Charlie Flanagan  
Minister of Justice and Equality  
Stephens Green  
Dublin 2  

Cc Department of Taoiseach, Department of Health  

1 May 2020  

Dear Minister,  

We are writing to express serious concern at reports that residents of the Direct Provision Centre in Caherciveen are being detained against their will. We understand from direct contact with residents, as well as media reports, that residents have been told that they are not allowed to leave the building and that there are padlocks on the gates. These residents have, to a large degree, the same rights of all persons in Ireland and we are concerned that this detention may represent a violation of their right to liberty and equal treatment and may constitute a violation of the s.42 Public Sector Equality and Human Rights Duty.  

Right to Liberty  

We are concerned that this detention may represent a violation of the right to liberty protected by Article 40.4 of the Constitution. While this right can be limited to protect public health, we believe this detention may go beyond what can be considered proportionate to the public health risk, in part because we understand that all residents currently in the centre have tested negative for Covid-19 and that there may be less invasive alternatives to detention such as requiring mask wearing and social distancing when residents leave the centre.  

Article 5 of the European Convention of Human Rights, (ECHR) protects the right to liberty. While article 51(e) makes an exception for “the lawful detention of persons for the prevention of spreading infectious diseases”, we are concerned that there is no lawful basis for this detention.  

We are aware that s.38A of the Health Act 1947, as inserted by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 extends the existing powers of detention of a medical officer. If it is the case that all residents of this centre have been detained under these powers, can you confirm that:  

1. Every resident is considered an ongoing potential source of Covid-19;  
2. A medical officer has certified the detention of each individual based on the fact that “such person cannot be effectively isolated, refuses to remain or appears unlikely to remain in his or her home or other accommodation arranged, or agreed, by the Health Service Executive.”  
3. Each individual detained has been informed of their right to have their detention reviewed by another medical officer;  
4. Any individual who has requested a review has been granted a review by a second medical officer.
If this is not the case, and you cannot point to another legal basis for their detention such as in the manner laid out under the International Protection Act, it is likely that the residents of this Direct Provision Centre are being detained arbitrarily.

We also note that part 5 of the Interim Public Health and Infection Prevention Control Guidelines on the Prevention and Management of COVID-19 Cases and Outbreaks in Residential Care Facilities and Similar Units V4. 22/04/20 at 5.5 refers to the fact that residents should be ‘advised’ to avoid communal areas and stay in their rooms rather than ‘required’ to.

**Right to Equal Treatment**

Residents of Direct Provision Centres have the right to equal treatment under article 40 of the Constitution and the right not to be discriminated against under art. 14 of the ECHR. They should not be subject to more stringent restrictions than other people in Ireland. Under s.4 of the Health Act 1947 (Section 31A – Temporary Restrictions)(Covid-19) Regulations 2020, everyone has the right to leave their place of residence if they have a reasonable excuse, which includes obtaining essential goods and services and exercising within 2 kilometres of their place of residence.

We note that, in a joint press release of 23 April, the Department of Justice and Equality and Department of Health said residents of centres are subject to the same current public health measures as the rest of the population, for example, the right to exercise within a 2km radius, attend medical appointments or to shop for food or other necessities as set out in Government guidelines.

If residents are not being detainted under s.38A of the amended Health Act 1947 and the same right to leave their place of residence with a reasonable excuse is being denied, it is likely that their treatment can be considered unequal treatment.

**Reception Conditions Directive**

We also highlight that the Reception Conditions Directive, Article 17, states Member States shall ensure that material reception conditions provide an adequate standard of living for applicants, which guarantees their subsistence and protects their physical and mental health.

We urge you to end the detention of these residents without further delay.

We look forward to your response.

Yours, etc,

Liam Herrick- Executive Director, ICCL

Fiona Finn- CEO, Nasc, the Migrant and Refugee Rights Centre

Nick Henderson- CEO, Irish Refugee Council