

DÁIL ÉIREANN

AN COISTE UM ACHAINÍOCHA ÓN BPOBAL

COMMITTEE ON PUBLIC PETITIONS

Dé Céadaoin, 30 Bealtaine 2018

Wednesday, 30 May 2018

Tháinig an Comhchoiste le chéile ag 1.30 p.m.

The Joint Committee met at 1.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Shane Cassells,	Jerry Buttimer.
Denise Mitchell,	
Eugene Murphy.	

Seanadóir / Senator Colette Kelleher sa Chathaoir / in the Chair.

The joint committee met in private session until 1.55 p.m.

Decisions on Public Petitions Received

Vice Chairman: We are now in public session. The first petition for consideration is No. P00034/16 from Mr. Joseph O'Shea, a petitioner who is seeking a mechanism to appeal decisions of the Minister for Justice and Equality on the determination of the level of disablement under the Garda Síochána Pensions Order 1925. This is the third time this petition has been considered by the committee. Does any member wish to contribute on this matter? It is proposed that the Joint Committee on Public Petitions forward a copy of the response from the Department of Justice and Equality to the petitioner and close the petition. Is that agreed? Agreed.

The next petition is No. P00004/18 from Mr. Patrick Kelly. This petition seeks the same automatic guardianship for unmarried fathers as that for married fathers. The petition states that a father's name in the birth certificate should bestow the same rights to unmarried fathers instead of a father having to pursue this through the courts system. Are there any contributions on this matter? It is proposed that the committee forward a copy of the response from the Department of Justice and Equality to the petitioner and close the petition. The Clerk to the committee will also circulate the background to the Department's thinking when it considered this matter a number of years ago. Is that agreed? Agreed.

Nursing Home Casebook: Ombudsman, Mr. Peter Tyndall

Vice Chairman: I welcome our visitors. At a previous meeting, we considered the Ombudsman's Nursing Home Casebook. To help us consider this matter further, I am pleased to welcome the Ombudsman, Mr. Peter Tyndall, who is accompanied by Ms Jennifer Hanrahan and Mr. Tom Morgan. I advise witnesses to turn off their mobile phones as they interfere with the sound system.

I draw the attention of witnesses to the fact that by virtue of section 17(2)(l) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to so do, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. The opening statement and any other documents submitted may be published on the committee website after the meeting.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the House or an official either by name or in such a way as to make him or her identifiable. I now invite Mr. Tyndall to make his presentation. He has circulated a report to the committee so we would appreciate it if he could give us a ten-minute summary of what he has already circulated.

Mr. Peter Tyndall: I am very glad to have the opportunity to meet the committee today.

The last time we met, some of the issues around nursing homes came up as part of the consideration of a wider report - the annual report - and I undertook to do some additional work for members to draw together some of the specific issues around nursing homes. I hope all members received copies of the general casebook and will continue to receive them post-GDPR. Within that, each particular area is dealt with under a separate heading but I thought it would be useful to pull together a nursing home casebook. We have hard copies here. I know members have all had an opportunity to see it online but we also have hard copies that we can leave with members should members want them.

We have tried to highlight some of the key areas of complaint that are dealt with by my office. Under the legislation as drafted, almost every nursing home is within jurisdiction. A complainant might not be in receipt of fair deal funding but if the nursing home is in receipt of fair deal funding, that brings it into jurisdiction. This means that virtually all of the 430 or so private nursing homes, as well as the public ones provided by the HSE, are now within jurisdiction.

Initially, take-up was slow, with only 57 complaints received in 2016. The end-of-year figure for last year, which supersedes the 79 outlined in the casebook, is 93, which is still lower than we would wish. Nonetheless, it gives us an opportunity to deal with issues. It is worth noting that if a resident at a nursing home complains about an issue that affects other residents in the home, any resolution will not only benefit the person who complains, it will also lead to changes for all residents such that while the number of complaints is low, the benefits are wider than would otherwise be the case.

Members will have seen the articles in the newspapers over the weekend regarding additional charges. The comment I made, which was repeated, was that people are being impoverished by the charges. I will give some examples. There were people left with almost no money. This meant that those who are keen on their appearance had no money to buy the make up they would ordinarily have bought. We heard of people being left with disposable incomes of €7 per week, of people having less to spend than their grandchildren in terms of pocket money and of people running up debts because they cannot afford the scale of the additional charges.

I have highlighted this issue previously. I am particularly concerned about security of tenure. The contract of care is a standard template. In essence, the nursing home does not have to provide any reason for terminating a contract of care. We have seen instances of people going into hospital and, on discharge, being refused re-entry to a home and of individuals being threatened with eviction because their families complain on their behalf. It appears that there is a major problem with the legislation and the contract. It is not acceptable that a person would have no certainty as to their capacity to remain within what has become their home. I have said previously that there is strong evidence to suggest that there are high levels of mortality following enforced moves for older people, particularly those with dementia. Not having security of tenure is not only a threat to their mental well-being, it is a threat to their physical well-being.

People in nursing homes should be able to access health professionals in the same way as anybody else in the community. The reality is that this is proving to be an issue for people complaining to my office. If the people who complain to my office are experiencing this problem, one must assume that those in other homes are experiencing it as well. In terms of advocacy, the threats to the capacity of somebody to remain in a home when people speak up on his or her behalf is one of the most serious issues that we face. There is no simple solution. Sometimes, family members can be unreasonable in the manner in which they deal with a home but it is this problem that needs to be dealt with and not the person's right of residence.

We welcome the increased expenditure available for supporting people in their own homes but the reality is we still have separate funding regimes. In terms of our hospitals and the problem of people waiting lengthy periods in emergency departments for beds, there are people in hospitals who have no need to be there. There must be a much more concerted effort to prevent people from becoming less able as a consequence of visits to hospital and to support them to become more able. This is very good practice. It is not that we cannot do it, only that we do not do enough of it. We then need to provide them with the supports they need in their own homes. Sometimes, the nursing home is the only option not because it is the best option - for some people it is a preference - but because the funding is not in place for an alternative. This remains one of the issues that concerns us in terms of our work.

We are planning to do some outreach work this year. There are 430 nursing homes and we cannot send staff to all of them. When we worked with people in direct provision, we found that there were individuals prepared to talk to staff who, in turn, might not be prepared to submit written reports. We intend to engage in some initial small-scale outreach to see if there are other issues that are not coming to our attention or if there are ways in which we could make ourselves more accessible.

I will be happy to answer any questions.

Vice Chairman: The way we will proceed is that members will now put questions to Mr. Tyndall. However, I ask him to consider how the committee can support him in his work. I understand that he has received a number of responses from the Department. If there is anything he can suggest to us, that would be helpful.

Deputy Shane Cassells: I welcome the Ombudsman and his staff. They are here to discuss an issue that is of huge importance to us, as parliamentarians, in terms of our constituency work.

The increase in the number of complaints received by the Ombudsman in 2017 is notable. I visit nursing homes in my constituency on a regular basis. I want to acknowledge the level of care being provided by them. The Ombudsman notes in his report that there are 122 public nursing homes and 458 private nursing homes across the country and that they provide care for 30,000 residents, which is a substantial number of people. It is obvious from population demographics that we have a population that is going to age significantly over the coming years and, thus, there will be a greater requirement for provision in this area. The likelihood is that complaints to the Ombudsman's office will grow in tandem.

The Ombudsman has acknowledged that his role is in respect of the €1 billion in public money allocated to the nursing home care system, which is a substantial part of the health services spend. It is right and proper not only that the Ombudsman should have oversight in this regard but that there is engagement with the Oireachtas in terms of probing that spend. The issue of additional charges was highlighted recently in the *Sunday Independent* and by other media organisations. The Ombudsman referenced that people felt impoverished by the charges for engaging in what one might consider to be necessary daily services rather than social activities. Will the Ombudsman elaborate on that?

Is there evidence of gouging in the sector by certain private nursing homes? The Ombudsman said that certain residents are left in a position whereby their grandchildren have more pocket money than they might from their pension income. At the time, the Department of Health distanced itself from the matter and it falls back to the Ombudsman to deal with it. The Department argued that it is a matter between residents and nursing homes because of the pri-

vate contract that exists between the proprietors of nursing homes and residents. Who is looking out for the resident and protecting him or her? Is it a case that there can be intervention and an examination? The majority of residents and families would be quite interested to hear from the Ombudsman today and it is one matter I would like to be addressed.

In the context of contracts of care, it is quite significant for the Ombudsman to state that mortality rates can and do rise as a result of patients being moved. I have read the comments of the Ombudsman, particularly those relating to dementia care and the difficulties that nursing homes can face in providing adequate care. We must be cognisant of those increasing mortality rates.

Vice Chairman: There are some questions, especially regarding finances and financial abuse. I have worked with Ms Patricia Rickard-Clarke on the adult safeguarding Bill and financial abuse is one element of this. Deputy Cassells has asked questions about the scale of this and what might be the remedies. There is also the matter of contracts of care and the fact that people are not secure in their beds when they go to hospital or they are moved around. This can have significant consequences for people, especially those with dementia.

Mr. Peter Tyndall: I will start with the financing issue. HIQA has made it very clear that nursing homes are expected to ensure that residents have access to adequate social programmes. I have no problem with that and it is entirely appropriate. It is clearly not covered within the contract of care and the cost of providing that programme is substantial. We have looked in detail at the finances of homes and on some occasions we have turned back particular decisions because of huge rises in charges without an adequate explanation, or where there has been no capacity to explain what the charge is covering and adequately separate this from the cost of care provided under the fair deal scheme. Ultimately, we must ask how much should be included in the funding of the fair deal scheme and what the contract should cover. If the gap between the contract and the income is generally of a fixed amount for people on pensions and if most of that is to be taken up by the social provision by the home itself, leaving not a huge amount of choice for the individual, it means people have either no or very little disposable income. That cannot be right. It is not for me to propose a detailed solution to that. My sense is that I would probably include more of that in the contract. It is my instinct. However, it is a matter in a sense for the political domain to find a resolution. The problem will only get worse.

We looked at it and the comment made to me was that one would need to be a forensic accountant to understand exactly what is going on in some cases. Staff time is spent on the social programme. In the context of how contracts are constructed and so on, that is currently legitimate but it leads to blurring.

Deputy Shane Cassells: Is the Ombudsman saying that it is like a solicitor charging an hourly rate?

Mr. Peter Tyndall: Yes. Care staff accompanying residents as part of the social programme have time charged for in that context rather than as part of the fee. There are many of these issues. There is nothing illegal or wrong about that but the outcome is wrong. That is the problem. It is not that people are gaming the system, so to speak, but that there is probably not sufficient funding going into each individual to cover what we regard as the basic necessities of life, which include some social element.

Deputy Shane Cassells: Has the Ombudsman identified from the evidence available, the cumulative amount of funding that would be required to bridge that gap?

Mr. Peter Tyndall: We have not done that. We know there are two pieces of ongoing work. One relates to the consumer protection element of the contract. The other relates to the level of funding by the Department of Health. We made inputs into both those processes some considerable time ago but we could not tell the Deputy where they are now.

Deputy Shane Cassells: There is no gaming of the system or gouging. If this is not addressed, however, it will lead to the impoverishment of the approximately 30,000 residents that are in nursing home facilities throughout the country.

Mr. Peter Tyndall: Yes, that is exactly what is happening. I have a bad example but I will give it any event. There are people who cannot afford their cigarettes. Some may suggest that they would be better off without them but nonetheless the example demonstrates how autonomy can be completely eroded in such circumstances. The contract must be very specific about what is funded and there should be rules about the costing of other elements. If there are isolated incidents where advantage is being taken - for example, where social charges might be used to fund other aspects of care - we can deal with that when complaints come to us. We can make redress.

Vice Chairman: To summarise, the contract is key to all this and there must be clarity on what is covered, as well as what owes to the contract. There is also the issue of adequacy of funding to cover that which is clarified. Those elements are under considerations but Mr. Tyndall is not quite sure where the process stands.

Mr. Peter Tyndall: Yes. The Deputy had a question about security of tenure. I simply do not believe it is acceptable for there to be no security of tenure and it seems quite wrong. Taking a human rights perspective on the right to a home, it is difficult to justify denying somebody a home at no notice. It is a qualified right under the human rights legislation. As Ombudsman, it also seems to me to be bad administration. Whichever way we look at this, the contract should be as any private rental contract would be, with notice periods and some security built in so as to give some assurance. One can understand that challenges are faced by the people running nursing homes and if security of tenure had to be given, there might need to be assurances about additional care if somebody became more dependent and so on. Although I am not saying it happens, as it stands somebody could be evicted on a whim, which cannot be right.

Vice Chairman: Looking at that is another key issue, particularly the €1 billion transfer from the State to the sector. There must be a balancing of that transfer and certain obligations owing to it.

Senator Jerry Buttimer: I welcome Mr. Tyndall, Mr. Morgan and Ms Hanrahan and thank them for being here. The presence of the Ombudsman is always welcome.

I will make two comments. I refer not only to today's publication but also to the fact that the role of the Ombudsman illustrates the importance of the office. The perspective the Ombudsman brings, while challenging, is refreshing, for which I thank him in a very sincere way. We can skirt around some of the sensitive issues, but it is important that collectively - whatever organ of the State we represent - we do so on behalf of citizens.

It is completely wrong and unacceptable that there is no security of tenure for residents in their new home. I agree with Mr. Tyndall completely in that regard. I hope we can see full implementation of the Assisted Decision-Making (Capacity) Act which will lend itself to giving security of tenure. I am interested in hearing Mr. Tyndall's view. Notwithstanding that,

we have to balance the competing interests of owners of nursing homes with those of patients. The issue of security of tenure is one we should monitor continually and keep at the forefront of what we do. In his letter to us today the Minister of State speaks about having had a meeting with Nursing Homes Ireland. Is there anything the committee can do to provide a sense of security for residents?

I concur with Deputy Shane Cassells on the additional charges. The Minister of State has met Nursing Home Ireland, the Ombudsman and Age Action Ireland to discuss the issue. Mr. Tyndall has said that perhaps solutions cannot be offered. There must be solutions. In any society, no matter how limited discretionary spending is, it is not good enough that there is a senior citizen with €4, €5 or €7 to spend. We are not supporting smoking or anything like it. It says an awful lot about society. I am curious that, in reply to us in advance of the meeting, the Minister of State spoke about exploring options and having a project team with the aim of making recommendations with an interdepartmental working group. Has there been further action in that regard? We would like to hear about it. Perhaps we might invite the Minister back as a consequence of the Ombudsman's visit. The Minister of State is proactive. I thank Mr. Tyndall for being here and his presentation. Some of the case studies are just silly; bad practice can be changed easily.

Mr. Peter Tyndall: There are several things I want to say. In general, we receive very good co-operation from Departments and agencies when it comes to dealing with complaints.

I should have responded to something Deputy Shane Cassells said, as well about the good quality of care. Most people's experience most of the time in nursing homes is positive. I would not for one moment want to-----

Senator Jerry Buttimer: I concur with that.

Mr. Peter Tyndall: We have worked closely with Nursing Homes Ireland and continue to do so. We developed the model of complaints policy which is used by its members and which we have provided for all nursing homes. We have helped it with training in that regard. Most recently, Ms Hanrahan ran a webinar into which large numbers of nursing homes across Ireland logged for a training exercise. Generally we have good links.

Coming back to the issue of the contract, the contract should be modified to include security of tenure or at least sensible notice periods. I suggest there have to be reasons for notice being given, that it cannot just be done, as it can be at the moment, without reason. That is an important point. In the end I think the contract probably needs to cover more of the areas HIQA identified as requirements. The funding has to reflect this. It is the only practical solution to the problem of leaving people with more disposable income. We made an input early on into both of the processes that were under way, the process of revising the contract and the process of looking at the additional charges, but we have not had recent engagement on either. That may well be because work is ongoing actively and we will hear about it when it has reached a conclusion. I would not want to draw any inference from that. One of the things I will say is that when processes are under way to make improvements, some of which reflect issues raised in our reports, as an office, we are always happy to engage in those processes and participate in groups. I will give an example. We are doing a follow-up report to A Good Death, the report on end-of-life care. There is a working group in which the Department and HSE have been actively involved. We have been engaged with the working group throughout. We do not push out reports and leave them to sink or swim. We are quite happy to engage and will do so again, if requested.

Vice Chairman: I will make a suggestion. It seems that there is consensus in the committee to support the recommendations the Ombudsman is making on the contract of care and strengthening the rights of people, particularly when it comes to security of tenure but also in enumerating what the contract should cover and having adequate funding to cover them. It might be possible for the committee to write to that effect in support of the Ombudsman's findings. We probably have not had a lot of time to consider it and may not have time to consider alternative models of care. The Minister of State, Deputy Jim Daly, has work in progress on the issue of home care. I will make two suggestions. The first is that the committee write indicating its support for the Ombudsman's position. Second, given there has been an interregnum since the Ombudsman's representations to the Department of Health, we could ask the Minister to come back to update us on what is happening. We endorse the Ombudsman's analysis of the contract, the issues related to security of tenure, particularly the additional charges, how they are provided for and their impact on people's disposable income and their ability to live a life with some volition. The Minister of State might be able to talk to us about the alternative care models because that is the subject of the work under way. Is there anything else anybody could suggest? Writing as a committee and inviting the Minister are the two things we could do.

Mr. Peter Tyndall: That is very helpful, but it is for the committee to decide what it does.

On alternative care models, I take the view there should be a single funding model and that the presumption should be that there should be support for people in their own homes, if possible and it is the person's preference, rather than having the money compartmentalised, leading to decisions about care being taken on the basis of budgets, rather than preference and best outcomes.

Senator Jerry Buttimer: Did Mr. Tyndall make a contribution to the public consultation process on that issue? Was he asked for his views on it?

Mr. Peter Tyndall: I believe we did, but I would have to check.

Vice Chairman: In the interests of-----

Mr. Peter Tyndall: I am being reminded by my colleagues that we met the Minister of State to discuss it.

Vice Chairman: In the interests of meeting the needs of the individual, rather than any other consideration, the Ombudsman's recommendation is that there be a single simplified scheme that would include home care as well as access to residential care.

Mr. Peter Tyndall: Yes.

Vice Chairman: We will take it on board.

Senator Jerry Buttimer: Has the Ombudsman had any involvement on the issue of home help hours in terms of the model of delivery of home help hours linked with keeping people at home for longer?

Mr. Peter Tyndall: We will have to go back and have a look at the issue.

Vice Chairman: Perhaps Mr. Tyndall might circulate his submission to us to give us the information.

Senator Jerry Buttimer: The reason I ask is if we are looking at an alternative model of

care in the context of nursing homes and the single unified model, we should look at how home help hours are allocated and what the carer or home help does. It is a conversation we also need to have.

Vice Chairman: Perhaps we might invite-----

Senator Jerry Buttimer: As I know that it is different from what we are discussing today, I do not want to put Mr. Tyndall on the spot.

Vice Chairman: Perhaps when the Minister comes back, he can talk to us about the matters in hand, the contract, security of tenure, the additional charges, the adequacy of funding, home care and the range of issues under consideration. There are particular issues. I know from my work on dementia services that a 15 minute home help slot is almost of no help. It has to be adequate for the person concerned and consistent. There is a range of issues on which we could follow through.

I thank Mr. Tyndall for coming. We fully support what he is doing and will do all we can to further the recommendations he has made to us. I thank him and his officials for their assistance.

The joint committee adjourned at 2.35 p.m. until 1.30 p.m. on Wednesday, 13 June 2018.