

Joint Committee on Disability Matters, 16th December 2021

Opening Statement from the Ombudsman, Mr Peter Tyndall, on

“Grounded: unequal access for people with disabilities to personal transport schemes”

Cathaoirleach and members of the Committee, thank you for the invitation to come here today to discuss my recently published commentary report titled *“Grounded: unequal access for people with disabilities to personal transport schemes”*.

I had the opportunity of meeting this Committee in June of this year to discuss the *Wasted Lives* report, which as you are aware was in relation to the inappropriate placement of people under 65 in nursing homes. I was delighted at the coverage this report received and the opportunity it gave me to highlight the serious and systemic issues that unfairly impacted, and continue to impact on, people under 65 living with a disability in nursing homes. I had thought that would be my last appearance with this Committee before I finished my tenure as Ombudsman. However, I am happy that this did not prove to be the case. I am glad to have the opportunity to discuss the issue of unequal access to personal transport supports for people living with a disability.

UNCRPD

As Committee members will know, the ratification of the [United Nations Convention on the Rights of Persons with Disabilities](#) (UNCRPD) in 2017 provided a legal basis for people with disabilities to have the right to live independently and participate fully in all aspects of life. Lack of access to transport is one of the key barriers to stopping the realisation of these fundamental rights and can lead to the further economic, social, and personal isolation of people living with a disability. The opposite is also true and access to transport for many people can be an equaliser, changing the lives of persons with disabilities for the better.

Article 9 of the UNCRPD is focused on accessibility and puts an onus on signatures to provide equal access to transportation to people living with a disability in order to support them to participate equally in daily life, for example, to access further education, gain employment, be involved in their community or participate in social activities and hobbies.

In Ireland the [National Disability Inclusion Strategy 2017-2021](#) sets the overall framework for the equal participation of people with disabilities in society. Under the Strategy, the Department of Transport, Tourism and Sport has responsibility for the continued development and availability of accessible public transport. I warmly welcome all the necessary work that has been undertaken in this area. However, in my opinion this, by itself, is not enough to meet our commitments under the UNCRPD.

For some people living with a disability, public transport may not be the most appropriate or even a possible mode of daily transport. For example, the inadequacy of access to some public transport facilities such as the DART, is a matter of great concern to disabled people who use it. Many journeys on public transport also require the use of different services which means that any problem occurring with one of the services, makes the whole journey impossible. Fear of personal safety on public transport is also an issue for some.

Therefore, while improving access to public transport is an important issue in its own right, it is unreasonable to suggest that it can address the transport needs of many disabled people, who may live in rural areas, or struggle to get to bus stops or stations. In such circumstances a car provides optimum mobility for many people living with a disability who see it as the key to their quality of life. However, often they may need to be supported to access their own personal transport whether that be through an adapted car for themselves to drive or within their household as a passenger.

Mobility Allowance and Motorised Transport Schemes

Two schemes, the Motorised Transport Grant and Mobility Allowance, were put in place in 1979 and 1968 respectively, for operation by the Health Service Executive (HSE) to support people living with a disability to access their own personal transport needs.

The Motorised Transport Grant was a means-tested grant to assist persons with severe disabilities with the purchase or adaptation of a car, where that car was essential to retain employment. The maximum Motorised Transport Grant, which was payable once in any three-year period was €5,020.

In 2012 my predecessor Emily O'Reilly, published an investigation into the Motorised Transport Scheme. The investigation found that the manner in which the HSE interpreted the medical criteria for eligibility used by the HSE was unacceptably restrictive and contrary to the Equal Status legislation. It was recommended that the Department of Health review the terms of the scheme, to provide explicitly that the term "severe disability" be understood in light of the findings of this investigation and the broad definition of disability in the Equal Status Acts.

The Mobility Allowance is a payment to disabled people who are unable to walk or use public transport and who would benefit from a change in surroundings for example, by financing the occasional taxi journey. In 2012 my predecessor, Emily O'Reilly, published an investigation report titled *"Too Old to be Equal?"* into the legal status of the Mobility Allowance Scheme in the context of the Equal Status Act. The investigation found that this scheme was in breach of the Equal Status Act 2000 because it included an upper age limit. Noting that the Department of Health had committed to undertaking a review of the scheme, the report recommended that this process of review and revision should be completed within six months of the date of this report. The Department accepted this recommendation.

However, in 2013, following these investigations the Government decided to close both of these schemes to new applicants. At the time this was announced as an interim measure and that a replacement scheme was promised. However, some eight years later, a replacement scheme is still awaited.

Following closure of the scheme in February 2013, no further Motorised Transport Grants have been payable. In relation to the Mobility Allowance the Government decided to continue payment of this allowance to those who were in receipt of it at the time of its closure. The most recent data I have indicates that of the 4,700 individuals in receipt of the Mobility

Allowance when the Scheme closed in 2013, there were 3,831 people in receipt of the interim payments at July 2019. This has resulted in a very unfair situation whereby those already in receipt of these supports continue to receive them, but others in exactly the same position cannot access these or alternative supports.

Disabled Drivers and Disabled Passengers scheme

As I mentioned earlier access to a car can be life changing for many people living with a disability, however adapting a car can be very costly. The Disabled Drivers and Disabled Passengers scheme provides a range of tax reliefs linked to the purchase and adaptation of vehicles by drivers and passengers with a disability. In order to qualify for tax relief under the scheme, the person with a disability must have a Primary Medical Certificate from the HSE. In order to receive a Primary Medical Certificate, the person must meet one of six medical criteria and since 2001 my Office has been receiving complaints about the excessively restrictive nature of these criteria.

I will now read these six criteria out to you and I would like you to think of some of the people you know living with a disability and the difficulties they encounter on a daily basis in relation to accessing transport. In order to get a Primary Medical Certificate a person must:

1. Be wholly or almost wholly without the use of both legs; or
2. Be wholly without the use of one their legs and almost wholly without the use of the other leg such that they are severely restricted as to movement of their lower limbs or
3. Be without both hands or without both arms; or
4. Be without one or both legs; or
5. Be wholly or almost wholly without the use of both hands or arms and wholly or almost wholly without the use of one leg: or
6. Have the medical condition of "dwarfism" and serious difficulties of movement of the lower limbs.

There is no doubt in my mind that these criteria are excessively restrictive and that the administration of this scheme has resulted in people who do not meet the criteria, but who are just as immobile as those who do, being excluded from the scheme. The 2002

Report to the Minister for Finance titled “Disabled Drivers and Disabled Passengers (Tax Concessions) Scheme – Interdepartmental Review Group, recommended that the medical criteria should be based on lack of mobility, as opposed to medical criteria.

Since 2016, I have received 335 complaints in relation to these criteria. That is 335 individuals who are desperately trying to purchase or adapt a car for their use or for the use of a member of their family. I highlighted some of their stories in my report. Sinead who is in her 70s, has COPD and is unable to walk or stand without aids. Her husband is her carer and they need to adapt their car so Sinead can access her medical appointments. David who has a Disabled Drivers Parking Permit but cannot afford to get his car adapted to meet his mobility needs. Orla, whose son Tadhg has Down Syndrome and profound Autism, and for whom they wish to adapt their car to make it safe to take Tadhg out.

In 2020 the Supreme Court quashed a refusal of the Disabled Drivers Medical Board of Appeal to grant medical certificates allowing the parents of two disabled children to avail of tax relief under this scheme and noted that the problem is with the “under inclusive nature” of the legislation. In essence, this meant that the HSE could not continue with its work in assessing applications for a time. It is with great disappointment that I found out that the approach agreed by Government was to introduce an amendment to the Finance Act 2020 to provide for the *existing* medical criteria in primary legislation. I understand from officials in the Department of Finance that this is an interim measure. However past experience has shown that such interim measures often once in place, stay in place. It is of real concern to me that this will remain the case, and I ask this Committee to continue to follow and raise this issue with the Department of Finance to ensure this scheme is reviewed and reformed to ensure it is inclusive, fair and equitable for all.

Conclusion

My Office has been highlighting the issues in relation to access to personal transport schemes for people living with a disability as far back as 2001. I am very concerned that as we close 2021, there is no evidence of any real progress that would serve to enhance the lives of those for whom these schemes were intended to assist with their daily lives.

If as a Country, we are committed to the full implementation of the UNCPRD, we must move with a fresh pace, focus and determination to ensure that living with a disability in Ireland in 2021 does not mean that a person is grounded in their home unable to participate equally and actively in their community and in work.

My sincere hope, as I complete my tenure as Ombudsman, is that action is now forthcoming.

Peter Tyndall

Ombudsman