into direct provision accommodation centres. While these numbers may seem small at this juncture, given the length of time it takes to determine whether a separated child is entitled to protection from Ireland, on average over five years, a significant proportion of separated children in the care of the Child and Family Agency will age-out before their protection claim is determined. There will, in reality, be little in the way of appropriate aftercare for aged-out separated children. In understanding why this is so, we argue that the political suspicion that surrounds asylum applicants more generally is seen as justifying poor practices of aftercare for aged-out separated children.

Understanding the Development of Aftercare for Aged-Out Separated Children in Ireland

Justifying the Denial of Aftercare: A 'Deterrence' Mechanism

One cannot begin to appreciate the significant differences in aftercare provision for aged-out separated children who remain in the asylum system, unless the underlying purpose of the direct provision system is identified. The fundamental purpose of the system of direct provision, we argue, is simply to deter persons from claiming protection in Ireland. In establishing direct provision, preventing alleged large-scale welfare fraud (DJELR, 1999) was the core concern of policy planners in this area. The elimination of welfare entitlements as a 'pull factor' (Planning Unit, Dept. of Social, Community and Family Affairs, 1999; Reigel, 2016) has continued to be the core reason proffered by politicians' and policy makers for the continuation of the system of direct provision, along with assessments that direct provision delivers "value for money" (Value for Money & Policy Review, 2010). This is in spite of at least some political acknowledgement that direct provision is "not fit for purpose" and is in fact a significant violation of minimum human rights standards (Joint Committee on Public Service Oversight, 2015). The term 'suspicious vulnerability' has been used by others to analyse how governmental and societal concerns are reflected in discourses on asylum seekers access to mainstream welfare supports (Bhabha, 2001; Bhabha and Finch, 2006; Cook, 1999). In the establishment and operation of direct provision, we see, as Garrett (2015) notes "new regimes of control". The direct provision regime of course needs to be placed within its societal context, and Ireland has always created punitive institutions for those placed on the margins of society: borstals, mother and

child homes, Magdalene laundries, to name a few (Kilcommins et al, 2004). Political discourse in Ireland is dominated by the need to tackle the 'abuse' of the asylum system (DJELR, 2005; RTE, 2005; DJELR 2007; McMahon Report, 2015). Irish societal and political approaches emphasize that asylum seekers are different, in need of less support than citizens and legal residents, and, need to be kept under oppressive social controls and supervisions (Garrett, 2015; RIA, 2015; Lentin and Moreo, 2014). The tensions that exist between immigration policy and child welfare policy are well documented (Aspinall & Walters, 2010; Giner, 2006; Cemlyn & Nye, 2012). Within Ireland, like in many jurisdictions, immigration policy ultimately trumps child welfare policy. In Ireland, this is particularly evident once the separated child turns 18 and becomes an aged-out separated child: the punitive force of asylum policy re-asserts itself and direct provision applies. This policy also exists in the context of a history of suspicion that adults were claiming to be children in order to reap the benefits of more support. Age assessment is internationally recognized as challenging and contentious. As such the state is attempting to minimize the likelihood that adults will claim to be children.

However, it would be incorrect to simply view the State's approach to care for aged-out separated children as emerging solely from the political sphere. The legal sphere, in particular within the domain of immigration and asylum, treads carefully in order not to upset the politically preferred narrative of protecting the 'vulnerable' State from asylum seekers. The State's aftercare obligations towards aged-out separated children was challenged on one occasion before the Irish High Court (*Enguye v Health Services Executive* ([2011] IEHC 507, Mr Justice Gilligan, Judge of the High Court, 26 October 2011). While there were two applicants in this case, similar facts and issues

arose in both proceedings. Esther Enguye entered Ireland in 2008 at sixteen years of age. As an "unaccompanied minor", she was taken into care by the Health Services Executive (HSE, then the responsible agency) under Section 4 of the Child Care Act 1991 and Section 8(5)(a) of the Refugee Act 1996 (para 2). The applicant was placed in a hostel for separated children in Dublin city upon her arrival. Enguye attended a local school. In April 2010, Enguye turned 18, and in June 2010 she was offered aftercare, which meant being dispersed to a direct provision accommodation centre in the west of Ireland, some 200 kilometres away from where she had previously lived. Arrangements were made in order for Enguye to complete her final year of study, and complete the final State examination, in a school in Galway (paras 3-4). After intervention from a clinical psychologist, and support from a civil society organisation, Enguye was able to move back to Dublin and complete the final state examination in her old School (para. 5 and para. 28). No State support was being provided to the applicant throughout this time. The civil society organisation, who supported the applicant financially and through accommodation, was facing financial difficulties. Enguye sought to quash the decision of the HSE to refuse to provide her aftercare, in the form of accommodation outside the direct provision system and financial supports. Enguye also sought a number of other orders requiring the HSE to assess Enguye for aftercare provision under Section 45 of the Child Care Act 1991, a declaration that the HSE had failed to exercise its statutory powers to provide aftercare to her, and a declaration that the HSE had failed to take into account independent evidence relating to her need for aftercare (para. 7). Enguye also sought a declaration that her rights under the Irish Constitution had been breached by the actions of the HSE.

In assessing the applicant's claims, Judge Gilligan stated (para. 29),

> *"The applicants appear to lose sight of the fact that they entered this State as unaccompanied minors, have been provided for while they applied for refugee status…"*

In considering the limited nature of the applicant's residency right to remain in the State until the outcome of whether she would be granted a right to remain in the State, the HSE were entitled to take into account "*the asylum and immigration position*" of the applicant (para. 31). Mr Justice Gilligan concluded, that government policy of moving aged-out separated children into direct provision accommodation did not fetter the HSE's ability to provide further aftercare supports, if it was so minded to do so (para. 32). So while the discretion of the HSE was enshrined in statute, and their decision not to fully consider offering the applicant aftercare support "*may appear insensitive*" (para. 34),

> *"[I]t so happens that on this occasion the decision made by the [HSE] …was in accordance with government policy"* (para. 32).

Ignoring Vulnerabilities

With this judgment showing an unwillingness by the courts to intervene, other potential avenues to provoke change emerged. From November 2014 to June 2015, a working group was established to consider, amongst other issues, the system of direct provision and to make suggestions for improvements. The group, consisting of a retired judge as chair, a number of non-governmental organization representatives, one asylum seeker, an academic, and several civil servants, produced the McMahon Report (2015). The McMahon Working Group was not permitted to recommend an

end to direct provision as this was outside of its remit. Instead, it was charged with recommending reforms to enable living to be more bearable in such centres. Members of the Working Group expressed "no positive view" about aged-out separated children transferring to direct provision upon reaching 18 years. Yet, it structured its narrative and recommendations on aged-out separated children in an odd manner. Its starting premise was that separated children nearing 18 years, "may require direct provision accommodation". The McMahon Report recommended that all 'qualifying' separated children should have an aftercare plan in place and "as far as practicable" and subject to the wishes of the child, they should be accommodated near their former foster carers' or residential care placements. A further recommendation was made that the Department of Children and Youth Affairs convene a "stakeholder" group to consider "optimum supports" for aged-out separated children. These recommendations need to be viewed in the context of the findings of the Working Group as regards how aged-out separated children experience direct provision differently from other individuals in direct provision. It was found that aged-out separated children can share a bedroom with up to three other adults and that the direct provision centre may be some distance from the former foster placement. It also found that since an aged-out separated child will get €19.10 per week, access to social activities and cultural outlets will not be available. The Working Group also noted the potential risk that those aging-out will face in terms of drug abuse and prostitution, as well as dangers of becoming involved with crime.

The McMahon report is highly problematic (Thornton, 2015a), and claims that the 'multi-stakeholder deliberative process[es]' were useful (Smyth, 2016) are belied by the lack of any actual reform of the direct provision system. One of the most startling

recommendations in the McMahon Report, as regards aged-out separated children, and we link this to the broad political and legal suspicion which accompanies the Irish state's view of asylum seekers, is that foster carers should receive training in order to build the independence and resilience of aged-out separated children to cope with moving into direct provision. So, while providing an extensive list of noted issues that arise with placing aged-separated children in direct provision, noting the "lack of purpose" these young people will experience, a key solution is to propose 'independence and resilience training' while they are children in order to facilitate them as young persons to move into the institutionalised living space of direct provision. The McMahon Report states that only those who are 'exceptionally vulnerable' may be permitted to remain in care after they reach 18 years. Yet the Working Group did not produce any statistics on the numbers of aged-out separated children deemed to meet this exceptional vulnerability criteria, thus leaving one to wonder whether indeed this criterion is ever used.

The move to direct provision is not just damaging to young people when they become adults. For separated children who are under 18, the anticipation of the move to direct provision can mitigate against their best interests by impacting on them during their time in care. As such, the attempts to draw a line between the lives of separated young people as children in care prior to age 18 and as adult asylum seekers once they turn 18 is very arbitrary. The views of the English Court of Appeal, although not discussing care systems for aged-out separated children, are apt (*D.S. (Afghanistan)*, Lord Justice Lloyd),

> *"[i]t is not easy to see that risks of the relevant kind to a person who is a child would continue until the eve of [an 18th] birthday, and cease at once the next day."*

Yet, the findings of the McMahon Working Group do precisely this, albeit with some recognition of the vulnerabilities that aged-out separated children may face. In keeping with these vulnerabilities, professionals who were interviewed in the foster care study identified a number of different aspects of the direct provision regime that they felt posed risks to the young people. They included the sense of the marginalisation and idleness by virtue of being excluded from the workforce and having limited access to education and money. The foster care study found that participants, particularly foster carers and professionals/stakeholders, were concerned about the discretionary nature of aftercare provision. Essentially, the decision as to whether an aged-out separated child will move to direct provision or remain in foster care, is made by the Child and Family Agency. The Social Work Team state that all aged-out separated children will receive an aftercare plan, and have access to an aftercare worker "if they want one" (Personal Communication, 2015).[2] The Social Work Team further emphasised that after-care planning prepares the aged-out separated child for direct provision (Personal Communication, 2015). In the foster care research study, representatives of the Reception and Integration Agency (RIA), who exercise administrative control over the direct provision system, emphasised that direct provision was not a care facility. Their view was that *'nobody is in the care of RIA'*, although it was acknowledged that centre managers are often asked, by the Child and Family Agency, to *'keep an eye on young people'.* RIA representatives were clear that it was not within

[2] Given the lack of any clear written guidance as regards the operation of aftercare for aged-out separated children, it was necessary for the authors to contact the Social Work Team directly. The author's recognise that this is far from ideal, but is important to include this information within the article.

their remit to make decisions about who should move to direct provision or who should not. This was the HSE/Child and Family Agency's responsibility, and in RIA's view, was to do with 'vulnerability':

> *"…If they are deemed to be vulnerable they will not come to us, because that is a decision to be made by the HSE."*

This differed to some degree from the HSE's/Child and Family Agency's perspective, in keeping with the McMahon Report, where the criteria were not based on vulnerability but instead, on *"exceptional vulnerability*".

> *"I need to make a case to senior management for why this young person isn't ready to leave. And the circumstances need to be quite exceptional.*
> ***Okay. To do with vulnerability?***
> *Well, it's to do with exceptional vulnerability, because all of our young people are vulnerable."*

The Social Work Team have noted that they collaborate with the RIA as regards "health, education, social needs" in consultation with the aged-out separated child, residential staff or foster carers (Personal Communication, 2015). Time and time again, social work practitioners and other stakeholders who participated in the foster care study referred to the vulnerability of the young people and to their lack of readiness for leaving the care system, especially when subsequently entering the system of direct provision. Participants spoke of advocating that specific separated children be allowed to remain with their carers or highlighting issues of risk and vulnerability. As one individual put it:

> *"I spent months in correspondence with members of the HSE … setting out all the inherent vulnerabilities in separated children, but specifically related to the*

> *individuals whom I was working with, which were serious mental health concerns, suicidal ideation, losing two stone in the process of moving from a foster placement into direct provision accommodation. … and what I received back, was "That's not vulnerable enough. Sorry".*

The proposals contained within the McMahon Report (2015) appears to make a clear distinction between the needs of children in the foster care system and the direct provision system designed 'for adults'. This demarcation has had a profound impact on these young people causing high degrees of stress within foster placements. Instead of looking forward to becoming adults, it was noted by one stakeholder:

> *"A lot of the kids whom I'm working with now are scared to death of turning 18, and it all starts when they're 16."*

Within the research, while participants highlighted the immense resilience displayed by many separated children, they were strongly of the view that these young people demonstrated on-going vulnerability after reaching the age of 18, particularly in the context of little support. For young people the difference between the supports provided while in foster care was in stark contrast to the system of direct provision. While foster care served to build resilience and strengths, there was a concern that this became undermined when the move into direct provision occurred. Many of the professionals expressed frustration that all the good of foster care became undone. Interestingly, some even wondered whether the previous hostel system was a better one as the transition from hostels to direct provision involved less of a jump than the transition from foster care to direct provision.

> *"There are lots of kids who are doing really well, both from an education point and the foster care placement, and purely, from what I can see are budgetary reasons, they're now being moved to direct provision at 18. And very often*

> *they're moved to a hostel that's completely outside of where they've been living. So they lose all the supports that they have around them. So you nearly go, "What's the point of putting in two or three years of foster care?" … to actually just pull it straight out from underneath their feet?"*

Being able to complete their second level education while in direct provision was helpful for some young people. This meant that the idleness experienced by others in direct provision was not as evident. However, by virtue of their vulnerability they faced particular challenges trying to attend school and study while living in direct provision. One professional alluded to this noting:

> *"…The act of putting on a school uniform and going to school with 16 boys who are just talking about hurling* [a popular Irish sport] *when you've been moved from your country of origin separated from your family, have been through some sort of horrific trauma … I just think it's really difficult and when you've nobody there to support you through it … they just need that little bit of extra somebody there in the background saying get up and go to school or you know you can do this… they just need that extra boost … but they need it all the time"*

Our socio-legal analysis suggests that when separated children turn 18 their status as adult asylum seekers take precedence over their status as care leavers. The majority of aged-out separated children move into the direct provision system. While representatives of the Child and Family Agency may visit them there and offer assistance, it is evident from the general literature on direct provision and from the specific research study discussed in this article, that this form of accommodation is detrimental to their well-being.

As one of the aged-out separated children in the study has noted,

> *"…Like me sometimes, I just sit in my room and I cry and cry and cry and cry… I know I'm safe here but its more hard for me than the way I was back home …*

> *sitting in your tiny room thinking like 'oh God'! I've been here like now for four years and I talk to other people and they tell me like 'Oh we're here more than like 8 years, 10 years and nothing changes we're still waiting for the Justice to decide'…so I'll be thinking Oh God am I going to be like them or am I going to get deported back home and what's going to happen if I go home"*

Since aged-out separated children can be easily categorised as the 'other', politics, law and society "…can impose strict controls without giving up freedoms of their own" (Garland, 2001). This is evidenced by the fact that while aftercare planning is (usually) conducted, aged out separated children are regarded as migrants first and foremost who have to fit in within the highly punitive direct provision system upon turning 18. The move away from automatic hostel accommodation for children and young persons under 18, was accompanied by a specific policy requiring those aging-out of care to move into direct provision (HSE, 2011). The placement of aged-out separated children in direct provision, to our mind, can be viewed as a form of punishment for (continued) exercising of a legal right to claim protection.

Concluding Remarks

It is a welcome that while under eighteen, separated asylum seeking children in Ireland are not subject to the much criticised system of direct provision which applies to adult asylum seekers (including children of these asylum seekers). The evidence suggests that, within the Irish context, care provision for separated children is much more child centred than in other jurisdictions given that care is primarily provided through the foster care system. The foster care study on which this article draws suggests that this system of care is working well for separated children and that it has the potential to facilitate the meeting of their best interests. However, the situation as regards aftercare is very different and unfortunately it also impacts on young peoples' experiences of

being in care. Legal, policy and social work approaches to aged-out separated children emphasise their 'difference' from other young people in need of transitional supports when leaving foster care. The McMahon Report while recognising the vulnerabilities of aged-out separated children, did not fundamentally challenge the State's approach to this group. Ultimately, aftercare for aged-out separated children controls and confines this vulnerable cohort to years of shared bedrooms, unable to decide when to eat or what to eat, and denied educational and employment opportunities. The spectre of 'floodgates' and maintaining the integrity of the border and nation, has contributed to public support for highly differentiated welfare entitlements for asylum seekers in comparison to those deemed to be 'fully' part of the Irish state (Collins, 2014). The political, societal and legal indifference to the rights of aged-out separated children is unfortunately not surprising, given Ireland's long history of confinement of those who are deemed to be 'not like us' (Kilcommins et al, 2004).

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References

Abunimah A and Blower S (2010) The circumstances and needs of separated children seeking asylum in Ireland. *Child Care in Practice* 16(2): 129-146.

Arnold S, Goeman M and Fournier K (2014) The Role of the Guardian in Determining the Best Interest of the Separated Child Seeking Asylum in Europe: A Comparative Analysis of Systems of Guardianship in Belgium, Ireland and the Netherlands. *European Journal of Migration and Law* 16(4): 467-504.

Arnold S and Kelly J (2012) Irish Child Care Law and the Role of the Health Service Executive in Safeguarding Separated Children Seeking Asylum. *Irish Law Times* 30: 178-183.

Aspinall P and Walters C (2010) Refugees and Asylum Seekers. A Review from an Equality and Human Rights Perspective. London: Equality and Human Rights Commission.

Bhabha J (2001) Minors or Aliens: Inconsistent State Intervention and Separated Child Asylum Seekers. *European Journal of Migration and Law* 3(3): 283-314.

Bhabha J and Finch N (2006) *Seeking Asylum Alone: United Kingdom*. London: MacArthur Foundation.

Cemlyn SJ and Nye M (2012) Asylum seeker young people: Social work value conflicts in negotiating age assessment in the UK. *International Social Work* 55 (5): 675-688.

Child and Family Agency (2014) *Separated Asylum Seeking Child*. http://www.tusla.ie/services/alternative-care/separated-children/ [last accessed: 01 November 2016]

Child Care Act 1991.

Child Care (Amendment) Act 2011.

Child Care (Amendment) Act 2015.

Committee on the Rights of the Child (2009) *Concluding Observations: Ireland*. UN Doc. CRC/C/IRL/CO/2.

Collins S (2014) Majority are in favour of direct provision, poll finds. *Irish Times*, 11 October.

Cook D (1999) Racism, Immigration and Welfare Policing: The Case of the Asylum and Immigration Act in Lavallette M et al. (eds) *Anti-Racism and Social Welfare*. Ashgate: Aldershot.

Dáil Debates (2016) Written Answers Nos. 238-255: Department of Children and Youth Affairs, Vol. 907, No. 1 [unrevised]. 20 April.

Department of Children and Youth Affairs (DCYA) (2011) *Ryan Report Implementation Plan: Second Progress Report*. Dublin: DCYA.

Department of Justice, Equality and Law Reform (DJELR) (1999), 'Minister for Justice, Equality and Law Reform announces that asylum seekers will be dispersed throughout the country. 19 October.

DJELR (2005) *Immigration and Residence in Ireland Outline Proposals for an Immigration and Residence Bill: A Discussion Document*. Dublin: DJELR.

DJELR (2007) McDowell takes firm action to deal with influx of Romanian asylum seekers. Dublin: 18 January.

de Ruijter de Wildt L, Melu E, Ishola P, Dolby P, Murk, J and van de Pol P (2015) *Reception and Living in Families: Overview of Family-Based Reception for Unaccompanied Minors in the EU Member States.* Netherlands: Nidos.

D.S. (Afghanistan) v Secretary of State for the Home Department [2011] EWCA Civ 305.

Enguye and Twumasi v Health Services Executive [2011] IEHC 507 (Mr Justice Gilligan, High Court of Ireland, 26 October 2011).

Eurostat (2016), Asylum applicants considered to be unaccompanied minors by citizenship, age and sex: Annual data. Brussels.

Garland D (2001) *The Culture of Crime Control: Crime and Social Order in Contemporary Societies*. Oxford: OUP.

Garrett M (2015) Constraining and confining ethnic minorities: impoverishment and the logics of control in neoliberal Ireland. *Patterns of Prejudice* 49(4): 414-434.

Giner C (2006) Asylum and Childhood in the UK: A Highly Political Relationship. *RSC Working Paper No. 32.* London.

Health Services Executive (2006) *Model for Delivery of Leaving Care and Aftercare Services in HSE North West Dublin, North Central Dublin and North Dublin*. Dublin: HSE.

Health Services Executive (2011) *National Policy and Procedure Document for Aftercare Service Provision*. Dublin: HSE.

Hodes M, Jagdev D, Chandra N, and Cunniff A (2008) Risk and resilience for psychological distress amongst unaccompanied asylum seeking adolescents. *Journal of Child Psychology and Psychiatry* 49 (7): 723-732.

Holt S and Kirwan G (2012) The "Key" to Successful Transitions for Young People Leaving Residential Child Care: The Role of the Keyworker. *Child Care in Practice* 18(4): 371-392.

House of Lords, European Union Committee (2016) *Children in Crisis: unaccompanied migrant children in the EU*. London: House of Lords.

International Protection Act 2015.

Irish Refugee Council (IRC) (2006) *Making Separated Children Visible: The Need for a Child Centred Approach*. Dublin: IRC.

Joint Committee on Public Service Oversight (2015) *Direct Provision System Report*. Dublin: Houses of the Oireachtas.

Kilcommins S, O'Donnell I, O'Sullivan E, Vaughan B (2004) *Crime, Punishment and the Search for Order in Ireland*. Dublin: IPA.

Lentin R and Moreo E (2015) Migrant deportability: Israel and Ireland as case studies. *Ethnic and Racial Studies* 38(6): 884-910.

LH v Child and Family Agency [2014] IEDC 08 (Irish District Court, 31 July 2014).

Mac Neice S and Almirall L (1999) *Separated Children Seeking Asylum in Ireland: A Report on Legal and Social Conditions.* Dublin: IRC.

Mayock P and Vekic K (2006) *Understanding Youth Homelessness in Dublin City: Key findings from the first phase of a longitudinal cohort study.* Dublin: Stationary Office.

McMahon Report (2015) *Working Group to Report to Government on Improvements to the Protection Process, including Direct Provision and Supports to Asylum Seekers*. Dublin: Department of Justice and Equality.

Mullally S (2011) Separated Children in Ireland: Responding to 'Terrible Wrongs'. *International Journal of Refugee Law* 23(4): 632-655.

Ní Raghallaigh M and Gilligan R (2010) Active survival in the lives of unaccompanied minors: Coping strategies, resilience and the relevance of religion. *Child and Family Social Work* 15(2): 226–237

Ní Raghallaigh M (2013) *Foster Care and Supported Lodgings for Separated Asylum Seeking Young People in Ireland: The views of young people, carers and stakeholders*. Dublin: HSE/Barnardos.

Ní Raghallaigh M and Sirriyeh A (2015) The negotiation of culture in foster care placements for separated refugee and asylum seeking young people in Ireland and England', *Childhood* 22 (2): 263-277.

Ní Raghallaigh M, Foreman M and Feeley, M (2016) *Transition: from Direct Provision to life in the community: The experiences of those who have been granted refugee status, subsidiary protection or leave to remain in Ireland*. IRC.

Office of the Refugee Applications Commissioner (ORAC) (2016) *Annual Report 2015*. Dublin: ORAC.

Office of the Ombudsman for Children (OCO) (2009) *Separated Children Living in Ireland*. Dublin: OCO.

Personal Communication (2015) with TULSA/Child and Family Agency Team for Separated Children Seeing Asylum, October to December 2015 [on file with authors].

Planning Unit, DSCFA (1999), Implications of direct provision for the DSCFA (obtained through a Freedom of Information (FOI) request, dated 04 November 1999).

Quinn E et al. (2014) *Policies and Practices on Unaccompanied Minors in Ireland*. Dublin: Economic and Social Research Institute and European Migration Network.

RIA (2015) *Direct Provision: House Rules and Procedures (Revised)*. Dublin: RIA.

RIA (2016), *Monthly Report: August 2016*. Dublin: RIA.

Refugee Act 1996 (as amended).

Reid C and Thornton L (eds) (2014) *Direct Provision at 14: No Place to Call Home*. Dublin: IRC/ UCD Human Rights Network.

Riegel R (2016) Direct provision is here to stay, says Fitzgerald. *Irish Independent*, 03 August.

RTE News (2005), "McDowell repeats claims on asylum seekers", 1 June 2005.

Separated Children in Europe Programme (SCEP) (2010) *Statement of good practice.* 4th edition. Geneva: Save the Children and UNHCR.

Smyth C (2016) Chronicle of a reform process: the Irish Working Group on Protection. *Journal of Refugee Studies* 29(3): 388-410.

Smyth J (2010) HSE Director Criticises Care for Children Seeking Asylum. *Irish Times*, February 8.

Stein M (2006) Research Review: Young People Leaving Care. *Child and Family Social Work* 11(3): 273- 279.

Thornton L (2015a) A Preliminary Analysis of the Working Group Report and Recommendations on Direct Provision'. Dublin: UCD Human Rights Network, Working Paper, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685268 [last accessed, 01 November 2016].

Thornton L (2015b) Socio-Economic Rights and Ireland in Egan S (ed) *International Human Rights: Perspectives from Ireland*. Dublin: Bloomsbury.

Thornton L (2016) A View from Outside the EU Reception Acquis: Reception Rights for Asylum Seekers in Ireland in Minderhoud P and Zwaan K (eds), *The recast Reception Conditions Directive: Central Themes, Problem Issues, and Implementation in Selected Member States* (Oisterwijk, Wolf Legal, 2016).

Value for Money & Policy Review (2010) Asylum Seeker Accommodation Programme. Department of Justice.

Wade J (2011) Preparation and transition planning for unaccompanied asylum-seeking and refugee young people: A review of evidence in England. *Child and Youth Services Review* 33(12): 2424-2430.

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