

**JOINT COMMITTEE MEETING ON
PUBLIC SERVICE OVERSIGHT AND PETITIONS**

WEDNESDAY 29TH MAY 2013

**STATEMENT BY SECRETARY GENERAL
DEPARTMENT OF HEALTH**

Introduction

I would like to thank the Chairman and the Committee for their invitation to appear before you again today. This is the third occasion this year on which we have had the opportunity to discuss issues relating to the Mobility Allowance and Motorised Transport Grant and I am happy to update members, in so far as I can, on the significant amount of work which has been undertaken over the past weeks since I last appeared before you on the 6th March.

I am aware that the Committee wishes to address in a general way additional issues regarding this Department and the Ombudsman and I will endeavour to address any matters in this area for the Committee today also.

As before, I will be happy to answer questions members may have but will commence with some remarks which may assist members in framing their questions.

Background

With respect to members who have had an opportunity to discuss the history of the issue before, I do not propose to go through in detail the context of the decision of Government earlier this year regarding the future of the Mobility Allowance and Motorised Transport Grant schemes. However, for the record I think I should say that the Government decided, on foot of a report of the Ombudsman, that it was no longer possible to continue the schemes in their existing format and that they should be closed.

I am happy to tell members that in the ensuing weeks a huge amount of work has been done by the Group established to review the Schemes and to recommend alternative solutions to Government.

Establishment and membership of the Review Group

As members will be aware, Minister Reilly and Minister Lynch established the Review Group and its membership includes representatives of people with disabilities and service providers; a number of Government Departments and State Agencies and others with relevant expertise and experience. The Group is chaired by Ms Sylva Langford who is a person held in high respect by all who deal with her and who has a wealth of experience in this field. I am also happy to confirm that following our meeting on 6 March last, and on foot of this Committee's request, Minister Lynch invited the Centres for Independent Living to nominate a member for the group. The Group has benefitted considerably from the wide experience and contributions of all of the very varied and dedicated stakeholders and each and every one has contributed significantly to the Group's research, preparations and deliberations.

Work of the Review Group

While we await the outcome in terms of a Government decision on what will happen next, I understand that some of the many tasks which have been undertaken by the Group on a collaborative basis include:

- an analysis of the circumstances of those who have benefited from the schemes;
- an analysis of how mobility supports for people with disabilities are provided in other countries; and;
- the collation of significant detail on the range of transport supports and developments across the wider State funded sector.

A large amount of consultation has also taken place, including a broad public consultation, a number of in-depth focus groups and a detailed survey of a significant percentage of existing recipients.

Given the short time available to the Group, I think it is important to acknowledge the contributions made by all to this work. This has not just involved those who are directly members of the group, but also supported by those in organisations like the Irish Wheelchair Association, the Centres for Independent Living and the Disability Federation who have provided invaluable assistance, in particular with

focus groups; staff of the NDA who have done research, helped with consultations and facilitated the focus groups; those in Government Departments and other Agencies such as Pobal, the Citizens Information Board and the HSE who have dedicated time and resources to bringing all of this together.

Next steps

I am confident that the data gathered will aid the Government significantly in coming to conclusions on what it should do next to address these mobility and transport needs and indeed in looking at wider longer term issues around transport for people with disabilities. I think it is important to reiterate again, that the funding allocated to the two schemes remains committed to whatever solution Government may decide to implement following consideration of the Review Group's report. I know that the Minister for Health and the Minister of State are very conscious, as is my Department, that the payment of the Mobility Allowance to current recipients would continue until the end of June and that many people are concerned about what will happen after that time. It will be a matter for Government to make its decisions in its own time but I can assure you that should the Government decide to assign any tasks to my Department or to the HSE, I will ensure that this is prioritised and implemented as soon as possible.

Wider Ombudsman Background

I would now like to address the wider context referred to in the Committee's invitation to me to attend today. I am aware that the Ombudsman raised a number of issues with this Committee at a presentation on the 6th of December, which were not related to the Mobility Allowance Scheme and the Motorised Transport Grant.

In doing so, the Ombudsman made a number of points about the Department and the Minister for Health relating to the overall state of relations between the Ombudsman and the Department and the Minister. Many of the issues referred to by the Ombudsman are now dealt with and in the past, but like many things I feel the important thing now is that we, as the Organisation that is the Department of Health, reflect on these experiences and draw meaningful lessons from them. Indeed I would hope to demonstrate that we have, to the best of our ability, tried to use the Ombudsman's reports and our experiences from dealing with her Office to put in place a better system for dealing with

the clients who, after all, are the reason we are all working in this Department.

At a hearing before this Committee on the 6th of February I disputed the Ombudsman's points and briefly addressed the three examples given by the Ombudsman. Now with the benefit of additional time, I will provide further detail on the issues.

Subvention Regulations

The Ombudsman had raised the matter of the 1993 Subvention Regulations and the assessment of the means of adult children to contribute towards their parents care. This matter had already been corrected, and compensation paid to those affected, and I note that the Ombudsman has acknowledged this.

Travers Report and Wrongful Charging

The Ombudsman also outlined the history of wrongful charging of public patients in long stay care, but acknowledged that steps to address this matter had been taken, notably the establishment of the Health Repayment Scheme.

The State has already acknowledged the error with assessing adult children with regard to the 1993 Subvention regulations, as well as the wrongful charging of public patients in long-stay care that the Ombudsman raised, and has already taken corrective steps to correct the wrongs of the past.

"Who Cares?" Report

The third issue raised by the Ombudsman during her appearance last December was the 'Who Cares' report.

As I have previously informed this Committee, there is a fundamental difference in the interpretation of the 1970 Health Act between my Department and the Ombudsman and I have to say that I do not agree with the position advanced by the Ombudsman. Her position is that since 1970, "Health Boards had an obligation to provide long-stay care for older people" without limit. The Department of Health, and the many Ministers who have served in the Department since that time, have never agreed with that position.

The essential argument made in the Ombudsman's Report is that the statutory duties imposed on the HSE/health boards under the 1970 Health Act in relation to in-patient services, including nursing home services, are not subject to any resource limitation and that adequate resources have never been provided to honour these obligations in a transparent and accountable way.

I have to say that the Government is not aware of any country in the world where health and personal social services are provided without some form of prioritisation which reflects the reality of resource limitations. The reality is that access to health services has always been determined by a combination of clinical and other professional judgments within an overall resource availability envelope.

I have to reiterate that although people may be eligible to receive in-patient services under section 52 of the Health Act, 1970, any entitlement to receive those services in a particular case has always been subject to, inter alia, the availability of adequate resources. The obligation to provide services prescribed in legislation enacted by the Oireachtas is clearly subject to the resources made available by the Oireachtas to provide those services. I appreciate that the Ombudsman has formed a completely different view in this regard, and of the requirements of the legislation enacted by the Oireachtas but this is the genuine view of this Department and the Government. I do not think anyone could argue with the principle that it is a matter for the Government to determine the manner in which resources are to be prioritized and allocated.

I think it only fair to also point out that this investigation was based on complaints received over 25 years – on average 48 complaints a year. This must be seen in the context of an average nursing home population in excess of **20,000** people in recent years. While we all accept that on principle even one complaint is one too many, I would argue that for the vast majority of people we do, in spite of very constrained resources at times, manage to provide a high level of service.

Non Co-Operation

I now want to turn to the Ombudsman's views concerning the non-co-operation of the Department. It is true that the Department expressed

serious concerns about the “Who Cares” Report, and the manner in which it was undertaken. However I must in all honesty take issue with one of the most serious allegations in the report - that the Department refused to co-operate with this investigation by the Ombudsman.

I consider that the correspondence published by the Ombudsman, and by the Department, shows conclusively that we always made it clear that we were willing to fully co-operate with any investigation by the Ombudsman that was conducted within the parameters of the Ombudsman Act 1980. However we did have concerns about the Ombudsman’s jurisdiction in relation to certain matters in light of the provisions of the Ombudsman Act, 1980 as amended. Once we expressed concern about the Ombudsman's jurisdiction in dealing with the issues raised, there was no subsequent meaningful engagement by the Ombudsman with the Department on the investigation.

The Department at all times sought to balance co-operation with the Ombudsman with the limitations of the jurisdiction assigned to her by the Oireachtas under the Ombudsman Act 1980. We were particularly concerned that this would not affect the right of the State to defend itself in any litigation.

Litigation

In response to the issue of litigation facing the Department, and the Ombudsman’s repeated requests for information on how this litigation is being managed, I wish to make the following points:

In defending litigation, a Minister is not discharging administrative powers but rather exercising the executive power of the State and/or the inherent constitutional right which every litigant enjoys to defend litigation commenced against them. The Ombudsman’s jurisdiction is confined, very clearly, by the Ombudsman Act 1980 to the investigation of “any action taken ... in the performance of administrative function” not an executive function. It is our firm view that the Ombudsman has no jurisdiction to investigate or seek or demand information in relation to the litigation being managed by or on behalf of the State.

Quite apart from the fact that these matters are outside the remit of the Ombudsman’s jurisdiction, it would be fundamentally unfair that any Defendant in any litigation should be compelled to make their legal

advice freely available to third parties and to openly discuss the management of their litigation in public fora. To do so, could fundamentally undermine the defence of their litigation.

A relatively small number of legal actions have been taken by people seeking compensation for private nursing home costs incurred by them or their deceased relatives. These cases are being vigorously defended.

We have always acknowledged that there have been a number of settlements based on legal advice which had regard to the particular circumstances of the individual cases. There is nothing unusual or untoward about this.

I would not wish for this particular matter to forever colour the relationship between my Department and the Ombudsman. I acknowledge that the very nature of any process where an Organisation is scrutinised by an outside agency can lead to its own tensions. I would however like to assure the Committee that my Department fully appreciates the invaluable role of the Ombudsman in the overall structure of accountability for this State.

Fair Deal

In that very context I would like to take this opportunity to highlight the many advances we have made in the area of long stay care for Older People and I would like to take a few moments to talk about the introduction of Fair Deal and the very significant improvements we have made in recent years. Indeed the interventions of all three holders of the Office of Ombudsman over the years have had a part to play in the shaping of where we are today.

The Nursing Homes Support Scheme commenced on the 27th October 2009. Prior to its commencement, there were four stated objectives:

- To put in place an infrastructure of high quality and sustainable long-term residential care services for older people.
- To equalise State support for public and private long-term residential care recipients;
- To render private long-term residential care affordable and anxiety-free, and ensure that no-one has to sell their home during their lifetime to pay for their care;

- To remove the incentive to avail of public rather than private long-term residential care.

The legislation underpinning the Scheme includes a principle of resident choice. Individuals can choose to enter any nursing home, subject to it being able to meet their particular care needs and having an available bed. Importantly, individuals contribute on the same basis, irrespective of whether they choose a public, private or voluntary nursing home. Consequently, any financial incentive for people to avail of public nursing home care has been removed.

The Scheme has also eliminated the financial uncertainty that older people and their families faced. No longer do people have to worry about how they will fund their nursing home care. The Scheme is very clear about the basis upon which people contribute towards the cost of their care. This makes it possible for people to plan ahead, safe in the knowledge that their nursing home care will be affordable.

Entering long-term nursing home is a hugely significant decision for any person. It is one thing to know that you will be able to afford the care. Equally important is the quality of that care. We have to ensure that the highest standards of care are provided to residents in a safe and secure environment, and that we meet the needs of those who require our services in the very best way possible. Residents, their families and the public need to be reassured that the care people receive is monitored.

On the 1st July 2009 statutory responsibility for inspecting and registering nursing homes was given to the Health Information and Quality Authority's Chief Inspector of Social Services. This is underpinned by a comprehensive quality framework comprising the Health Act 2007, Care and Welfare Regulations and the *National Quality Standards for Residential Care Settings for Older People in Ireland*.

All nursing homes, whether public, private or voluntary, are subject to the same core standards in relation to quality and safety. HIQA carry out inspections across the nursing home sector to ensure that these Standards are being met and that residents are receiving the best possible care. Inspection reports for every nursing home are available on the HIQA website.

To go back to the Nursing Homes Support Scheme, a commitment was made that it would be reviewed after it had been in operation for three years. This process commenced last year. The Department of Health called for submissions to inform the review. A summary report of the submissions received was published on the Department's website in December.

The review will examine the sustainability of the Scheme and the effectiveness of the current methods of negotiating and setting prices. It will also consider the balance of funding between long-term residential care and community based services and the extension of the Scheme to community based services and the Disability and Mental Health sectors. It is expected that the review will be completed in 2013.

In short, under successive Governments, the landscape for nursing home care in Ireland has been reshaped and redefined over the last five years. We now have a national legislative framework for access and financial support for nursing home care together with an independent quality assurance and inspection function residing in the Health Information and Quality Authority. The Department is very proud of the advances we have made in this area, and acknowledges the many stakeholders who assisted us along the way including the Ombudsman through the many complaints and reports over the years.

Conclusion

I am very conscious that this Committee and indeed others have expressed, in public, concerns about the overall nature of the relationship between the Ombudsman and my Department. I hope that I have in some way allayed those fears today. However I have also, since I took over as Secretary General, decided to proactively foster a better working relationship with the Ombudsman. I have undertaken a series of practical measures including the appointment of a senior Official in my Organisation to act as Ombudsman Liaison and this Official will also report regularly to my Management Advisory Committee on any issues of concern or trends emerging with the Ombudsman so that they can be dealt with at a very early stage.

I will never shy away from placing and accepting blame where needs be, I have to ask that everyone acknowledges that for a large amount of

people, we do get it right – and meet the needs of our population. Yes, there is still work to be done, but we cannot allow the past to overshadow our ongoing work and our plans for the future. Where mistakes have been made they have been acknowledged - it is time to move on and focus on the future.

My Department is now in the middle of the most radical and far reaching health reform initiative since the foundation of the State. At the centre of this reform will be each and every citizen who deserves to live the healthiest life possible. I know that the same citizen is at the centre of the Ombudsman's concerns also and I know that if we both work together that citizen will benefit.

In conclusion, I would like to say that I believe the Ombudsman carries out an important and valuable function. It is regrettable that the relationship between her Office and the Department of Health has deteriorated in recent years and I want to assure the Committee that I and my officials are committed to rebuilding that relationship and ensuring that we can all work together in a productive and respectful manner.