

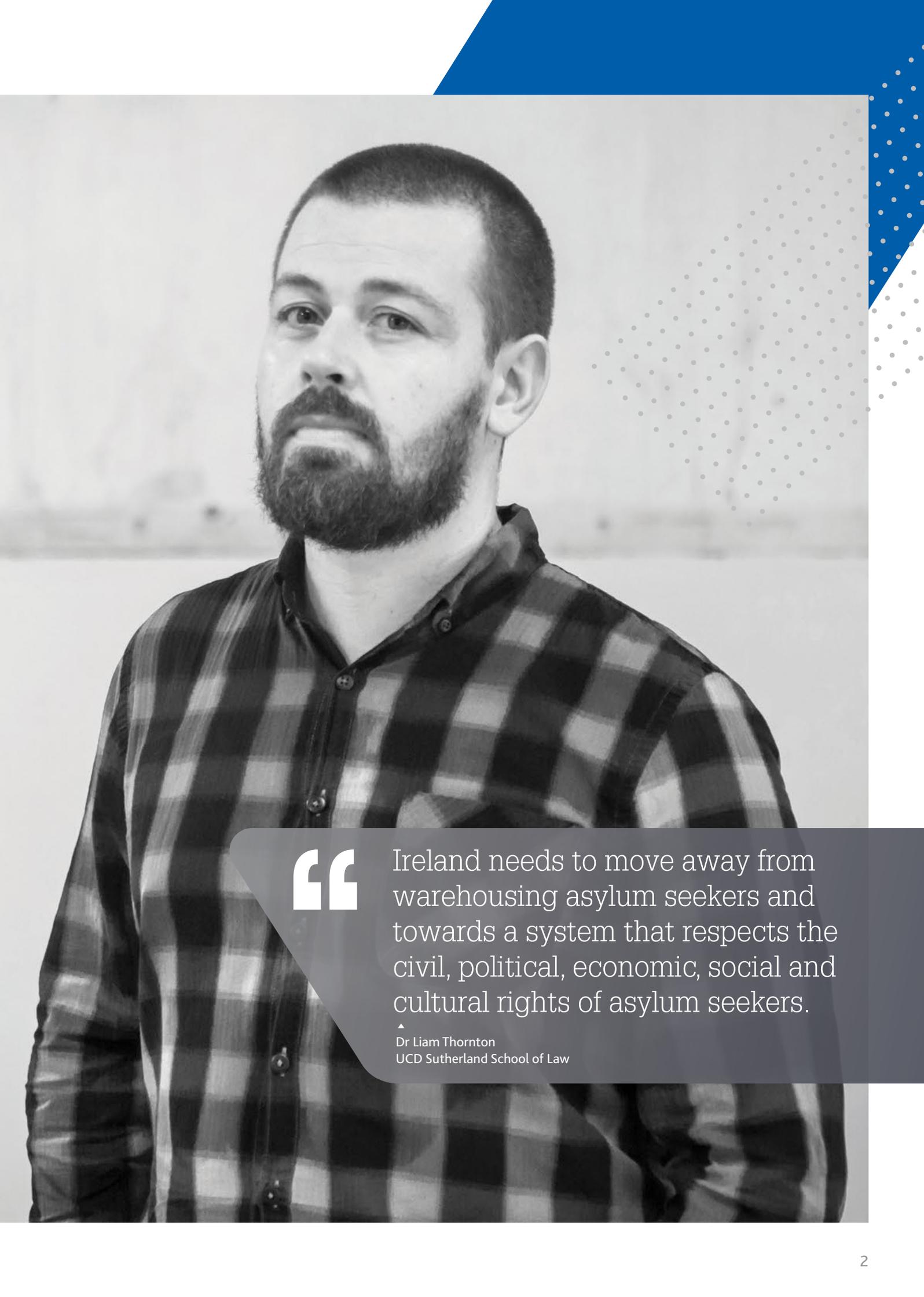
DR LIAM THORNTON

UCD Sutherland School of Law

Out of sight, out of mind

The way Ireland deals
with asylum seekers is
an Irish solution to
an Irish problem.

Putting people in institutions, says Dr Liam Thornton, UCD Sutherland School of Law, is how we have always dealt with so-called 'problematic' groups resulting in their segregation from a society that simply does not care about them.



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Ireland needs to move away from warehousing asylum seekers and towards a system that respects the civil, political, economic, social and cultural rights of asylum seekers.

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Dr Liam Thornton
UCD Sutherland School of Law

Out of sight, out of mind:

Ireland's treatment of asylum seekers is a denigration of their human dignity.

Asylum seekers in Ireland's direct provision system are forced into State dependency, restricted in where they can live and prohibited from employment for fear of criminal conviction. They are denied the same social rights other people in Irish society enjoy.

Dr Liam Thornton's research focuses on the systems and processes of law that have led to the denial of social rights to asylum seekers. He shows how segregation through the direct provision system is typical of how Irish society treats groups it believes to be troublesome and continually refuses to learn from its mistakes.

An asylum seeker is a person who comes to Ireland, makes a claim for protection from persecution or serious harm, but whose claim has yet to be ultimately determined by Ireland. Asylum seekers in Ireland live in designated centres away from the main body of Irish society. They are not allowed to work, are not entitled to social welfare and are excluded from social housing and rent allowance. If they move from these designated centres, they lose their right to bed and board accommodation and their allowance of €19.10 per week, an amount that has not increased since 2000. The system for determining whether an asylum

seeker is entitled to protection in Ireland can be slow and cumbersome. There is a high success rate in challenging rejection of protection claims before our courts. This leads to people spending several years in the system of direct provision. What started as a short term 'no more than six months' system, has become a stain on Ireland's human rights record.

Dr Liam Thornton has carried out a significant analysis of the formation of the direct provision system, utilising Freedom of Information documents to construct a picture of how and why the system of direct provision developed. He finds that since

asylum seekers started coming to Ireland, a hallmark feature of the Irish reception system has been the continual withdrawal and diminution of social rights. This, he says, is justified on the grounds of preserving the integrity of immigration controls and the protection of the welfare state from those who are not viewed as having a definitive right to be in the country.

"Direct provision is not on a statutory footing. It has not been set out in legislation, but is based on a series of ministerial circulars, written by civil servants and approved by various ministers. They have organised the removal of asylum seekers

from the welfare system process by stealth. And because asylum seekers are not entitled to work, they have been forced into a dependency on the system, while still being excluded from the welfare system afforded to the rest of society,” Dr Thornton says.

Direct provision has worrying historical and even current parallels with how we have treated other politically labeled ‘problematic’ populations in the past. From the mass incarceration of our most vulnerable citizens in industrial schools, borstals, mental hospitals, mother and child homes and Magdelene laundries, there are times that the ‘never again’ and apologies for these past harms by our most senior politicians ring hollow.

When established, direct provision was to be a short term, no more than six month system. Yet, by mid-2016, there were almost 4,000 asylum seekers in the direct provision system. 12.4% of these asylum seekers have lived in direct provision for more than 7 years. Well over half of asylum seekers in direct provision have been in the system for over 12 months.

“Why do we continue to repeat the mistakes of the past? Why does the country continue to build institutions for parts of the population they don’t like and then make excuses about it?” he adds.

Dr Thornton says that society will always come up with reasons why the system is working and can’t be changed. For example, the initial excuse used in the case for keeping asylum seekers in the direct provision system was because there was a housing crisis in the country.

“Then, by 2003, it was to deter asylum seekers from having children born in Ireland. In 2008/9, the excuse was that the number of asylum seekers was dropping so it was proof that the system was ‘working’. Now we are using the excuse of another housing crisis. We are constantly coming up with new reasons not to make a change – or continue

to recycle old reasons.” Dr Thornton believes that society does realise that it is repeating the same mistakes of its past.

“There is an image that we have a respectable policy of allowing people to remain in centres but beyond that veneer of respectability, the more punitive, harsh face of Ireland is revealed.”

The McMahon Report – which was published in June 2015 and came from a working group set up to investigate direct provision – made a number of limited recommendations on improving the system of direct provision. To date, very few of these recommendations have been implemented. Dr Thornton has been critical in his analysis of the McMahon report, and his opinions have received widespread media coverage.

Liam provided research support to the legal team in the C.A. v Minister for Justice case, which unsuccessfully sought to challenge the entire system of direct provision, on human rights grounds.

Thornton is equally forcible in his contention that transformative understandings of law, can be a part, but only part, of seeking to end the system of direct provision.

As well as engaging with non-governmental asylum organisations and other groups seeking to end direct provision, Dr Thornton drafted legislation in 2014 that was debated in the Seanad. This legislation sought, unsuccessfully, to provide a renewable residence right for those who had been in the asylum system for a period of five years or more. If the legislation had been passed, it would have enabled persons in direct provision to move out, and to benefit from the same rights and entitlements as afforded to Irish citizens.

His academic and legal policy work has influenced public debate while also highlighting the failure of the law and systems to fully recognise the rights of

asylum seekers. As well as engagement at the national level, he informed the UN Committee on Economic, Social and Cultural Rights about Ireland’s lack of compliance with its freely accepted obligations under the UN International Covenant on Economic, Social and Cultural Rights.

Only through engaging in protest, with asylum seekers now organising and agitating for their rights, coupled with the need for a fundamental discussion within Irish society, within the Irish political system, and within the Irish legal system on the inherent dignity of people, can Ireland remedy the appalling breach of human rights inflicted upon asylum seekers. Through placing human dignity at the heart of legal systems, there can be a move away from the denigrating direct provision system. With direct provision now into its seventeenth year of operation, it remains to be seen whether Irish society will finally begin to question how we recognise, respect and protect the fundamental human rights of asylum seekers.



ABOUT THE RESEARCHER

Dr Liam Thornton is a law lecturer in UCD Sutherland School of Law. He teaches on a number of undergraduate and graduate courses and has a strong interest in social justice and law. Some of his areas of research relate to immigration law, social security law, European law, human rights law and children’s rights. He has published numerous peer-reviewed journals and book chapters as well as edited a number of books. He is a regular writer of newspaper articles and blogs on these issues. Dr Thornton has also carried out tendered research for the Law Society of Ireland, the Irish Human Rights Commission and the Odysseus Network/European Commission. Prior to taking up his position in UCD, Liam was Research and Policy Officer with the Irish Human Rights Commission.

KEY RESEARCH INTERESTS

Asylum Seekers
Human Rights
Direct Provision System
Law

“ There has been a tendency to exclude asylum seekers from supports that are seen as essential to allowing citizens and legal residents to live with a basic degree of dignity.

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Dr Liam Thornton
Law lecturer at UCD Sutherland School of Law