

# A hundred thousand welcomes?

Habitual residence and access  
to social welfare for returned  
Irish emigrants



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## EXECUTIVE SUMMARY

A Hundred Thousand Welcomes? analyses and critiques the experiences of returning Irish emigrants who have been denied access to social welfare support based on the Habitual Residence Condition (HRC) assessment under the Department of Employment Affairs and Social Protection (DEASP) over the past three years. The report outlines evidence of inconsistencies and misapplication of the assessment process that results in the adverse impact on returned Irish emigrants. The context of recent return migration and the barriers to accessing social welfare assistance are detailed in the Introduction, along with a brief outline of the work of Crosscare Migrant Project, the HRC assessment, and Ireland's Diaspora Policy and the impact of HRC on returning emigrants. What is the Habitual Residence Condition? details the purpose of the HRC as an assessment for social welfare entitlement, the five factors that are applied in the assessment process, the operational guidelines, and interpreting the guidelines for returning emigrants.

The largest chapter, 'How does it impact returned Irish emigrants?', outlines identified inconsistencies in the application of the HRC from client work and presents three sample cases and one case from Safe Home Ireland. Research on the national experience is presented based on the results of primary research carried out via an online survey with recently returned emigrants. These findings are supplemented by findings from our 2017 research study and report 'Home for Good?'.

In 'How have we worked to address this barrier?' we review our advocacy and lobbying activities to address the emergence of the HRC as a barrier for some returning emigrants. It presents a ten year timeline of advocacy and developments. It further details our most recent engagement with the Interdepartmental Committee on the Diaspora and the Department of Employment Affairs and Social Protection in our efforts to progress the issue.

An outline of why it is evident that the HRC continues to be inconsistently applied and is a barrier for returning emigrants is presented in 'Why is it still a problem?'. This includes an analysis of the evidence, research and identified inconsistencies and misconceptions, and provides some examples of good practices. Complexities with the HRC and training on the assessment process are outlined as key challenges for the DEASP to ensure consistency in service provision and equity of access for all social welfare applicants. Contributions from other Irish support organisations around the world are presented, quoting



their experiences with emigrants planning a return to Ireland. We refer to the findings of the Indecon report and its recommendations in relation to the HRC. The final chapter, 'What will help?' recaps the identified failures in the system and sets out eight key recommendations to the Department of Employment Affairs and Social Protection:

1. Ongoing training for front line staff to ensure appropriate and consistent application of HRC guidelines for returning emigrants as 'Returning migrants resuming previous residence'
2. Publish a clear user-friendly guide to the HRC for returning Irish emigrants that can be hosted on [www.welfare.ie](http://www.welfare.ie)
3. Introduce a declaration of 'resuming residence' on the HRC1 form for returning emigrants
4. Collect and publish annual figures showing the total number of HRC related refusals overturned on appeal relating to Irish citizens
5. Provide clarity on required documents and evidence that will be accepted as proof of permanent return for HRC purposes
6. Refer all returning emigrants to the Community Welfare Service for interim payments of Basic Supplementary Welfare Allowance, as per guidelines, while their primary claims are assessed
7. Ensure that the appeals process is made clear to anyone refused a payment due to HRC
8. Make returned emigrants aware of advocacy services available to them (e.g. Crosscare, Safe Home Ireland, Citizen's Information Service).

These recommendations aim to improve consistency in the application of the HRC through administrative procedures, and improve the quality of customer service for returned emigrants. It concludes within the context of the Government's overarching responsibility and commitment to Ireland's Diaspora Policy.

## 01 INTRODUCTION

Ireland has a long and well documented history of emigration. Crosscare Migrant Project has supported Irish emigrants since 1987, both those leaving the country and also those who are coming home. The experiences of Irish emigrants returning home has been a specific area of focus for us since the early 2000s.

In the last few years the discourse around returning home has begun to identify the experience as one of ‘re-emigration’ – as physically and emotionally demanding as any major move, despite the fact that emigrants are ‘coming home’. Returning emigrants can face many barriers, and Crosscare Migrant Project has both practical experience and evidential research that documents these.

Chief among the barriers we have identified is the issue of accessing social protection and safety nets for those who need assistance and support on return, and central to this is the HRC – the Habitual Residence Condition. It is one of the biggest concerns for returning emigrants.

### **Our work on the HRC**

We are funded to work with Irish emigrants by the Emigrant Support Programme of the Department of Foreign Affairs and Trade. Our aim is to provide a quality information and advocacy service to enable people involved in a migration experience, especially individuals in vulnerable circumstances, to make informed choices and access their rights. Through our engagement with Irish emigrants who use our service, we aim to effect positive change in migration related policy. We have been extensively involved over many years in raising issues that returning Irish emigrants have experienced with access to social welfare assistance in relation to the HRC.

Between 2008 and 2011 we lobbied on behalf of returning emigrants experiencing problems with the HRC. We met with the Minister for Social Protection and presented to the Oireachtas Joint Committee on Social and Family Affairs on the difficulties that emigrants experienced with HRC when applying for social welfare on return<sup>1</sup>. Following changes to the HRC guidelines that specifically recognised returning migrants the situation improved markedly for a period of over 8 years. However, a decade later it has become evident that issues with the HRC are adversely affecting people returning to live in Ireland today.

Over 105,000 Irish emigrants have returned home since 2014<sup>2</sup>. We have noted a growing trend in them being denied access to non-contributory social welfare payments in Ireland. In most of these cases the primary reason for refusal of a payment is due to the HRC. This condition applies to anyone applying for a non-contributory social welfare payment and, in the case of returning emigrants requires proof of a person ‘resuming their residence’ in Ireland<sup>3</sup>.

### **The HRC assessment**

When deciding whether a person is habitually resident as part of a claim for a non-contributory social welfare payment, a deciding officer of the Department of Employment Affairs and Social Protection considers five factors: main centre of interest, the length and continuity of residence in Ireland, the length and purpose of any



absences from Ireland, the nature and pattern of employment, and future intention to live in the Republic of Ireland for the foreseeable future. The application process can be complicated and claims can take a number of weeks or sometimes even months to process. This means that applicants can be affected by a long time-lapse at a critical time of need.

#### Process of refusal and appeal on decision for non-contributory claim based on the HRC



#### Ireland's Diaspora Policy and the impact of HRC on returning emigrants

This report examines current refusals of social welfare claims based on meeting the HRC for returned Irish emigrants. It presents a growing trend in inconsistency in decision-making on applications. It outlines the impact that these decisions have on emigrants who are choosing to return to Ireland post-recession and re-settle in their home country. In its commitment to returning emigrants, Ireland's Diaspora Policy establishes a duty on the Irish state to provide safety-nets to those returning who need temporary or urgent support<sup>4</sup>.

This policy strives to achieve a cross-departmental response to the needs of returning emigrants:

*'Government will also work to ease the logistical challenges of moving from one country to another. The consultation process for this policy identified a number of barriers to return for emigrants...we will, through the Interdepartmental Committee, work with other Departments and agencies to minimise the difficulties that these challenges present.'*

Through the work of the Minister for Diaspora Affairs and the Interdepartmental Committee on the Diaspora, opportunities have arisen to raise and highlight barriers such as the Habitual Residence Condition at a policy level. Additionally, the publication of the recent report by Indecon Ireland has supported our recommendation to ensure consistency in the application of HRC guidelines<sup>5</sup>. This is endorsed by the Minister for Diaspora Affairs in his aim to eradicate all barriers for returning emigrants if possible<sup>6</sup>.

<sup>1</sup> See submission to the Joint Committee on Social & Family Affairs on Habitual Residence Condition and its implications for Returning Irish Emigrants, Crosscare Migrant Project (2008); [https://www.migrantproject.ie/images/CMP\\_submission\\_HRC\\_JointCommittee\\_02.2008.pdf](https://www.migrantproject.ie/images/CMP_submission_HRC_JointCommittee_02.2008.pdf)

<sup>2</sup> Population and migration estimates, CSO (April 2017); <http://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2017/>

<sup>3</sup> Guidelines on Habitual Residence Condition Guidelines for Deciding Officers, Department of Employment and Social Protection; <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition-Guidelines-for-Deciding-Offic.aspx>

<sup>4</sup> Global Irish Ireland's Diaspora Policy, Department of Foreign Affairs (2015); <https://www.dfa.ie/media/globalirish/global-irish-irelands-diaspora-policy.pdf>

<sup>5</sup> Indecon Economic Report on Addressing Challenges Faced by Returning Irish Emigrants, Indecon Ireland (Feb. 2018); <https://www.dfa.ie/media/dfa-2017/globalirish/Report-on-Returning-Emigrants-2018.pdf>

<sup>6</sup> Dáil Debates, Statement by Minister for Diaspora Affairs, 08/03/2018; <https://www.kildarestreet.com/debates/?id=2018-03-08a.137&s=speaker%3A58#g138>

## 02 WHAT IS THE HABITUAL RESIDENCE CONDITION?

Adopted in 2004 following the expansion of the European Union, the Habitual Residence Condition (HRC) is a condition that must be satisfied for an individual to be eligible for most non-contributory social welfare payments in Ireland. It requires an applicant to show that they have a strong connection to Ireland and that it is their home. It is not based on nationality and is therefore applicable to both Irish and non-Irish citizens. It only applies to claims for non-contributory payments (such as Jobseekers Allowance, Disability Allowance, Carers Allowance, Basic Supplementary Welfare Allowance, State Pension (Non-Contributory), etc.) and the universal Child Benefit payment.

The Department of Employment Affairs and Social Protection (DEASP) conducts assessments of applications for social welfare schemes in line with its operational guidelines to comply with the provisions under the Social Welfare Act (2014)<sup>7</sup>. Decision makers in the Department make assessments on applications with regard to various conditions, such as income, record of employment, PRSI contributions, and the HRC.

### The Five Factors

The following five factors are considered by DEASP Deciding Officers when deciding if a person is habitually resident:

1. Main centre of interest
2. Length and continuity of residence
3. Length and purpose of any absence from Ireland
4. Nature and pattern of employment
5. Future intention to live in the Republic of Ireland as it appears from all the circumstances.

### The guidelines

There have been numerous amendments and reviews of the HRC guidelines since its introduction. One significant change in the general HRC guidelines was the omission of a previous reference to the requirement to have a defined residence of at least two years in the State. This was deemed to be contrary to EU law and removed from the HRC guidelines in 2014<sup>8</sup>. The current guidelines outline a specific provision relevant to returning Irish emigrants resuming previous residence under section 6.2<sup>9</sup>. This provision, introduced in 2010, outlines the assessment for a social welfare payment, providing an applicant meets the standard assessment criteria for a specific allowance or benefit, and states that in relation to an assessment for a returning migrant,

*“A person who had previously been habitually resident in the State and who moved to live and work in another country and then resumes his/her long-term residence in the State may be regarded as being habitually resident immediately on his/her return to the State.”*





It follows therefore that Irish emigrants who were previously resident in Ireland may be found habitually resident immediately upon return to Ireland, once they can demonstrate that they are resuming their residence.

Additionally, the guidelines also provide for certain arrangements whereby returning Irish emigrants repatriated to Ireland with the assistance of Safe Home Ireland and similar programmes can sign a declaration form confirming that they have returned to reside in the State on a permanent basis.

### **Interpreting the guidelines for returning emigrants**

Interpretation and application of the Habitual Residence Condition requires a detailed assessment of individual claims on a case by case basis. Returning to Ireland is often a complex process and for the majority of returned Irish emigrants with whom we work it can be painstaking to provide evidence and detailed explanations of the varying and complicated circumstances of their return.

On first engaging with our service, an individual is either planning an imminent return to Ireland or has recently arrived back. They require information and if necessary, advocacy with local statutory services in order to access services such as social welfare assistance. Some of the individuals and families we work with may be at risk of homelessness, are experiencing homelessness, and/or have further medical or social care needs, further complicating their cases. In our experience, the three main inconsistencies in HRC decision cases that present to our advocacy service:

1. The applicant is informed that they are 'Not long enough in the country'
2. Their 'Centre of interest' is deemed to be elsewhere than Ireland
3. They do not have a recent Irish employment record or employment secured before returning to Ireland

These are the most common issues that are seen in the cases presenting to the service, however, there are a number of further identified inconsistencies on HRC decisions which are discussed in further detail in Chapter 3.

<sup>7</sup> Habitual Residence Condition Guidelines for Deciding Officers, Department of Employment and Social Protection; <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspxf>

<sup>8</sup> The '2 year rule' was never a requirement but a 'presumption', it was based on the provision in Section 246 (1) of the Social Welfare Consolidation Act 2005 which stated: "it shall be presumed, until the contrary is shown, that a person is not habitually resident in the State at the date of the making of the application concerned unless he has been present in the State or any other part of the Common Travel Area for a continuous period of 2 years ending on that date." This presumption caused huge confusion in the assessment of social welfare claims.

<sup>9</sup> Supplement to HRC Guidelines, Guidelines for Officers dealing with returning migrants and resuming previous residence, Section 6.2., Department of Employment Affairs & Social Protection (Last modified: 28/09/2017); <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#sect5>

## 03 HOW DOES THE HABITUAL RESIDENCE CONDITION IMPACT RETURNED IRISH EMIGRANTS?

The immediate impact of the HRC can be a delay in accessing social welfare payments, and having no income at all as a result. The HRC can prolong processing times of social welfare applications for returning emigrants due to the complexity of the assessment associated with it. This in turn means that the situation of people returning with a low income or in situations of risk can be exacerbated, causing the further instability of having no income or even becoming homeless. The likelihood of this dramatically increases in cases where returning emigrants are refused access to a social welfare payment due to the HRC. In addition, through our advocacy work with returning Irish emigrants refused social welfare payments due to the HRC, we have encountered a number of inconsistencies in decision making at the level of local DEASP offices.

### 3.1 Inconsistencies in decision making

The Habitual Residence Condition is not a new policy and has been implemented since 2004. The importance that is placed on the HRC in assessments for social welfare assistance has led to decisions that have relied too heavily on satisfying all the criteria of the HRC or placed too much emphasis on specific criteria that is difficult to determine or evidence.

In our experience, the main issues encountered by returned Irish emigrants who have been refused social welfare payments due to the HRC are:

1. Disregard of the provision for 'resuming residence' when assessing claims made by Irish emigrants immediately upon return
2. Over-emphasis placed on one of the five factors, especially 'Length and Purpose of Absence', resulting in a person's full circumstances not being taken into account
3. Insufficient information provided to applicants about the types of documentation they can provide to evidence their 'habitual residence' in Ireland
4. Unfair burden of proof on applicants to produce documentation that is outside of their power to obtain. For example, proof requested of cancelled social welfare payments in another country, or providing and paying for translation of foreign language documentation
5. Dismissal of the ability of applicants who are homeless on return to resume a residence in Ireland based on the fact that they do not have a fixed abode in Ireland
6. Failure to take into account the unique circumstances of Irish citizens returning in crisis, especially naturalised Irish people returning from conflict zones
7. Decisions on applications for Basic Supplementary Welfare Allowance deferred until HRC has been decided for primary claims such as Jobseekers Allowance
8. Refusals of the right to a review, exacerbated by the length of time it takes for appeals to be processed by the Social Welfare Appeals Office

In the past two years, our service has been 100% successful in all 12 of our review and appeal cases. In one other case, the individual was experiencing poor mental health and decided to emigrate again before appealing



the refusal on his claim based on the HRC. These inconsistencies have been highlighted in each appeal or review case where relevant, and the original disallowance has been overturned by the original Deciding Officer or by the Social Welfare Appeals Office.

### 3.2 Challenging cases

The following are sample cases of returned Irish emigrants that were supported by Crosscare Migrant Project (Cases 1, 2 & 3) and Safe Home Ireland (Case 4), another emigrant support organisation supporting returning emigrants. The cases outline the complexities in individual cases presenting to our services. They also demonstrate that not all those who experience difficulty with the HRC upon return have come back to Ireland in crisis. It also affects people who have made a planned return to Ireland, like Patrick and Maureen (Case 1) and John, Mary and Sean (Case 4). Permission has been provided from these clients to share the details of their cases, and their names have been changed for the purposes of this report.

#### Case 1. Patrick and Maureen

Patrick and Maureen, retired husband and wife decided to return to Ireland to be closer to his family in rural Ireland. Patrick informed us that he had been born in Ireland and was sent to live in the UK when he was 2 years old. He always had a yearning to come home to Ireland, especially as all of his siblings are here. He and his wife planned their return to Ireland for many months, eventually moving out of their accommodation in the UK and renting a property in Kerry in April 2016. Patrick applied for Jobseeker's Allowance in September 2016 but the application was refused due to the Habitual Residence Condition.

He came to us for help and we assisted him to submit a request for a review of the decision. We supported him to obtain and provide various documents of proof of residence in Ireland and emigration from the UK.

Fortunately, the negative decision was successfully overturned at local level by the Deciding Officer. By that stage however, a total of **five months** had passed. This meant that Patrick and Maureen had exhausted any savings they had brought with them from Britain and had been surviving on Maureen's modest UK pension only. As well as this financial impact, Patrick told us that he felt his sense of Irish identity was challenged by this experience and that his country of birth had failed to recognise him.

### Case 2. Tatiana

Tatiana, a former refugee and now a naturalised Irish citizen who had lived in Ireland from 2002 to 2014, returned to Ireland in June 2017 after caring for her mother who was unwell in her birth country. She had worked full time in Ireland from 2008 until 2014 which was when her mother became ill. She intended to stay only short term but her mother's illness was protracted and so she ended up staying longer than expected. After over two years abroad caring for her mother full time, her mother's health started to improve around the same time Tatiana was pregnant. She decided to return to Ireland with the hope of securing her old job and preparing for the birth of her baby.

On return, Tatiana had no income and very few funds to manage until she secured employment or social welfare support. She stayed with a friend when she returned on a short term basis as there would not be enough room for her once the baby was born. She applied for Jobseekers Allowance (JSA) and Basic Supplementary Welfare Allowance (SWA) at the local Intreo Office. However, both her applications were refused on the grounds that she did not satisfy HRC for the following reasons:

*'You have not established Employment or Self-employment.*

*Your centre of interest is stronger elsewhere.*

*Your close family members live abroad.*

*You have no apparent means of financial support.*

*Your residency has not been continuous here in Ireland.'*

Tatiana came to us in the ninth month of her pregnancy and was assisted with an application for an Exceptional Needs Payment (ENP) and a request for a review and appeal against the refusal of her JSA and Basic SWA claims. We helped her with accessing homeless accommodation as she could no longer stay with her friend, nor was she able to afford to rent any accommodation without an income. This was an extremely stressful time for her during a very sensitive and critical period for the welfare of her and her baby. Following the birth of her child she was issued with two 'once-off' Exceptional Needs Payments but was refused any further payments pending the outcomes of the two appeals. We continued to advocate for emergency interim payments on the grounds that the appeals were still pending with no projected decision date and as she had absolutely no income and had ongoing needs for herself and her new born baby. This request was refused, leaving her with no income at all. Tatiana was struggling to survive and manage the stress that this was causing her, further placing her welfare and the welfare of her new born baby at risk.



She sought assistance from the Society of St. Vincent de Paul, but they could not make visits to her emergency homeless accommodation. She had to borrow money from a friend to get by. **In mid October 2017, she was awarded Child Benefit, a benefit that is also assessed on HRC. This was awarded despite the ongoing appeals that were disallowed under the HRC grounds.**

By the end of October 2017, both JSA and SWA appeals were successful. The local Social Welfare office issued a backdated JSA payment on 14th November. However, as she had moved address since giving birth to her baby she was asked to make new applications for One Parent Family Payment and SWA payment at a new local Social Welfare office. At this new office, despite proof of winning her appeals, a payment was not issued immediately and she was asked twice to complete new HRC forms. She was also asked to provide proof of how she had supported herself throughout the appeals process. She was still not in weekly payment by the last week of November. Her Basic SWA was finally issued to her on the 8th of December and her One Parent Family Payment was issued the following week. She had been surviving without any income for a total of **six months**.

### Case 3. Ahmed

We received a request from a local TD in Co. Meath to assist Ahmed, an Irish citizen who had returned to Ireland eight months previously from Libya and was refused Disability Allowance and Supplementary Welfare Allowance on HRC grounds. The TD had assisted his constituent with an appeal against the refusal to the Social Welfare Appeals Office.

Ahmed had grown up in Ireland until he was 17 then moved to Libya with his family to study there and returned when he was 20 to work in Ireland briefly before going back to Libya again. At 22, he was shot in Libya and was severely disabled as a result. He returned to Ireland for surgery and underwent leg amputation surgery in Galway. He began living in Co. Meath with his family and applied for Disability Allowance and Supplementary Welfare Allowance payments. Both payments were refused on HRC grounds. Both his requests for review of the claims were refused. He was assisted by a Health Service Executive social worker and a local TD to submit a further review request to the Deciding Officers and appeals to the Social Welfare Appeals Office.

We requested support from Safe Home Ireland, and they were able to visit him to apply for an Exceptional Needs Payment. He started rehabilitative treatment with the help and support of his family whilst they continued to advocate for a social welfare payment for him. Whilst they were happy to help, Ahmed's family was placed under the extra pressure of supporting him financially in the interim.

Following a review of the claim by the original Deciding Officer in the local Meath office, he was granted Basic Supplementary Welfare Allowance, a **full nine months** after his return to Ireland.

#### **Case 4. John, Mary and Sean – A case from Safe Home Ireland**

John's parents were born in Ireland and like so many people of second generation, he had spent many long summer holidays visiting his grandparents in Ireland. He had been reared in a very Irish household in London and had always felt that Ireland was home and that is where he would live out his final years. He had a sibling-like bond with his cousins and extended family in Waterford.

Our colleagues in Safe Home were initially contacted by John, Mary and their adult son Sean in early April 2017 when they were making plans to come and view a property that they hoped to move to in County Waterford. The family had experienced a couple of recent bereavements in the UK and this led them to reassess their life-style and priorities. Safe Home provided them with general information on access to health care in Ireland and Disability Allowance, specifically referencing the Habitual Residence Condition. He was also offered access to the Safe Home outreach service, however John felt confident that they should be able to secure employment as he had always worked in the UK despite his mobility issues.

Despite significant efforts, they were unable to secure employment after they made the move to Ireland. In August 2017, the family had no option but to apply for social welfare assistance. Although, he had previously worked all of his life in the UK, John was advised at the local Intreo office that he should apply for Disability Allowance due to his mobility issues. He applied for Disability Allowance and submitted a claim for Supplementary Welfare Allowance (SWA). Their savings were running low and they were very concerned about how they would continue to pay their rent, bills and manage day to day expenses. He received a decision letter in September stating that his claim had been refused based on not meeting Habitual Residence Condition.



The family got back in touch with Safe Home in mid-November 2017 when their case had been referred to the Social Welfare Appeals Office. In the meantime, the couple's son, Sean (aged 22) had applied for and was awarded Job Seekers Allowance in August and this was now the only income for the whole household. A Safe Home Ireland Outreach Officer visited the family in November at their home in Waterford. She found them to be in a very upset and somewhat traumatised state. They were worried about paying rent and also accessing health care for John, who was then in serious pain from his arthritis.

Safe Home's Outreach Officer assisted them to submit an application for a once off Urgent Needs Payment and submit an appeal against the refusal of the SWA to the Social Welfare Appeals Office. She assisted them with an application for social housing support to the Local Authority so they could be assessed for assistance with rent payments. She also assisted John with accessing a G.P who would treat him without payment as his Medical Card application was also declined on the grounds that he had no income for a means assessment. She linked the family in with the local St. Vincent de Paul Conference who started to provide weekly food parcels until February 2018 when the appeal was successful and John was awarded a SWA payment.

John and his wife had waited for a total of **six months** from the date of the first application to receiving a payment, with no income and becoming dependent on their son once their savings ran out. Mary has since found full-time employment and John is in receipt of a partial Disability Allowance payment and volunteering weekly at the local after-school club.

These cases illustrate the experiences of emigrants in situations of extreme adversity upon return. They also demonstrate that issues with the HRC can significantly exacerbate their situation. It must also be noted that naturalised Irish citizens appear to be disproportionately affected (see section 4.1). Though the numbers we have identified may be considered relatively low, we suspect that throughout Ireland there are many more people who may not be seeking support from services such as ours and are struggling to survive, dependant on others, or choosing instead to leave Ireland again.

### 3.3 Research on the national experience

The increase in the number of cases that our advocacy service has undertaken within the past two years (total 13 from 2016–17) indicates inconsistencies in decision-making at local DEASP office level. As our office is based in Dublin, the majority of the cases we see are Dublin based. However, through contact with other emigrant support organisations like the County Mayo based Safe Home Ireland, we are aware of similar inconsistencies in other areas of the country. To establish an indication of the consistency in HRC based decisions nationally we conducted an online survey targeting recently returned emigrants nationwide who have been refused a social welfare payment based on HRC.

We composed a survey (on SurveyMonkey.com) asking respondents to answer 11 questions about their experiences. The survey was conducted over 6 weeks from 21st November 2017 to 12th January 2018 and was circulated via social media. Figure A outlines a breakdown of the results of refusals of the survey on social welfare applications and subsequent appeals.

Figure A

	Number of refusals	Appeals submitted	Successful appeals	Waiting for a decision	Unsuccessful appeals
Based on Habitual Residence Condition	11	4	2	2	0
Based on means assessment	6	2	1	1	1
Based on PRSI contributions	5	1	0	0	1
<b>Total</b>	<b>22</b>	<b>7</b>	<b>3</b>	<b>3</b>	<b>2</b>

Only 7 out of 22 respondents made an appeal against a disallowance. 4 of these were for claims that were disallowed based on the HRC. 2 of these appeal cases have been successful and respondents are now in employment, 2 are still waiting for a decision and are living off savings or are being supported by family.

A total of 7 respondents did not make an appeal against a disallowance based on the HRC. Worryingly, 3 of these currently have no income and are relying on borrowing money from friends, are dependent on a partner's income or are living off their own savings.





6 respondents received assistance from Citizen Information Centres and 3 received assistance from local TDs. Only 3 of these respondents submitted an appeal against the disallowance. Of these, 1 was successful with their appeal, 1 was still waiting for a decision and 1 was unsuccessful (which was based on PRSI contributions).

A 25% of claims were submitted in Dublin, with Cork, Mayo and Meath dealing with multiple claims. Respondents were asked which payments they had applied for and the breakdown shows that the majority, almost 80% (19), had applied for Jobseeker's Allowance claims. The remaining payments that had been applied for included Basic Supplementary Welfare Allowance, Disability Allowance, Carer's Allowance and One Parent Family Payment.

Figure B reveals further analysis of claims refused based on failing to satisfy the HRC assessment:

Figure B

Claims	Number refused	Counties	Appealed	Won	Decision pending
Jobseeker's Allowance	10	Meath, Cork, Cavan, Dublin, Kerry, Mayo	2	2	0
Basic Supplementary Welfare Allowance	2	Cavan, Mayo	0	0	0
Disability Allowance	2	West Meath, Dublin	2	0	2
Carer's Allowance	1	Mayo	0	0	0
Total	15		4	2	2

## Overall findings

The 11 individuals refused a payment due to the Habitual Resident Condition had a total of 15 social welfare applications between them, and represented 50% of the total number of survey respondents (22) who had been denied access to social welfare. This illustrates the barrier that the habitual residence condition poses to returned Irish emigrants. Two thirds (10) of the applications were for Jobseekers Allowance, indicating that the majority of this group had returned to Ireland seeking work.

It may also be significant that only 2 respondents made claims for Basic Supplementary Welfare Allowance, as this may suggest that most of the respondents were unaware that they could apply for this payment while their primary claim was being processed. This allowance is often applied for simultaneously when the individual is aware of their option to do so. However, if a person is not aware of this interim support, they may miss out on this entitlement and be at financial risk pending their primary claim.

Additionally, that 3 of the applications refused were for Disability Allowance (2) and Carer's Allowance (1) suggests that at least three of the individuals were not in a position to work due to a disability or as they were caring for someone else. Being refused a social welfare payment may have left them with very limited options, and possibly in quite a vulnerable situation. It must be noted that we have previously encountered issues with returned emigrants being refused Carer's Allowance when caring for a relative on return, as they may be deemed to have only returned on a temporary basis.

Geographically, the proportion of claims that were refused based on HRC grounds does not present an evidential pattern or commonality in any particular region. This could mean that refusals are not more prevalent in one area compared to another. The two appeals that were won in the Social Welfare Appeals Office were both for Jobseeker's Allowance and were based in Meath and Dublin. Therefore there is no conclusive pattern as to where inconsistencies are occurring from this limited sample.

## In their own words

Within the survey, respondents were asked;

*'How would you describe your experience of this process and interaction with the Department of Employment Affairs and Social Protection?'*

The following comments were made by those respondents who had been disallowed payments based on HRC grounds.



<sup>10</sup> Home for Good? A report on the experiences of recently returned Irish emigrants, Crosscare (2017) <https://www.migrantproject.ie/images/Home-for-Good---a-report-by-Crosscare-Migrant-Project---May-2017.pdf>

***'They treated me like a second class citizen'***

***'Told because she was born in USA she should return there if she wishes to collect money when I went in for emergency social welfare. Reception workers are nice and try to help.'*** (Representative of respondent)

***'Intimidating and cold'***

***'Dreadful. Demeaning and humiliating'***

***'Terrible. Considering leaving Ireland'***

***'Frustrating'***

***'Very long and difficult'***

***'Very, very difficult & disappointing'***

***'It was very, very difficult to get started. To get started I needed official documents I would have no way of having. I also felt like I was treated as though I was guilty and not a productive member of society'***

The comments and experiences as expressed indicate the level of stress and impact that decisions have had on returning emigrants who are in need of support at a crucial and possibly critical time. Returned emigrants' experience as customers at local office level has left them feeling unwelcome or even humiliated, as one respondent articulated their experience. For some, it has caused a significant delay in access to rights and entitlements and for others the outcome was inconclusive. It is possible those who did not pursue an appeal may have obtained other means of income, or it is also possible that they continued to borrow money and fall into further debt and risk until they found employment. However, their experiences are not consistent with Ireland's Diaspora Policy aims to support returning emigrants, and the feeling of being made unwelcome should not be part of anyone's interaction with a key service. These comments are also reflective of comments recorded in our earlier Home for Good? report which are discussed in the next section<sup>10</sup>.

## **Home for Good?**

In early May 2017, we published a report looking at the experiences of 400 Irish people who had moved back to Ireland from abroad in the previous two years and asked them if they were 'Home for Good?' In it we explored what challenges they had encountered on return, including in the area of access to social welfare.

174 people shared their views on this, giving mixed comments that consisted of a total of 73 positive comments and 101 negative comments about their interaction with DEASP. **However, all who mentioned HRC spoke negatively of their experience.** A sample of comments with specific reference to HRC issues are presented here to demonstrate the similarity of experiences with respondents of our most recent online survey detailed in the previous section.

*'Applying for child benefit took a long time because we had to prove habitual residency in Ireland which I felt was awful. As returning migrants we already felt out of touch and it made us feel so unwelcome in what is our home'*

*'(I) was told I wasn't a resident of Ireland anymore because I was away for 6 years'*

*'I found it very hard to get past the Habitual Residence part because the welfare officer didn't ask for enough evidence even though we had a table full of it. It was only when we sought support and help from Crosscare Migrant Project that we felt we were listened to or were cared about. We felt there was no real understanding or heart from the Job Center, (the) forms are black and white but people are not'*

*'We were out of the country for too long to be eligible. Even though we paid taxes here since first working at 16. If we had not found work immediately, we would be on the street'*

*'This was extremely difficult, they wanted proof I returned for good. When I got employment, I contacted them to say I had found a job, they then paid me what I was owed'*

*'Awful, treated like a third class citizen. Asked why I came back and to think about leaving again'*

Some express surprise at being asked for documents which are difficult to obtain. These documents often include proof of residence in Ireland – if staying temporarily with friends or family, proof of closed bank accounts or other ties in their destination country, or proof of last permanent address in Ireland before they emigrated. In our experience there are still many returning emigrants who may not be aware of what documents will be required from them until they are asked by the social welfare office on their arrival.

Returning emigrants may also experience the application of the HRC assessment as discriminatory as they feel their Irish identity is in question following their residence abroad. Others may think that their previous PRSI contributions should be the primary criteria for assessment. While criteria are essential for the Department to determine entitlements, decision-making must be consistent with the HRC guidelines in relation to returned emigrants, with particular sensitivity to the stress that customers will experience when returning home, often having lived several years abroad.



Figure C outlines the main issues that the returning Irish emigrants who formed part of the 'Home for Good?' report encountered with the DEASP on return. **HRC** was specified in **five comments** and **eligibility** in **19 comments**. Other comments referred to problems with applying for payments in relation to their length of time living in Ireland. A total of **30 responses** made reference to **difficulties with access to payments based on their status as a returned emigrant**.

Figure C

Issues	No. responses
HRC	5
Delays	32
Customer service/admin (forms, documents required, lack of information, staff, poor treatment as expat)	55
Eligibility	19
PPSNs	4 (3 for children)

We did not specifically ask about the HRC or refusals of social welfare applications, so these comments reflect the general experiences these returned Irish emigrants had with the DEASP. Figure C therefore shows a broader perspective of the issues that are experienced in terms of delays in decisions on claims, customer service and administrative issues, eligibility criteria, and issues with accessing Public Personal Service Numbers. The results from this research report prompted the more in-depth online HRC survey discussed in the previous section.

## 04 HOW HAVE WE WORKED TO ADDRESS THIS BARRIER?

### 4.1 A decade of advocacy 2008–2018

Since the introduction of the HRC we have provided specific information on our website and advocacy support for returning emigrants seeking to access social welfare in Ireland on return<sup>11</sup>. We have worked to challenge HRC issues affecting returning Irish emigrants since 2008. The timeline (overleaf/Figure D) marks out the steps made through our work on four levels:

1. **Supporting returning emigrants** through the information and advocacy service to access social welfare entitlements, including the provision of bespoke information on our website [www.migrantproject.ie](http://www.migrantproject.ie)

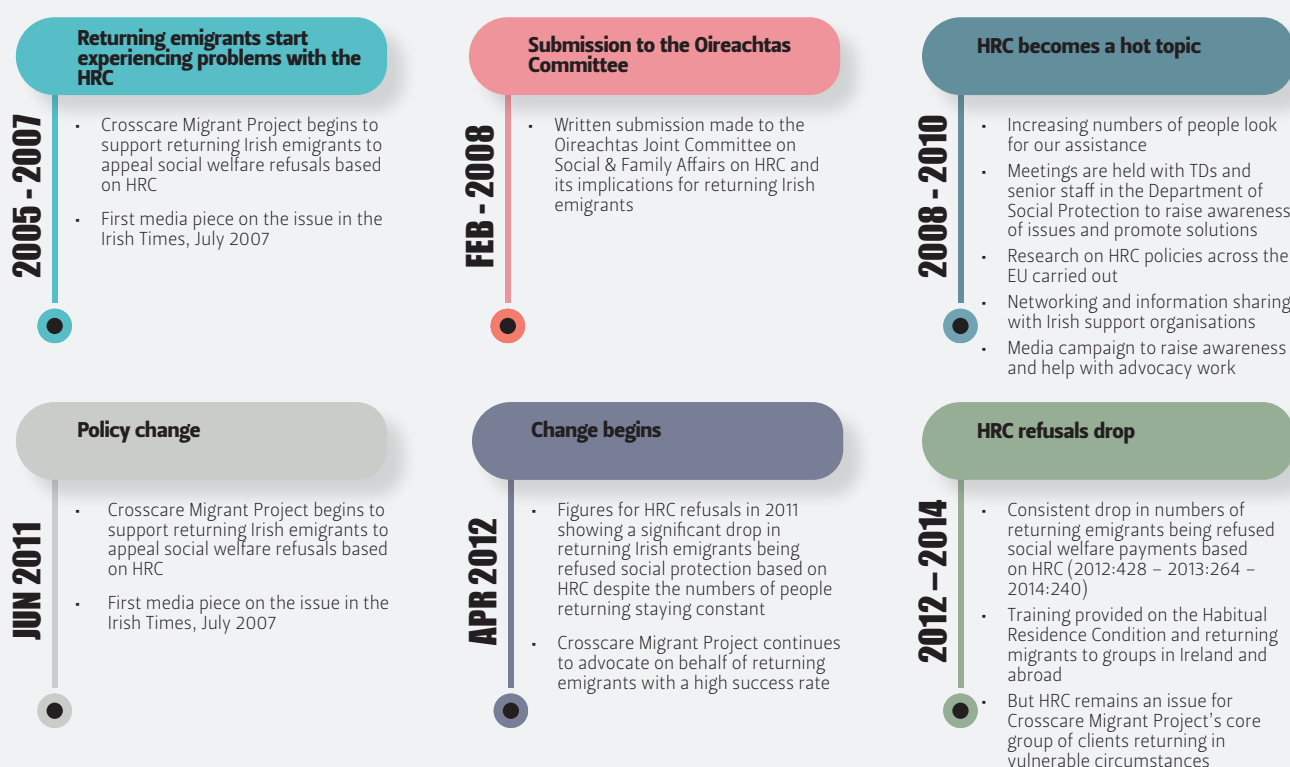


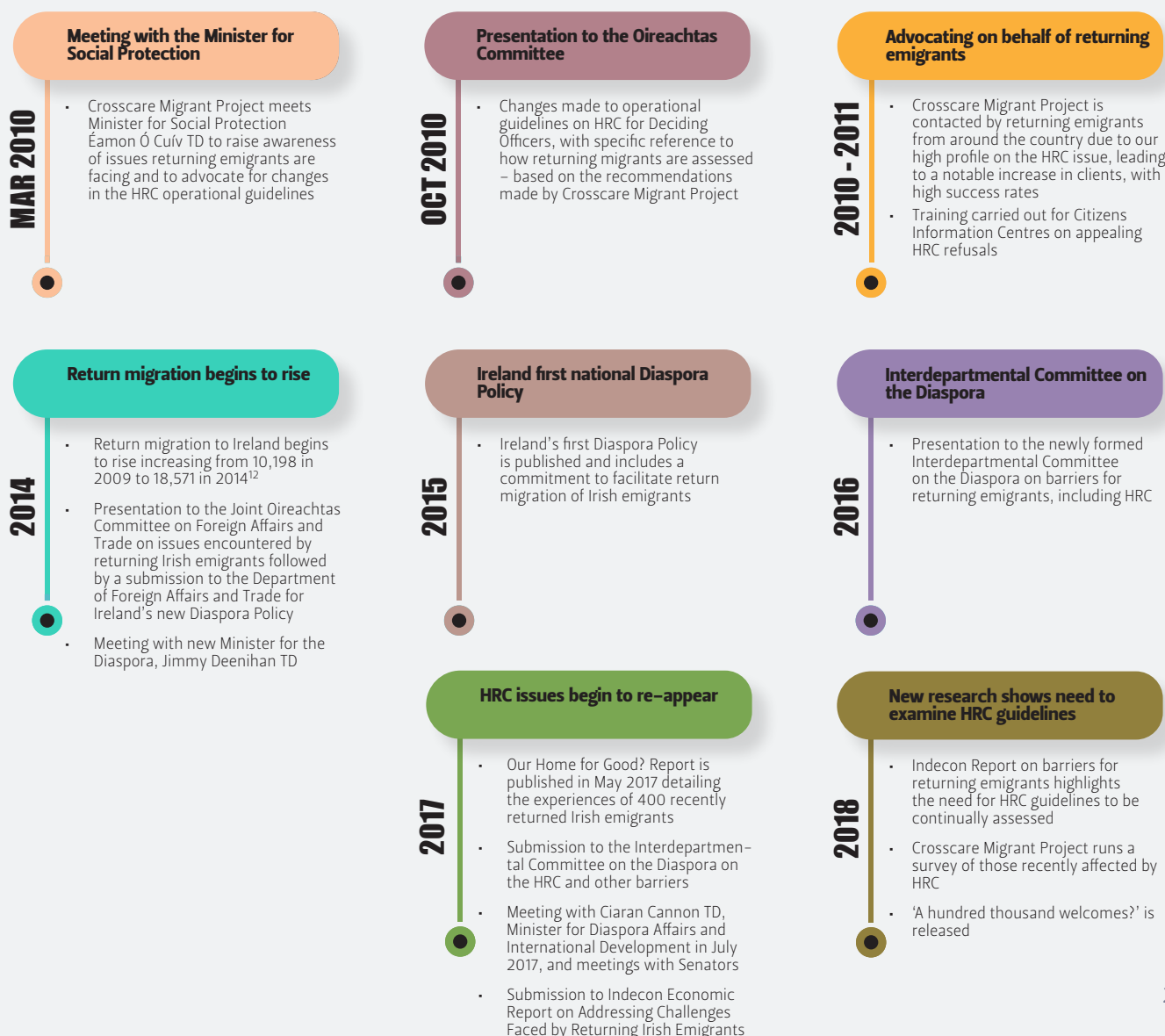
Figure D

2. **Supporting ESP-funded groups abroad** and other frontline services in Ireland to understand about HRC for returning emigrants, through training and peer support
3. **Policy led engagement** with the Department of Employment Affairs and Social Protection with submissions and case studies, identifying issues with consistency in application of HRC
4. Political engagement with the Government and parliamentary committees



<sup>11</sup><https://www.migrantproject.ie/returning-to-ireland/social-welfare-habitual-residence/>

<sup>12</sup>CSO, <http://www.cso.ie/en/releases-andpublications/ep/p-cp7md/p7md/p7ri/>



## 4.2 Our engagement with stakeholders

The Interdepartmental Committee (IDC) on Diaspora Policy was initiated through the “Global Irish – Ireland’s Diaspora Policy” in 2015. Its main purpose is to ensure that the government realises the objectives of the diaspora strategy, including addressing issues affecting the Irish abroad and those planning to return. The Committee includes key Government departments and State agencies and meets on a quarterly basis. It is chaired by the Minister of State for the Diaspora and International Development. To date the IDC has reviewed issues affecting the return of Irish emigrants and has heard from various key stakeholders, including Crosscare Migrant Project.

We highlighted the issue of the HRC in policy submissions to the Interdepartmental Committee (IDC) on Diaspora Policy in November 2016 and again in March 2017<sup>13, 14</sup>. These submissions outlined case studies from our advocacy service that had encountered difficulties in relation to the HRC. Both submissions discussed how inconsistencies in HRC assessments posed administrative barriers and significant adverse impact on some clients. We called upon the Interdepartmental Committee for the Diaspora to ensure that the HRC remained on the agenda as a priority for the DEASP for emigrants returning in crisis, and proposed two key recommendations:

1. Updated training for frontline staff and regular reminders circulated on relevant circulars on section 6.2 of the Guidelines for Deciding Officers on the determination of Habitual Residence which provides details on ‘Returning migrants or resuming previous residence’.
2. Appropriate referral of customers to the Community Welfare Service for interim Basic Supplementary Welfare Allowance with decision to be made in advance of and independent of primary claims, as per guidelines.

In 2017 we continued to advocate on HRC related social welfare appeals for returned Irish emigrants – most of which were successful through the Social Welfare Appeals Office. We are concerned with the most recent increase in returned Irish emigrants presenting to the service who have had applications refused based on HRC grounds since 2016, 100% of which have since been overturned by the Social Welfare Appeals Office. **Between 2016 and 2017, we worked with 124 individuals/families (2016) and 128 queries (2017) about HRC and directly worked on 18 cases of HRC-based refusals for 16 individuals.**

It is regrettable that the previous efforts to address inconsistency in the application of HRC for returned Irish emigrants are failing to ensure the protection of individuals presenting to our service and continuing to present issues for others such as the respondents from our research surveys. The body of evidence gathered in this report outlines the urgent need for updated HRC specific training for DEASP staff. We note consistent reduction in refusals comparatively in previous years, however, the continued rate of HRC based refusals for





Irish nationals up to 2016 is concerning given the specific HRC provisions made for returning emigrants and their unique connection to Ireland.

Given the increase in returning Irish emigrants, there is a risk of a possible increase in the quantity of refusals for 2017 if inconsistency in HRC-based refusals continues.

The quantity of refusals based on means or other assessment criteria are not available from DEASP as figures are identified by Irish nationality and are inclusive of all Irish citizens and do not separately identify returning emigrants. There are arguments to be made for revised means assessments in the cases of returning emigrants where these means are not accessible, such as a property abroad in the case of an emigrant returning to care for a family member. However for the purpose of this report, the concern is focussed on refusals primarily on the basis of HRC for claims from returning emigrants.

As above, we have on multiple occasions raised the issue of the HRC and access to social welfare with the Interdepartmental Committee on Diaspora Policy with respect to returning Irish citizens (2016, 2017). This was followed with a submission of evidential cases to the Department of Employment Affairs and Social Protection. The submission aimed to provide a clear picture of the challenges that are faced by returning Irish emigrants and to help inform the training and understanding of Deciding Officers in their assessment of the HRC for claims from returning emigrants.

<sup>13</sup> Presentation to the Interdepartmental Committee on Diaspora Affairs, Crosscare Migrant Project (November 2016) <https://www.migrantproject.ie/wp-content/uploads/2017/10/Barriers-for-returning-emigrants-Crosscare-Migrant-Project-brief-for-Diaspora-Affairs-IDC-24.11.2016.pdf>

<sup>14</sup> Brief for Interdepartmental Committee on the Diaspora, Crosscare Migrant Project (May 2017) [https://www.migrantproject.ie/wp-content/uploads/2017/10/Brief\\_for\\_Diaspora\\_Affairs\\_IDC\\_-\\_Crosscare\\_Migrant\\_Project\\_16.03.17.pdf](https://www.migrantproject.ie/wp-content/uploads/2017/10/Brief_for_Diaspora_Affairs_IDC_-_Crosscare_Migrant_Project_16.03.17.pdf)

## 05: WHY IS IT STILL A PROBLEM?

### 5.1 Analysis

The combined evidence of the cases of Patrick and Maureen, Tatiana, Ahmed, John, Mary and Sean's experiences, along with the primary research we conducted and available data on HRC refusals from the DEASP indicate that there continues to be outstanding and persistent issues with HRC based decisions on social welfare claims from returned Irish emigrants.

#### Individuals' experiences with DEASP

There is a need to provide clarity for individuals applying for social welfare to ensure they are made aware of:

- The criteria that will be used to assess their claim
- What documents they should provide
- What support is available to them in the interim if they so require it
- How to appeal the decision if they are unhappy with it

Guidelines on the HRC used by DEASP Deciding Officers are available online at [www.welfare.ie](http://www.welfare.ie) but can be difficult to find. The HRC form itself does not explicitly state which documents are required, nor does it advise how an applicant will satisfy the HRC. Additionally, often returning emigrants (with the exception of those engaging with Emigrant Support Programme groups such as our service, Safe Home Ireland or the Irish Council for Prisoners Overseas), may not be aware that as a result of the HRC they may be required to provide certain documentation that they can only obtain overseas.

There is an implied level of discretion that is available to the Deciding Officer in making an analysis of the information provided in an application, in line with the guidelines. There is room for subjectivity in this discretion as individual cases can differ in various ways, therefore Deciding Officers may seek documentation from one applicant that they may not seek from another applicant. However, the guidelines are very clear as to the rights of a returning Irish citizen: that they may be considered compliant with the HRC once they have returned with the intention of 'resuming their residence'.

The guidelines go further for those who have a declaration showing that they have repatriated with the assistance of Safe Home Ireland '*as it can be accepted as proof that the customer has returned to reside in the State on a permanent basis*', or those who have been forcibly deported back to Ireland, stating that deportees are one of the '*categories of cases where the five factors are usually found to be met*' in order to satisfy HRC. In our experience, decisions to refuse a social welfare allowance on HRC grounds for a returning Irish emigrant are often overturned on appeal. The primary objective of this report is to address this operational failure at local level.



### **The issue of insufficient proof**

We contacted the DEASP in July 2017 to highlight that many of the HRC related cases we were undertaking were being overturned on appeal, indicating in our estimation an issue with decision making at local level. The DEASP responded by saying that evidence that was made available to the Appeals office was not always made available to the original Deciding Officer. In our view however, this information could have been requested at application stage so as not to adversely affect the outcome of the initial decision making.

Additionally, for those emigrants returning from conflict zone areas, evidence of being directed to leave the area by the Irish authorities should have been sufficient as in many of the cases it was not possible to obtain evidence of closing bank accounts, terminating tenancies, etc. This also applies to people who returned to Ireland in a hurry to be closer to ailing parents or due to unavoidable circumstances such as an expired visa or loss of income.

### **Dual citizens**

Ireland has always had a wide diaspora globally, and today we are seeing a changing diaspora that includes many dual Irish citizens who were born abroad or born in Ireland to naturalised parents, or are naturalised Irish citizens. Two-thirds of the cases concerning HRC refusals that presented to our service in 2017 came from dual citizens, who were either born here to non-Irish parents or who naturalised as adults. All of these cases were won on review or appeal. As illustrated in Tatiana and Ahmed's stories, these cases were particularly difficult with significant delays in access to financial support from the DEASP.

These citizens have family or heritage outside of Ireland and will spend some time in their lives in another country. Some, like Ahmed are forced to return in crisis from conflict zone areas such as Libya, Syria, and Yemen and may have been advised by Irish consular authorities to evacuate for their safety. Others, like Tatiana, return in vulnerable circumstances with no reliable income or option to work. On return to Ireland however, they may be at risk of being denied urgent social welfare assistance.

## Examples of good practice

Good practices in HRC assessment for specific groups of returned migrants currently exist and are explicitly included within the HRC guidelines.

### 1. Returning migrants or resuming previous residence

The current HRC guidelines for Deciding Officers are very clear in relation to the assessment of returning migrants or applicants who are resuming previous residence:

*'Returning migrants or Resuming previous residence*

*A person who had previously been habitually resident in the State and who moved to live and work in another country and then resumes his/her long-term residence in the State may be regarded as being habitually resident immediately on his/her return to the State.<sup>157</sup>*

They further outline the items that should be taken into account when determining the centre of interest of the applicant in Ireland, and the types of documents that can be approved as evidence – which is not an exhaustive list, therefore other documentation may also be assessed and approved.

### 2. Referral to Safe Home Ireland

There is a safety-net provision for returning migrants who require assistance with demonstrating their intention to live in Ireland permanently.

*'Safe-Home Ltd. and returning Irish emigrants*

*Arrangements were agreed with Safe-Home Ltd, a registered charity, to assist with the difficulty experienced by a minority of returning Irish emigrants in demonstrating their intention to live here permanently for the purposes of satisfying the HRC.*

*To assist with this issue, Safe-Home Ltd. has drawn up a check list of a range of documents that will help customers show that they have returned to Ireland permanently.*

*Safe-Home Ltd. has also designed a declaration which will confirm where a customer is engaging with them as part of their repatriation. The declaration should be associated with any social assistance claim a customer might make. This measure should help to expedite the decision-making process in these cases as it can be accepted as proof that the customer has returned to reside in the State on a permanent basis.<sup>161</sup>*

Whilst this provision is positive and beneficial for some returning emigrants, it may not be accessible for others who will not be aware of or have not been referred to the service. The declaration has a caveat that is dependent on Safe Home Ireland confirming that the applicant has secured housing in Ireland. Whilst this approach aims to alleviate the delay in processing applications from returning emigrants, it can be restrictive



to identify one service alone in coordinating this practice with the Department. It can also exclude individuals who are staying with family members or associates on a short-term basis and are therefore unable to provide proof of residence. This might be particularly the case where emergency accommodation is unavailable in some Local Authorities.

This provision would be more beneficial where the Department itself could provide the relevant information on demonstrating intention of permanent return, provide a standardised declaration on their repatriation, and make appropriate referrals to other local support organisations that can further assist where required.

### 3. Returning Irish Nationals following deportation to Ireland

Another protocol that is in practice (section 6.5 of the HRC guidelines) where cases are generally deemed to have met the five factors for HRC are deportees, that is, people returning from abroad under a deportation order following release from prison or removal due to an expired visa. These individuals are usually provided with a copy of their deportation order and on presentation to the local social welfare office on arrival in Ireland will usually qualify for a social welfare payment as the HRC is verified by the proof that they can no longer reside in the country they have returned from. These individuals are often referred for assistance to the Irish Council for Prisoners Overseas (ICPO) by our service and Consular Authorities in the host country. The ICPO assists these individuals with their repatriation including assistance with applications for social welfare payments.

#### *'Returning Irish Nationals following deportation to Ireland*

*Irish nationals who have been deported from other countries, e.g. USA and return to live in Ireland having lived here previously normally satisfy the HRC, if their centre of interest is Ireland. Form HRC1 should be completed in full in these cases and copies of deportation papers requested in support of statement of deportation. DO's should bear in mind that they can't go back to the country from which they've been deported.'*<sup>17</sup>

Making the decision to return to Ireland after emigrating several years ago, especially for those who felt they had no choice but to leave, is not taken lightly. Often individuals and families are returning to be closer to family, restart their lives here and settle in Ireland permanently. Yet those in need are still experiencing issues with accessing basic statutory supports during a critical time in their lives, particularly those who are returning in crisis with no access to income or funds. Public awareness of the HRC has

<sup>15</sup> <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#app1> (Section 6.2 Habitual Residence Condition – Guidelines for Deciding Officers)

<sup>16</sup> Ibid

<sup>17</sup> Ibid; Appendix 1(b)

been limited and there continues to be various misconceptions. The reasons emigrants return are varied and may not always be planned or prepared, and the fear of being denied access to urgent supports on return can act as a deterrent to people returning who will essentially be contributing to the growth of the economy.

#### 4.2 Misconceptions and insufficient information

Over the past decade we have encountered many HRC-related misconceptions from individuals, NGOs at home and abroad, Irish consular staff, TDs and even DEASP staff. The complexity of the condition has led to confusion among those seeking information on this assessment and in understanding whether they will satisfy HRC in making a claim. With the exception of individuals engaging with support services such as ours, many will have already returned to Ireland and started a social welfare application before coming across the term 'HRC'. In fact some may not be aware of this condition until their claim has been refused citing the HRC as grounds for refusal.

Between 2016 and 2017 we gave 10 information sessions on applying for social welfare and the HRC on return for both emigrant support organisations and individual emigrants that targeted Irish communities in the US, Canada, Australia, UK, and New Zealand. These reached over 3,000 people and there is demand for further sessions in 2018. HRC is consistently in the top 3 of most searched items on our website, and over 2,000 people accessed this information in the 3 months from January to March 2018<sup>18</sup>.

Some misconceptions that have been found to be circulating among these audiences and social media discussions are:

- Proof of Irish citizenship (passport or birth certificate) is sufficient to meet HRC
- A tenancy agreement or ownership of a property in Ireland is sufficient to meet HRC
- There is a requirement of 2 years residence in Ireland to qualify for social welfare
- Newly returned emigrants are not allowed to apply for social welfare

Some evidence of these misconceptions has also been present in queries received through our information and advocacy service.

#### Recurring cases

Various misconceptions of HRC and the recurrence of refusals that have been overturned by the Social Welfare Appeals Office through our work emphasises the inconsistency in knowledge and interpretation of the HRC.

**Crosscare Migrant Project dealt with 280 queries (some clients have multiple applications, all affected by the HRC) in relation to HRC in 2017, an increase of 19% on 2016 and 211% on 2015. Queries are by email, phone and in person, many of which are informing clients about the HRC or dispelling confusion with it.**



Some cases have led to further advocacy which involves making appeal submissions to the Social Welfare Appeals Office for refusals based on the HRC. Through our networking with other Irish emigrant support organisations abroad, we are aware that emigrants intending to return to Ireland are seeking information and advice from these organisations and we provide supplementary information and advice on this.

### The HRC1 form

With each social welfare claim, a separate 24 page Habitual Residence Condition form (HRC1) is included to be completed as part of the claim<sup>19</sup>. This form includes 62 questions and a checklist of required applicable documents including 'Bank statements for the last 6 months for all bank accounts held outside the Republic of Ireland', and 'Documentary proof of continuous residency in Ireland'. However, it does not provide further information on the assessment of the HRC, the 'five factors', or examples of cases where the five factors are usually found to be met (e.g. international workers, deportees, etc.)<sup>20</sup>. There is also no reference to 'resuming residence' for returning emigrants or specific documentary proof that will be considered or may later be requested by the Deciding Officer. It is a particularly long and tedious form that can seem unnecessary for applicants as some questions may seem irrelevant or aimed at non-Irish applicants, e.g. Q33. 'Did you arrange or seek to find employment in the Republic of Ireland before coming to the Republic of Ireland?'

The absence of information and knowledge prior to return often results as a barrier to emigrants who have already returned, as they may be unable to access documents from their host country such as confirmed closure of bank accounts. Knowledge of what documents are important or requested from the Department to establish habitual residence is necessary for emigrants prior to return, as access to such documents is more accessible while they are still in their host country. This would prevent delays in accessing social welfare on return when income support might be imperative.

### Availability of information

There is limited provision of clear accessible information of returning emigrants on the Department's website [www.welfare.ie](http://www.welfare.ie). Under the 'rules' subtitle in the 'Jobseeker's Allowance' page it states that applicants '*must meet the habitual residence condition*' with a hyperlink to the specific operational guidelines on HRC<sup>21</sup>. However, these guidelines are written for and addressed to the Deciding Officer to assist in their decision making, without an explainer for the public or customers. In these guidelines,

<sup>18</sup> <https://www.migrantproject.ie/returning-to-ireland/social-welfare-habitual-residence/>

<sup>19</sup> <http://www.welfare.ie/en/pdf/hrc1.pdf>

<sup>20</sup> Guidelines for Deciding Officers on the determination of Habitual Residence, Department of Employment Affairs & Social Protection, Section 6.5: <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx>

<sup>21</sup> <http://www.welfare.ie/en/Pages/Habitual-Residence-Condition--Guidelines-for-Deciding-Offic.aspx#app3>

reference to returning emigrants is referred to in section 6.2 but is not easily visible, and the reader must scroll far down through the text to read it.

Under the section on ‘Frequently Asked Questions’, question 23 covers the returning emigrant question ‘*I have been working abroad for the last couple of years. I have now returned to Ireland and I am looking for a job. Can I apply for a Jobseekers payment?*’. The answer refers to transferring social insurance records from EU countries or refers the customer to their local Intreo office<sup>22</sup>. This presents an issue for people seeking information online from abroad who are returning from countries outside the EU.

#### 4.3 The experience of Irish support organisations around the world

Emigrant support groups around the world are funded through the Department of Foreign Affairs and Trade Emigrant Support Programme to support Irish nationals living abroad. Many are supporting emigrants who are at risk and may be planning a return to Ireland or are in a crisis situation and are unexpectedly returning. As part of this, they receive queries from emigrants about access to social welfare on return. We asked the organisations in the USA, UK and Australia about the issues they encountered in relation to social welfare and the HRC for returning emigrants:

##### Irish Community Services, USA

*‘At ICS, our clients find that navigating the HRC can be quite difficult and uncertain. Upon making a big life decision the uncertainty of satisfying the HRC is stressful for emigrants seeking to return. The primary concerns our center sees in relation to the HRC, are basic necessities such as access to healthcare, housing, and education. Navigating the HRC from afar can be intimidating and in some cases may delay or even prevent folks from returning.’*

##### Coalition of Irish Immigration Centers, USA

*‘In recent years, the Coalition of Irish immigration Centers (CIIC) received feedback from our membership that there was a lack of understanding regarding the Habitual Residence Condition both among clients and service providers. Both found difficulty in sourcing accurate information on the HRC and had uncertainty regarding the policy and application process for the condition. Given the support that our centers provide to individuals considering a return to Ireland to live, a working understanding of the HRC was critical.*

*Through collaboration with Crosscare Migrant Project, CIIC and its membership were able to receive necessary education and clarification on the HRC process, therefore benefiting the Irish Diaspora we serve in the United States. CIIC will continue to work with partners like Crosscare to stay informed on the HRC, allowing us to provide up to date, accurate and reliable information and support to the community we serve.’*





<sup>22</sup> <http://www.welfare.ie/en/Pages/jajbfaq.aspx>

### London Irish Centre, UK

*'Often our returning Irish clients don't realise the HRC is in existence and they are surprised to hear that it applies to them. In fact, an Irish person can move from Ireland to the UK and they are instantly eligible for benefits, yet if an Irish person returns home to Ireland they are subjected to the HRC.*

*When people hear about the reality of returning to Ireland and everything they need to do to ensure they satisfy the HRC, it can deter them from the process. Due to the conditions of the HRC, people have to shut down everything here in the UK (benefits, tenancies, bank accounts) which means that they have nothing to fall back on if it doesn't work out at home. This means that people are quite vulnerable as they do not have any options if it doesn't work out. The decision to move home is difficult for people, and the HRC can create a significant barrier to the process.'*

### Irish Community Care, UK

*'A Service User of our Wigan Service had a stroke and was in full time care in a nursing home. He still had mental capacity and was able to communicate that he wanted to return to Ireland to be near his family. We found a care home willing to take him who could offer 24 hour care. In the end he couldn't risk it as he would have to fund himself in the nursing home until he was assessed for financial support in Ireland, and this would use up all the savings he had. If he was then not entitled to financial support he would have to return to England as he could not afford to fund himself in Ireland. Travelling between England and Ireland would require accompaniment by healthcare professionals and ambulance staff which he would also have had to pay for, but he would have no money left to afford this. In the end it could not be arranged without possible risk to his own welfare so he had to stay in Wigan without family around him. He sadly passed away recently.*

*Another current ICC Service User in Liverpool desperately wants to return home to live in Ireland. However the risk of potentially not being able to access the welfare system there is affecting her decision. This is impacting negatively on her health and wellbeing.'*

### Irish Support Agency, Australia

*'At the Irish Support Agency one of the main concerns we observe when working with our clients considering a return to Ireland is access to welfare payments, mainly child benefits, upon their return. Migrants who left Ireland single are now returning with families and need to ensure that they are in a position to support them, especially if*

*they have a period of unemployment while they search for a suitable job. This can be a major deciding factor for them. There appears to be a sense of confusion relating to the HRC and we often hear potential returnees say that they won't be able to access welfare entitlements for two years. This is an important and common perceived barrier for them returning to Ireland.'*

The feedback from these groups highlights an unintended effect of the Habitual Residence Condition: the perceptual barrier it presents for Irish emigrants considering a return to Ireland. In so doing it can deter people from making a move back altogether, a fact which is at odds with Ireland's commitment to promote return migration as part of our Diaspora Policy. This issue is one we have noted in our engagement with Emigrant Support Program funded groups around the world, with the HRC being recognised by many of these as a barrier to return.

Fears of delays or even refusal of access to social welfare payments due to the HRC are compounded by confusion and misconceptions surrounding the condition – such as the belief that a person must be in Ireland for 2 years before they can apply for social welfare support. In other cases, Irish emigrants are surprised to hear HRC applies to them, and the uncertainty it poses if things do not work out as planned discourages some from returning at all, even if they wish to do so.

In Ireland, our colleagues in Safe Home Ireland have encountered similar issues with the HRC upon return for people coming back to areas outside of Dublin. Many are older emigrants who have retained very strong ties with Ireland and report feeling that their Irish-ness is being called into question:

### **Safe Home, Ireland**

*'The sentiments that seem to crop up again and again are that the habitual residency process makes people feel "unwelcome back in my own country". Returned emigrants are often upset and confused at the level and relevance of information requested. Returning emigrants need clearer guidance and support before they begin the HRC application process, which would have a real impact to improving the quality of people's lives on return. In some cases, applicants are left without access to any other source of income and this is on-going during the appeals process for several months. Particularly for people who are vulnerable, without family support, the risk of homelessness and decline in mental health can become huge factors at this point.*

*Some cases that present to the service are already at review/appeal stage and it is evident from the outset that it was clear that the applicant does meet HRC requirements but may not have been aware of what they needed to include with their application or were not given guidance on completing the application. Emigrants should be provided with information about organisations that specifically support returning Irish emigrants, including Safe Home Ireland and Crosscare Migrant Project and/or local Citizen Information Centres.*



*Additional training for DEASP Deciding Officers on HRC, and particularly how it relates to returning Irish emigrants, would not only save vulnerable people a lot of worry and trauma, it would also result in less DEASP resources being wasted in bringing cases all the way through the review and appeal system when this could have been avoided if sufficient information and guidance were provided at initial application stage.'*

#### 5.4 The Findings of the Indecon Report

In September 2017, the Minister for Diaspora and International Development Ciarán Cannon appointed economic consultancy group Indecon Ireland to compile a report on the barriers affecting returning emigrants and to look at potential solutions to address administrative issues. This report was published in March 2018 and included input from many stakeholders including a submission from Crosscare Migrant Project<sup>23</sup>. Reference to this input is made in section 10.3 of the Indecon report.

The Indecon report presents an analysis of a large scale survey with emigrants and includes a detailed section on the Habitual Residence Condition<sup>24</sup>. Respondents to the survey were emigrants who had returned, were planning a return or were not planning a return. The results showed **52.9% respondents found it difficult or very difficult to demonstrate normal/habitual residence in Ireland**. The majority of these respondents were resident in Ireland, Australia and New Zealand. The situations of these respondents in relation to any applications made or the outcomes are not captured in the Indecon survey.

In reference to 'at-risk' returning emigrants, such as the provision for returning Irish nationals who have been deported, Indecon "*considers the continued review of the portions of the guidelines relevant to returning emigrants to be of priority.*" The report does not specifically refer to other 'at-risk' groups however this recommendation is shared by Crosscare Migrant Project in relation to Irish nationals who are returning in crisis and may need to access immediate support services on arrival.

Of the thirty recommendations made by Indecon, number 21 recommends to '**Ensure Consistency in Application of Habitual Residence Condition Guidelines**'<sup>25</sup> in line with our position.

<sup>23</sup> Submission to Indecon Ireland on Barriers for Returning Irish Emigrants, Crosscare Migrant Project (October 2017) [https://www.migrantproject.ie/wp-content/uploads/2017/11/Submission-to-Indecon-Ireland-on-Barriers-for-Returning-Irish-Emigrants\\_Crosscare-Migrant-Project\\_October-2017.pdf](https://www.migrantproject.ie/wp-content/uploads/2017/11/Submission-to-Indecon-Ireland-on-Barriers-for-Returning-Irish-Emigrants_Crosscare-Migrant-Project_October-2017.pdf)

<sup>24</sup> Indecon Economic Report on Addressing Challenges Faced by Returning Irish Emigrants, Indecon Ireland (February 2018), Section 10.3; <https://www.dfa.ie/media/dfa-2017/globalirish/Report-on-Returning-Emigrants-2018.pdf>

<sup>25</sup> Ibid: Chapter 13

## 06: WHAT WILL HELP?

In this report, we argue that the HRC acts as a barrier for Irish emigrants who require urgent access to social assistance payments upon return primarily due to inconsistency in its interpretation, misinterpretation and misapplication at frontline level. This includes, but is not limited to:

- Failure to provide adequate information on the Habitual Residence Condition to returning emigrants
- Failure to seek adequate evidence from returning emigrants to support a claim at the initial application stage
- Requests made for excessive information which is beyond the remit of the applicant
- Failure to correctly interpret and implement HRC guidelines on claims from returning emigrants
- Failure to refer applicants to the Community Welfare Service for interim Supplementary Welfare Allowance claims
- Failure to refer applicants to relevant support services
- Failure to issue adequate Exceptional Needs Payments

What can be done to address this? It has been suggested that the wording in the policy on the HRC guidelines on returning emigrants should be changed from ‘may be regarded as being habitually resident’ to ‘will be considered habitually resident’. This was most recently raised by Deputy Brian Stanley TD who stated, *‘It seems that the affected are getting a double blow in that the habitual residency clause is being used such that they have to prove their case, which can take a considerable period’*<sup>26</sup>. Variations on this suggestion have been proposed in the past, however under EU free movement regulations Ireland cannot ‘positively discriminate’ by treating Irish citizens differently to EU citizens resident in Ireland.

It is our belief that the existing DEASP guidelines on HRC are adequate for returning emigrants to be considered habitually resident upon return. Improving decision making at local level in line with the guidelines would considerably reduce the number of refusals successfully challenged at the Social Welfare Appeals Office. It would also help relieve some of the burden on the Appeals Office, which has a record of 36% decisions overturned in the appellant’s favour.

### 6.1 Recommendations

#### Administration

Many of the issues in this report pertain to the administration of social welfare allowances based on consistency in HRC decisions. Inconsistency has resulted in an adverse impact on the individuals in the case examples outlined. Consistency in the application of HRC guidelines would ensure protection of returning emigrants and their entitlements, particularly for those returning in crisis. This can be achieved by appropriate staff training provision and implementation of the existing guidelines. As a safety-net and guarantee for



the Deciding Officer, the introduction of a mechanism for determining return on a permanent basis of applicants will ensure the applicant is enabled to access support in cases where evidence of permanent return to Ireland is unavailable. Transparency in consistency in the application of HRC in claims from returning emigrants must ensure fair treatment for returning emigrants.

- 1 We recommend the Department of Employment Affairs and Social Protection ensures appropriate and consistent application of HRC guidelines for returning emigrants as 'Returning migrants or resuming previous residence' through updated and ongoing training and supervision for frontline staff
- 2 We recommend the Department of Employment Affairs and Social Protection to provides a user-friendly bespoke guide to the HRC for returning Irish emigrants that can be hosted on [www.welfare.ie](http://www.welfare.ie) which is regularly updated
- 3 We recommend the introduction of a mechanism, such as a declaration form (similar to that accepted from Safe Home Ireland) or as an option for inclusion in the HRC1 form – not dependent on proof of secured housing, that returning emigrants can use to confirm that they have returned to reside in the State on a permanent basis
- 4 We recommend the collection and publication annually of figures showing the total number of HRC related refusals overturned on appeal relating to Irish citizens

#### Customer service

Clarity is required for returning emigrants to know in advance of applications what documents will be required from their host country, to help prevent delays in processing their claim on return. Returning emigrants must be appropriately informed of their rights and entitlements. Appropriate decision-making must be ensured in the first instance, and where necessary returning emigrants are enabled to make a timely appeal with access to safety-nets such as Supplementary Welfare Allowance. Emigrants returning in crisis might also need appropriate and timely assistance to access other relevant supports such as homeless services, health services and social and emotional well-being services.

<sup>26</sup> Dáil Éireann debates – 03/10/2017, Written answer 310 (Available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2017100300043>)

- 5 We recommend that the DEASP provides clarity on required documents and evidence for claim assessments in all forms of communication for returning emigrants, including the SW 108 HRC leaflet, website information and communications by email, phone, letter, and in person at local offices
- 6 We recommend appropriate referral of returning emigrants to the Community Welfare Service for Basic Supplementary Welfare Allowance and a decision to be made in advance and independent of primary claims, as per guidelines
- 7 We recommend appropriate referral of returning emigrants to the Social Welfare Appeals process
- 8 We recommend appropriate referral of returning emigrants to support services and agencies for further support needs, such as Crosscare Migrant Project, Safe Home Ireland and local services such as Citizen Information Centres

## 6.2 Conclusion

Inconsistencies in the application and assessment of the Habitual Residence Condition for social welfare claims are adversely affecting Irish citizens who have lived abroad. The HRC is in many ways both a real barrier for returned emigrants and a perceptual barrier for those still living abroad. For some, it is resulting in denial of access to a vital financial safety net, putting them at risk of poverty or even homelessness. For others, it brings into question their Irish identity, and contributes to feelings of alienation upon return. In some cases it is also acting as a deterrent for those considering a return.

The findings and recommendations in the Indecon report give further impetus to address the issue of the HRC as a barrier for returning Irish emigrants. Our own research and the case studies presented here provide additional in-depth and evidence-based analysis of the issue and particularly how it is having an impact on those returning in crisis.

The existing provisions in the Department of Employment Affairs and Social Protection's own guidelines on the HRC, if consistently applied, should prevent anyone from being denied a safety-net where they require it. Yet this is not happening in all cases.

Ireland needs to be responsive to the evolving needs of our citizens, and this includes those who return from abroad. We believe that, if implemented, the recommendations in this report will help to ensure returning Irish emigrants are not disproportionately affected by the HRC and are not at a disadvantage solely due to the fact they have spent time abroad. This in turn will contribute towards achieving the aims of Ireland's Diaspora policy, and help extend a welcome home to all our emigrants abroad.



## 07: APPENDIX – HRC SURVEY QUESTIONNAIRE

Launched 20th November 2017 (<https://www.surveymonkey.com/r/Crosscare-SocialWelfare>)

### Social welfare and returned Irish emigrants

Refusals of social welfare payments on return to Ireland. This survey aims to capture the experiences of people who have been disallowed non-contributory social welfare claims on return to Ireland within the past two years. All responses are anonymous and will be treated with confidentiality.

#### 1. Have you returned to Ireland from abroad within the past two years and been refused a social welfare payment?

Yes ☐ No ☐

#### 2. Which of these payments were refused? (select all applicable)

- ☐ Jobseeker's Allowance
- ☐ Supplementary Welfare Allowance
- ☐ Disability Allowance
- ☐ Carer's Allowance
- ☐ Child Benefit
- ☐ State (Non-Contributory) Pension
- ☐ Widow's, Widower's or Surviving Civil Partner's (Non-Contributory) Pension
- ☐ Blind pension
- ☐ Back to Work dividend
- ☐ Guardian's payment
- ☐ One Parent Family payment
- ☐ None of the above

Other (please specify)

#### 3. In which county did you make your application?

#### 4. What was the reason stated for refusal of your application? Select all applicable

- ☐ Do not satisfy the Habitual Residence Condition

Other (please specify)





5. Following the refusal did you make an appeal to the Social Welfare Appeals Office?

☐ Yes

☐ No

6. Did you get assistance from any of the following with making your appeal?

☐ Citizen's Information Centre

☐ Crosscare Migrant Project

☐ Safe Home Ireland

☐ TD

☐ Other

☐ None

7. Did you win your appeal?

☐ Yes

☐ No

☐ Still waiting on a decision

8. What is your source of income now? Select all applicable

☐ Getting the payment I applied for

☐ Getting a different social welfare payment

☐ Wages from employment

☐ Living off savings

☐ No income

Other (please specify)

9. How would you describe your experience of this process and interaction with the Department of Employment Affairs and Social Protection?

10. What country have you returned from?

11. If you are happy for us to contact you in relation to your answers please provide your name, phone number and email address. Your information will not be shared without your consent. If you have recently been refused a social welfare payment and would like some help with an appeal contact us at [migrantproject@crosscare.ie](mailto:migrantproject@crosscare.ie)







## Government of Ireland Emigrant Support Programme



An Roinn Gnóthaí Eachtracha agus Trádála  
Department of Foreign Affairs and Trade

Crosscare Migrant Project is a project of Crosscare, the social support agency of the Catholic Archdiocese of Dublin. Our work with Irish emigrants is funded by the Emigrant Support Programme of the Department of Foreign Affairs and Trade.

Crosscare Migrant Project [www.migrantproject.ie](http://www.migrantproject.ie)

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