

**Statement by Mr Peter Tyndall, Ombudsman, to the
Joint Committee on Public Petitions**

30 May 2018

Thank you for the opportunity to speak with you today and discuss issues related to the Ombudsman's Nursing Home Casebook. When I last addressed this committee I promised to produce an edition of the Ombudsman's Casebook specific to the Nursing Home sector, which I hope you found of interest.

One of the strategic objectives of my Office is to drive improvements in the wider public sector, through external engagement. We do this in a number of ways, for example, if there is learning from an individual complaint we examine then we highlight this to the service provider involved. However, we also share the learning from the complaints we examine in a number of ways. The casebook, similar to the one you received, is one of the tools used in my Office to enhance the learning from the complaints we consider.

In 2014 I decided to publish the majority of cases dealt with by my Office through a quarterly, electronic casebook. The cases published relate to all sectors under my jurisdiction. The casebook is circulated to over 2,500 public officials and key partners so that the opportunities for learning are maximised. The aim of the casebook is to prompt public service providers to think about ways they can change to avoid the injustices identified from happening to their service users in the future. The casebook circulated to you is a special edition of the casebook which summarises some of the complaints I have received in relation to the nursing home sector and the Nursing Home Support Scheme. It has been developed to bring together these cases in a coherent and accessible way.

As Ombudsman, over the years I have been able to examine complaints about public nursing homes and HSE schemes such as the Nursing Home Support Scheme. However, in 2015 my remit in this area was further extended, and from August 2015 I could also accept complaints from the general public about private nursing homes. This, in effect gave me oversight of the sector as a whole since 79% of nursing home care is provided by the private nursing homes sector.

If a person makes a complaint locally to a nursing home but is not satisfied with the response they receive they can bring their complaint to my Office. The benefit of making a complaint to my Office is that if I am in a position to

examine their complaint they will receive a personal response specific to their complaint.

The number of complaints to my Office about the nursing home sector, which includes complaints about the Nursing Home Support Scheme, increased last year from 57 complaints received in 2016 to 93 complaints in total in 2017. This increase was largely due to a doubling of the number of complaints received about private nursing homes. 30% of these complaints were upheld and related to a range of issues such as the eligibility or means assessment under the NHSS, general care and treatment issues and complaints about social charges imposed in private nursing homes. In 2017 44% of the complaints received in relation to the sector related to poor treatment of a resident. Issues such as decisions made regarding the escalation of a resident's care to hospital and the management of their end of life care were a common theme in the complaints received.

You will see that from my experience of examining complaints from the sector as a whole that I have highlighted a number of areas of concern.

Entering into a nursing home is a difficult decision for an older person and their family to make. Most often it is not a planned decision and sometimes it may be because adequate supports are not available in the community. For this reason I have highlighted the issues that arise in relation to the contract of care especially in relation to:

- **the additional charges** that a resident is expected to pay in most private nursing homes, despite the fact that 80% of a resident's income has already been paid over as part of the nursing home support scheme. I accept that nursing home providers are obliged to provide certain services that fall outside what is covered by the Nursing Home Support Scheme and that nursing homes may charge for these additional services. However the social charge varies greatly from nursing home to nursing home. I have seen cases where the additional charge has effectively wiped out the resident's remaining income. This is an issue which needs to be tackled. At the very least there should be guidelines in place against which these charges can be set, for example the range and level of additional services to be provided and what could be considered to be a reasonable charge for such services. Overall I believe there should be transparency, fairness and standardisation of charges across the private nursing home sector.

- The terms and condition of a contract of care in a nursing home can be harsh and offer no **security of tenure** whatsoever to the resident. A number of cases brought to my attention concerned the termination, or threatened termination, of the contract of care for a resident by a proprietor due to the behaviour or actions of family members, rather than due to anything the resident themselves did. A case dealt with recently in my Office concerned a nursing home which issued a notice of termination of the contract of care to a resident with advanced dementia. This was done as a result of difficulties the nursing home was experiencing in dealing with her daughter. In this case following discussion with the resident's daughter, the nursing home revoked the notice. Sadly the resident passed away just two weeks later.

Evidence shows that moving a person, especially a resident with dementia can be harmful and debilitating. Indeed moving a person in the latter stages of dementia can lead to a downward progression. It is clear that often relatives can display challenging behaviours but I firmly believe that the solution to the problem should not affect the resident themselves.

The Competition and Consumer Protection Commission (CCPC) has been charged with carrying out a review of the contracts of care in long-term residential care services for older people and I have raised these and other issues as part of that review.

Access to community allied health professional

Another area of concern not specifically highlighted in my casebook but one that has emerged in complaints to my Office is that of the access that residents in a private nursing home have to the services of allied health professionals. A complaint I am dealing with at the moment has highlighted this difficulty. In this case the private nursing home resident had very limited access to the services of a specialist tissue viability nurse to examine pressure sores which were not responding to treatment. Other cases have shown difficulties in accessing funding for specialist equipment which sometimes appears to be based on the resident's geographical location. I understand that resources are limited but I feel equality of access to services is key. At the very least there should be consistency from region to region.

The cases I have highlighted in relation to the NHSS generally concern the administration process. Consistency again is vital in the processing of applications in order to avoid undue delays. This is especially important since

the date of provision of financial assistance commences from the date of approval under the Scheme.

Advocacy

It is a sad fact that often families are not inclined to complain until their loved one, the resident, has passed away or has been moved to another nursing home. This is perhaps due to a fear that by complaining there may be repercussions for their loved one, or indeed for themselves in relation to visiting rights. I accept that families can sometimes be overly forthright in the manner with which they complain or perhaps in the frequency of their complaints. This however does not mean that they do not have a genuine concern or a baseless complaint.

In this vein I would like to mention the important role played by advocates in supporting people to say what they want, to represent their interests, secure their rights and obtain services they need. It promotes social inclusion, equality and social justice.

From an Ombudsman's perspective, advocates can play a number of key roles. They can help to tackle the poor communication which often leads to complaints. Having an independent advocate who is trained to a high standard and who is supported in their work means that residents who are vulnerable have a voice. It also means that complaints which they make in the interest of the resident are framed in a clear and concise way. Importantly they can reassure residents and their families that no detriment will flow from any complaint. My experience in Wales is that input from these independent advocates has led to better decisions about service provision for residents in the nursing home sector and indeed for patients in the more acute sector.

It is well known that I am strongly of the view that there should be a greater emphasis on allowing older persons to remain at home for as long as possible. Therefore it is encouraging that an increased budget of €18.25m for the provision of home support services is available this year which I understand has allowed for increased home support hours from 16.36 million hours last year to 17.1 million hours this year.

I have previously spoken of the importance of ensuring that the most appropriate care for older persons is available and resourced. I therefore welcome the work that is ongoing in the Department of Health and the HSE

which places a particular emphasis on facilitating people to live well at home in their communities for as long as possible. I am also encouraged by the work being carried out to streamline homecare and home help services in order to move towards a single funded statutory 'home support services', delivered along the lines of the Nursing Home Support Scheme, whereby people will be able to access the care they need by statute. Care that will be there on demand and delivered to them. I am of the opinion that greater planning for the needs of vulnerable older people living in the community would limit sudden and reactionary admissions to Hospitals and Nursing Homes when a situation deteriorates

Finally I thank you for the opportunity to discuss this important topic with you today and I would welcome any questions or comments from Committee members.