

# DÁIL ÉIREANN

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## AN COISTE UM ACHAINÍOCHA ÓN BPOBAL

## COMMITTEE ON PUBLIC PETITIONS

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*Déardaoin, 30 Meán Fómhair 2021*

*Thursday, 30 September 2021*

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Tháinig an Comhchoiste le chéile ag 12.30 p.m.

The Joint Committee met at 12.30 p.m.

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Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Cormac Devlin,	Jerry Buttimer,
Richard O'Donoghue.	Eugene Murphy,
	Fintan Warfield.

Teachta / Deputy Pat Buckley sa Chathaoir / in the Chair.

## **Election of Acting Chairman**

**Clerk to the Committee:** The Chairperson is unavoidably absent from the meeting. In accordance with the Standing Orders of the Dáil and the Seanad, I now invite nominations for the position of Acting Chairman.

**Senator Jerry Buttimer:** I propose Deputy Buckley.

**Deputy Cormac Devlin:** I second the nomination.

**Clerk to the Committee:** As there are no other nominations, I must now put the question: “That Deputy Pat Buckley be elected Acting Chairman of the committee.”

Question put and agreed to.

## **Business of Committee**

**Acting Chairman (Deputy Pat Buckley):** Thank you, everyone. I welcome you all to our public virtual meeting using Microsoft Teams. We have received apologies from Deputy Martin Browne and Senator Craughwell.

The first note I have is on housekeeping. The Ceann Comhairle of the Dáil, Deputy Ó Fearghaíl, and the Cathaoirleach of the Seanad, Senator Mark Daly, have appealed to everybody in the parliamentary community to continue to follow public health advice, wear a mask and maintain social distancing. I request that members, witnesses and staff use the wipes and hand sanitisers provided to clean seats and desks that are shared so as to supplement regular sanitation. This will help to mitigate the risk of Covid-19, including the Delta variant, spreading among the parliamentary community. Members and all in attendance are asked to exercise personal responsibility in protecting themselves and others from the risk of contracting Covid-19. They are strongly advised to practise good hand hygiene and they will notice that every second seat has been removed to facilitate social distancing. I urge them not to move any chair from its current position. They should also always maintain an appropriate level of social distance during and after the meeting. Masks, preferably of medical grade, should always be worn during the meeting except when members are speaking. I ask them for their full co-operation on this.

Moving to the first item of the committee’s business, I need approval for the minutes of the previous meeting. I propose we approve the minutes of the private and public meetings on 16 September 2021, already approved in virtual private meetings. Is that agreed? Agreed.

## **Annual Reports of the Ombudsman for 2018, 2019 and 2020: The Ombudsman**

**Acting Chairman (Deputy Pat Buckley):** I wish to raise some formal notices regarding privilege and members. I remind members of the constitutional requirement that they must be physically present within the confines of the place in which Parliament has chosen to sit, namely, Leinster House, to participate in public meetings. I will not permit a member to participate where he or she is not adhering to this constitutional requirement. Therefore, any member who attempts to participate from outside the precincts will be asked to leave the meeting.

I wish to explain some limitations to parliamentary privilege and the practice of the Houses regarding references witnesses may make to other persons in their evidence. The evidence of witnesses physically present or who give evidence from within the parliamentary precincts is protected pursuant to both the Constitution and the State by absolute privilege. However, our witness today is to give his evidence remotely from a place outside the parliamentary precincts and as such may not benefit from the same level of immunity from legal proceedings as a witness physically present does. He may think it appropriate to take legal advice on this matter. He is reminded of the long-standing parliamentary practice that witnesses should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, if a witness's statements are potentially defamatory in respect of any identifiable person or entity, he or she will be directed to discontinue his or her remarks. It is imperative that witnesses comply with any such direction.

I am delighted to extend a very warm welcome to Mr. Peter Tyndall, Ombudsman. Mr. Tyndall is joined by Ms Jennifer Hanrahan, who is a principal in his office. Mr. Tyndall will retire next month, and we wish him all the best of luck. He has served as Ombudsman for 14 years, six in Wales and eight in Ireland. Mr. Tyndall is the fourth Ombudsman in Ireland following Michael Mills from 1984 to 1994, Kevin Murphy from 1994 to 2003 and Emily O'Reilly from 2003 to 2013. Mr. Tyndall has served from 2013 to 2021.

The Ombudsman has two main roles: to examine complaints from people who feel they have been unfairly treated by providers of public services, including complaints under the Disability Act 2005, and to act as the champion of good administrative practice. The Ombudsman has a close relationship with the Committee on Public Petitions and Mr. Tyndall has appeared before the committee many times. It would be a good idea to set up a memorandum of understanding between the committee and his office.

I have a few notes here because Mr. Tyndall has covered so many things over the years that it would not be fair if we were to let any of them go. Mr. Tyndall was appointed Ombudsman and Information Commissioner by the President in December 2013. Mr. Tyndall is also commissioner for environmental information and an *ex officio* member of the Standards in Public Office Commission, the Commission for Public Service Appointments, the Referendum Commission and the Constituency Commission. Mr. Tyndall was reappointed in 2019 for a second term.

One of Mr. Tyndall's key investigations was the Opportunity Lost investigation in 2017, which found that women who had worked in the Magdalen laundries had been wrongly refused access to the Magdalen restorative justice scheme. Mr. Tyndall was also involved in Wasted Lives: Time for a Better Future for Younger People in Nursing Homes and, in 2015, Learning to Get Better, an investigation into how public hospitals handle complaints. A Good Death, published in 2014, described some of the issues raised in complaints about end-of-life care in hospitals.

Mr. Tyndall has called for the extension of the Ombudsman's remit to investigate complaints from all sectors in receipt of significant public funding. During his term in this office, the following came under his jurisdiction: private nursing homes, direct provision accommodation services and more than 200 regulatory and other public bodies. Mr. Tyndall has also been involved in internal developments and international contributions. He has ensured complainants can easily avail of his office services and that the office can deliver effective and efficient services by overseeing the development of the latest ICT and case management systems and

user-friendly, award-winning websites. Mr. Tyndall is highly regarded among the international ombudsman community and was elected president of the International Ombudsman Institute, IOI, in 2016, having previously served as its European regional president. His office also hosted the IOI world conference in 2021. Mr. Tyndall is also a key member and former chair of the Ombudsman Association, sharing his knowledge and experience as both Irish and a former Welsh ombudsman.

I could spend another hour and a half speaking about Mr. Tyndall and praising him. I do not know where he has got the time to go through all that. We look forward to his opening statement. Before we hear from the Ombudsman, I propose that we publish his opening statement on the committee's website. Is that agreed? Agreed.

I suggest that Mr. Tyndall make his opening statement for about five or ten minutes and that we will then have questions and comments from the members. Each member will have about five minutes and members may speak more than once. It is my pleasure and my honour to invite Mr. Tyndall, Ombudsman, to make his opening statement.

**Mr. Peter Tyndall:** Thank you, Chairman. It is always good to engage with the committee. As you said, this is one of many occasions when I have had the opportunity to do so. The relationship between the Ombudsman and the Parliament through committees is very important, as it ensures there is oversight of the public services within my jurisdiction and, particularly, that there is an opportunity to deal with any recommendations that may not be accepted. However, I am delighted to say, as I come close to the end of my term of office and following the work of my distinguished predecessors, that for more than 30 years all recommendations made by my office have been accepted. That is testament to the quality and effectiveness of the relationship with the committee. I was asked in a radio interview during the week whether people were concerned about my office and if they were afraid of it. I did not want to say that people are afraid of my office as, in general, we have very good working relationships, but I did say that where people were thinking about not implementing recommendations, telling them they might have to account for that to this committee usually has a salutary effect and persuades them to change their minds. I think they are afraid of the committee rather than of me.

I wish to open my remarks by saying that, as the Ombudsman, you see the failures of public service. Often, people come to the Ombudsman because they are unhappy, but I am very conscious of the quality of the public services in Ireland in general and of the quality of the people who deliver them. I wish to start by paying tribute to all the staff and leaders of public services throughout the country for their dedication, expertise and commitment. This has never been more evident than during the pandemic. I also take the opportunity of my final appearance before the committee to pay tribute to my staff for their work. The range of work across the office is very extensive and I have been very well served, so I am grateful to them for all their efforts.

We are here, largely, to examine the annual report from my office. The agenda lists three, but I will concentrate on last year. As the members know, 2020 was not a typical year. We had to deal with the pandemic. We had not long moved into our new offices on Earlsfort Terrace and had hardly arrived before we had to move out again, but we were able to get services up and running very quickly and almost seamlessly. Our systems enabled us to work remotely, as others have done. The annual report is titled "Managing complaints in a pandemic" because that was the context in which we worked during the year.

The number of complaints to my office was slightly down. We had high numbers of inquiries. The reduction in the number of complaints was from a high in 2019 but was mostly related

to the fact we were not able to undertake our usual outreach. That had an impact. A particular impact, considering conversations I have had with the committee previously, was in direct provision. As the committee knows, the majority of our complaints come from our visits to the centres. I am pleased we are about to recommence visiting the centres now. That is not to say we had no complaints, but that the levels were lower than we would have expected.

We did receive some new types of complaints arising from the pandemic, such as complaints about the new pandemic unemployment payment, PUP. Most of the complaints about the PUP were about arrears of payments to applicants, simply delays in getting money out to people. When we looked at it and the scale of what had been undertaken by the Department of Social Protection, we did not find any systemic issues. It was a remarkable achievement to put the system in place in the time in which it was done. We found individual cases and I illustrated one of those in the annual report. It involved an entertainer resident in Ireland but working overseas. Her PUP payment was first granted and then stopped. When we looked at it, we could see there was nothing in the scheme that prevented her from benefiting from it as she was resident and paying tax in Ireland. That was typical of a small number of cases where we got decisions reversed. Generally, the scheme was well managed and it was remarkable how quickly it was put in place.

This week, along with Ms Hanrahan, I have been engaged in outreach, this time virtually, in Wexford, Carlow and Kilkenny. That is part of a programme of outreach visits the office does. A case that was especially relevant there was the very sad one of a woman who was given drugs for alcohol withdrawal when, in fact, she had not had a drink for ten years and was dying with liver cancer. The impact of that was that the drugs caused her to be drowsy and her family were unable to engage properly with her in her final days. We brought about major changes there, partly because it was impossible for the hospital to identify who had actually prescribed the drugs. That revealed systemic problems in the way its systems were recording medical interventions. That has been changed since.

I have spoken to the committee at some length about the Wasted Lives report. The critical thing I wish to say at this point is that we are very heavily engaged with the HSE and the Department on the implementation of the report. I was delighted when the Government committed to implement the recommendations. The important thing now is to ensure it is done in an expeditious fashion. I hope the committee will also keep those recommendations in review to ensure the momentum is not lost and the commitments are delivered. People have waited a long time for action and I hope it will happen quickly.

An issue that concerns me greatly is access to transport for people living with a disability. Ms Emily O'Reilly produced a report on this in which she indicated that the schemes in existence then did not comply with equality legislation. There has still not been a replacement for those schemes. Many members will know about the inadequacy of the current disabled drivers and passengers scheme. I have raised this issue time and again. What is really instructive is that so many Members of the Oireachtas, including members of the Government, have complained to my office about the way the scheme discriminates between people with a disability. This scheme provides for a tax reduction in respect of acquiring a vehicle adapted for disability. The consequence of all this is that, before I finish, I intend to issue a report setting out my concerns about the lack of access to transport for disabled people. It is a serious matter.

There has been a suggestion they can catch a bus or get a train. Anybody who follows Twitter will be very well aware that the lifts on the DART almost inevitably do not work. However, if you are living in rural Ireland and you are waiting for a bus or a train to come to your isolated

home, you will be waiting for a very long time indeed. I hope that argument will not be advanced again. It is very important we do something because people get very isolated if they do not have access to transport and a way to get out and about and engage with their communities. It affects disabled people who want to work and cannot.

I wish to refer to some issues that were mentioned by you, Chairman, in your very generous introduction. I was wondering how I found the time for all that myself. I will pick up on the issues regarding jurisdiction. There has been a commitment to provide jurisdiction in respect of clinical judgment, in respect of prisons and in respect of the administration of the asylum and immigration process. All those commitments are welcome. We have seen fair progress on the prison complaints, although it has taken an eternity and must be brought to a conclusion. The other issues are moving but they are moving glacially. We could do with more progress on both of those matters in the not too distant future.

The Acting Chairman mentioned the role I played as president of the International Ombudsman Institute. One of the things that happened with that was the Venice Commission developed the Venice principles. I was glad to have an opportunity to input into that process and that they were adopted as the global standards for ombudsman institutions worldwide in December 2020 by the United Nations General Assembly with co-sponsorship by Ireland, which I was pleased to see. For my successor, there is an opportunity to review the legislation. It was amended in 2012 but the fundamental legislation dates back to 1980. The time is right to review it and replace it with something more modern and fit for purpose, which is consistent with the Venice principles. The Venice Commission has agreed to review legislation where requested to do so. That would be a useful first step in moving it forward and something my successor might well want to take on board. I hope the committee would participate in and perhaps sponsor any such review.

Before coming to this meeting, I thought back to my first engagement with the predecessor of the committee when I was appointed in 2013. I said at the time and I have always said since that trying to resolve issues in a non-adversarial way, being fair to everyone and looking to drive improvement and learning more broadly in the system would be my approach. In general I sought to fix things, rather than complain about them. The Acting Chairman mentioned some of the major reports that have been prepared. I hope they had an impact on securing improvements in public services.

I thank the members of the committee for their support over the past eight years. The role of the Ombudsman is an intrinsic component of the checks and balances within any well-functioning democracy. That relationship with the committee has been important. The committee will not be rid of me quite as early as may have been thought. I have agreed to remain in my post until the end of the year because of delays in the recruitment process. There should not be a long gap before my successor is appointed. I thank members for their attention.

**Acting Chairman (Deputy Pat Buckley):** If there is a delay in recruitment I suspect Mr. Tyndall could be here again next year. Would any member like to ask questions or make comments?

**Deputy Richard O'Donoghue:** The Acting Chairman read out the details of Mr. Tyndall's experience. It is a fair experience and I hope that when we finally get a successor, which we are not in a hurry to do with the experience Mr. Tyndall has, he or she will have as much success and show as much transparency as he has. I agree with everything he said, including what he has said about disabilities.

We are working on the issue of disabilities in Limerick. We see an awful lot of people who have disabilities and who have outgrown their equipment. That equipment is not getting back into circulation so we are in the middle of trying to organise a facility where all disability equipment that has outgrown children or adults gets reassigned, serviced, maintained, even if it has to stay on a shelf for a year or two. Many people with disabilities are waiting a long time for such equipment and the only access available is to new equipment, whereas reconditioned equipment can get back onto the field faster and help those people with their disabilities.

I thank Mr. Tyndall for everything he has done and for the way he relates to the rest of us in the committee room. I wish him the best of luck in his retirement. As we say in Limerick, we wish him health and wealth and I say that health is wealth. I wish Mr. Tyndall the best of luck in the future and I hope that his successor has as much experience as him. We look forward to working with whoever succeeds him.

**Deputy Cormac Devlin:** It is a pleasure to have Mr. Tyndall back before the committee. I say that as a new Deputy, which I am until the next election. Mr. Tyndall's engagement, insight and assistance to this committee have been valuable and worthwhile. We are a relatively newly reformed committee, as he knows having assisted us with that process. I want to put on record my appreciation and that of the committee to him and his staff. He rightly highlighted the superb support that his staff have given to him, as well as highlighting their flexibility at the outset of the pandemic. I share his pain in having moved office before the pandemic hit. Many new Deputies had that same experience.

As the Acting Chairman read out Mr. Tyndall's list of achievements and detailed his experience, it was beginning to sound like an episode of "This is Your Life". His achievements are remarkable and he can be rightly proud of them. The Magdalen laundries were mentioned and I refer to the impact Mr. Tyndall had on those survivor's lives. The end-of-life care in hospitals is so important to many families who go through that process. Direct provision was another matter that Mr. Tyndall dealt with and that is to name just a few of his achievements. It is a remarkable career and I am delighted to hear that it has been extended to Christmas at least. Hopefully, he will be back before us again.

I refer to the 2020 annual report and I want to delve into a number of issues. When we last met we had a full discussion on direct provision. Mr Tyndall said that 168 complaints were received in 2019 compared with 61 in 2021. I would have thought the reverse would be the case. He might come back to me on that.

Mr. Tyndall also mentioned the Wasted Lives report on those under 65. Unfortunately I had dealings with a constituent the other day and it just so happened that the only care that individual could receive was in a nursing home. It is not appropriate and I note Mr. Tyndall referred to that in his opening remarks. We need to examine and get away from such inappropriate placements for people. He said he was able to visit 28 people under 65 at the time who were living in nursing homes, yet some €3 million was ultimately allocated by the HSE. How is that progressing? If Mr. Tyndall answers those two questions I might come back in.

**Acting Chairman (Deputy Pat Buckley):** We have just heard the bells for the Seanad so I invite Senator Buttimer to ask his questions because I suspect there is a vote.

**Senator Jerry Buttimer:** It is only a recall so I am happy to wait a while.

**Mr. Peter Tyndall:** I will respond to Deputy Devlin then. Unfortunately, or fortunately in

my case, the end of the year is fixed for me to leave my post. I have written to the President asking to be relieved of office then. There was a delay in advertising the post but it has now been advertised. I was delighted that the Minister committed to a full public and transparent appointment process, which is being undertaken by the Public Appointments Service. I mentioned the need to review the legislation. That is not required by the legislation but it should be. International best practice would have the recruitment process specified as being open and transparent. We are getting it and I am very pleased about that but it is through the personal commitment of the Minister. It should be in law. There are various other aspects about the independence of the office and the powers and jurisdiction that could usefully be reviewed. It was good to have that example. The closing date has passed and a process is under way so I expect that a candidate will be coming before the Oireachtas in the not too distant future. I know these things take time - often more time than one would expect - but it is happening and there will be a replacement. That is the first thing.

Regarding direct provision, the reality is that people are happier talking to us in person. We made very considerable attempts to put in virtual outreach. For example, we arranged for rooms to be provided where people could video-conference privately with us but the take up was poor, which is why we are back on the road this autumn with a view to picking that up. I suspect there are issues we should have been picking up that have not been reaching us. What was the Deputy's second point?

**Deputy Cormac Devlin:** It concerned the Wasted Lives report involving the under 65s and the €3 million invested in 2021. Does Mr. Tyndall have any insight into the progress on that?

**Mr. Peter Tyndall:** We are engaged in detailed discussions. I know that work is under way for the first tranche of people to be discharged and helped to find homes within the community. The point I made when I spoke to the committee, which I will repeat, is that this is the tip of the iceberg. A total of 1,300 people were in receipt of fair deal. We suspect the actual numbers were higher because there are other people in nursing homes who are not in receipt of fair deal. Work is beginning on identifying who those people are and what are their preference is. That work is under way. Various elements of the recommendations are being implemented. The point I want to make concerns the pace at which that happens. I told the committee previously that at least four of the individuals with whom we spoke sadly died during the pandemic. These people do not have forever. Their lives are beings wasted as we speak. The Government has made clear that the initial tranche is to be used as a pilot programme. That is fine. I have no difficulty with that - that is appropriate - but a pilot programme must lead to a much larger delivery. The scale of this needs to move forward. Work is happening on the statutory funding scheme for home care. We are working with HIQA, which is developing new regulations that will take this into account. I know from speaking with HIQA inspection staff that they are more engaged in talking to people under 65 in nursing homes when they are there to see if they have access to appropriate activities because one of the other things we said was that while people are waiting to come out, they need to have more appropriate activities so there is movement on every front. My concern is that it now needs to accelerate, which is why I am asking the committee to come back to this topic. We know about the so-called decongregation programme for people with intellectual disabilities. That stalled completely some years ago and those small numbers of people continue to come out. There is still unfinished business there. These are people who, by and large, do not have prominent voices in our communities. They are tucked away, which is why it is really important that in its scrutiny role, this committee stays on top of this as the issue moves forward.



**Deputy Cormac Devlin:** That is something we might work on for our work programme. Mr. Tyndall mentioned prison complaints, which have been brought under his jurisdiction, but it has been painfully slow. Can he elaborate on that? Is it on the departmental side? Is it the Prison Service or is it a combination? What is the problem there? Mr. Tyndall mentioned the Venice principles and that he hoped this committee would continue that work and possibly co-sponsor or take up the sponsorship of that. Between that and the under 65s in nursing homes, I hear his call on that. As a committee member, I will work to put that on our work programme and continue the good work begun by the Office of the Ombudsman.

**Mr. Peter Tyndall:** I do not particularly want to allocate blame for the delay on the prison issue. It was complex. The intention is to introduce a new complaints process within the prisons and that once that process is in operation, my office would be able to deal with complaints that have not been resolved by the new internal process. There have been issues around drafting the relevant regulations and preparing the investigation report. We have had good engagement with the Prison Service and the Department. One then has the issue of drafters and so on getting engaged. I would not say the delay has been anywhere. It has just been frustrating for me as it is something I would have liked to have seen done by now. My office does not yet have jurisdiction. We are at the point at which the new regulations governing the new internal complaints process are being introduced. It is important that this happens and that the next stage proceeds.

**Deputy Cormac Devlin:** How long has this process been ongoing? Is it two or three years?

**Mr. Peter Tyndall:** The person who is leading for me on it has since retired.

**Deputy Cormac Devlin:** Say no more.

**Mr. Peter Tyndall:** It is at least three years.

**Deputy Cormac Devlin:** In terms of the Venice principles, this is possibly something this committee can look at for our work programme. I thank Mr. Tyndall and wish him all the best.

**Senator Jerry Buttimer:** I begin by thanking Mr. Tyndall for his engagement with this committee but more importantly for his courtesy and extraordinary professionalism to us and members of the public. I was a member of the old Committee on Public Petitions and met him on a number of occasions. I offer him sincere thanks for all he has done. Perhaps I am being futuristic. In the event of any review of how the Government and State agencies or bodies such as the HSE or nursing homes have handled Covid-19, does Mr. Tyndall think his office would have a role in that?

**Mr. Peter Tyndall:** It is a difficult one. We see a particular snapshot of public services where people are not happy. Where we see systemic issues, as we did with the PUP where we suddenly got a lot of complaints about something that did not exist previously, we nominated somebody to lead on that. Ms Hanrahan was very active in that process. We engaged very proactively with the Department. We had a clear picture of what was going on there because we were getting such a volume of complaints about it that we could see we needed to deal with them, if one likes, as a piece, rather than as one-off isolated incidents. That worked well. We see it from time to time. For instance, we know we will get a range of complaints at a particular time of year in respect of university grants, SUSI and so on. We encounter patches of complaints. There are occasions when we see enough of particular systemic issues to enable us to form a broad picture of a sector or a particular issue within a sector. We are currently examining several complaints relating to nursing homes. The number of such complaints is up

significantly in the current year. Complaints dropped in 2020 but that is certainly not the case in 2021. Complaints are running at record levels; the highest we have ever seen.

**Senator Jerry Buttimer:** Is Mr. Tyndall referring to complaints pertaining to nursing homes or complaints in general?

**Mr. Peter Tyndall:** It is in general, right across the board. Oireachtas Members will not be surprised to learn that we have received a significant number of complaints in respect of housing, including local authority housing. There has been a big increase in that regard. The complaints relate to delays in repairs because of Covid, but also access to housing issues, with people very frustrated at the length of time they have to wait. None of that will be any surprise to members.

In the context of nursing homes in particular, we will consider whether we need to produce a report along the lines of the A Good Death progress report to draw themes. It would not be a broad consideration of what happened in the sector but, rather, the particular snapshot that we have seen. If there is a broader consideration, my office will certainly want to feed into that. We engage closely with the other key players, such as HIQA in this particular instance, but also with Departments. We would be in a position to feed into such a consideration. However, as I always say, we have opinions, but they are our opinions. The only facts we have are the ones that come from our casebook. We do not tend to contribute beyond that. I am taking some liberties as I am reaching the end of my tenure in mentioning one or two matters that go a little beyond that. I may refer to them in closing, We would wish to contribute to such a consideration but we have a particular role to play and that is what we will do.

**Senator Jerry Buttimer:** Would such a broader consideration include the HSE or Departments?

**Mr. Peter Tyndall:** Yes. We cut them some slack in the first instance because it was clear to us that it was all hands to the pump but, since then, we have returned more or less to normal times in the context of dealing with complaints, so we are back fully engaged with the HSE on that.

**Senator Jerry Buttimer:** The presentation by Mr. Tyndall regarding access to transport for people living with a disability is one that I hope the committee will take up under the headings of the disabled drivers scheme and access to public transport. He referenced lifts in the context of access to public transport. The committee may consider inviting representatives of CIE or Iarnród Éireann to appear before it on this issue.

I ask him to develop the point he made under the heading of jurisdiction in respect of clinical judgment. I thank him for his service and his courtesy to us all, and to me in particular.

**Mr. Peter Tyndall:** I thank the Senator. This has been an issue for me because I am unusual in having served as an ombudsman in two jurisdictions. The first thing I noticed when I came back to Ireland was that a large source of complaints for me in Wales related to clinical jurisdiction but I could not even consider such complaints here. Let us say my office receives a complaint from a person in a nursing home during Covid. Such a complaint may relate to end-of-life care, a failure to look after a possession or access for relatives, as we have seen. I can consider all of those issues. However, the person may have become ill as a result of another person being discharged from hospital. If that is the case, I cannot examine that issue. Neither can I examine issues relating to decisions taken on the care of that person. The family do not

want half an answer; they want somebody to look comprehensively at the whole of it.

This became an even bigger issue in Ireland when a decision was properly made by the courts that professional standards bodies and regulators, including the Medical Council, could not consider issues unless they suggested there was a *prima facie* case for a gross breach of professional standards. That is my paraphrasing of the decision. As such, a tranche of complaints have no home. Many of the issues my office considers do not suggest at all that a person was in gross breach of his or her professional standards, but there may well be issues relating to clinical care from which lessons could be learned. On some occasions, I have considered cases and simply raised them with the HSE as, even though I could not investigate them, I could see there were problems. There was an issue regarding equipment in use in emergency departments and it was obvious to me that lives were at risk. I was able to raise that issue but I could not formally consider it.

It is important to note that north of the Border, the complaints considered by the Northern Ireland Public Service Ombudsman fit into the broad range of public service complaints. Here, no one can look at them. To be fair to the HSE, it does its best, but having the HSE consider an issue is not the same as having access to independent redress. That is why this is so important. The Government has accepted on several occasions that this is an important issue and has agreed to move it forward, but that has not transpired in practice as yet. I know the Department of Health is considering it again, but it is time to get it over the line. It is an obvious gap in the landscape of access to independent redress and it needs to be filled.

**Deputy Cormac Devlin:** I wish to return to the issue of access to transport for people living with disabilities. Mr. Tyndall highlighted in his opening remarks that, in 2012, his predecessor, Ms Emily O'Reilly, issued a special report regarding issues relating to mobility allowance and the motorised transport grant. He noted that, nine years later, that has still not been implemented. However, he went on to state that it is his understanding that the Department of Finance is to develop a new and more equitable scheme and that he hopes it will be included in the finance Bill this year. Is that a belief based on engagement or is it the hunch of a gentleman who is due to retire in a couple of weeks? Is he certain that it will be included in the Bill?

He referred to the issue of faulty equipment or that of a person living in a rural area whose bus does not arrive. I have personal experience of an issue in urban areas relating to lifts at DART stations or whatever not working. That causes significant inconvenience and distress for the individuals concerned. Does Mr. Tyndall expect progress to be made on that specific element?

**Mr. Peter Tyndall:** There is a need to separate out the two lots of schemes. When I last pressed on the matter, I was basically told it was too expensive. My office continues to have discussions on it every so often. The finance scheme relates to tax concessions rather than the schemes that offered grants, which were the subject of the report by Emily O'Reilly. I hope there will be progress on the hopelessly inequitable conditions relating to assessing disability, under which only certain types of disability qualify. Does Ms Hanrahan want to add anything?

**Ms Jennifer Hanrahan:** There are six criteria and they are limited. We are engaging with the Department on it at the moment.

**Deputy Cormac Devlin:** It may be something we can put on our work programme to revisit. The next time the witnesses are at the committee, we might probe that again. It is an important issue and one all Members of the Upper and Lower Houses are frequently made aware of.

**Mr. Peter Tyndall:** We are committed to producing a special report before the end of the year which we will provide to the committee. It is hoped that will give the committee a basis for picking it up with my successor.

**Deputy Cormac Devlin:** That would be great. I support Senator Buttimer's call for having either or both of Iarnród Éireann and CIÉ in before the committee. Maybe that would be in the new year, after Mr. Tyndall's report.

**Acting Chairman (Deputy Pat Buckley):** I agree with that. I call Senator Murphy. He is otherwise engaged. I will come back to him.

Members have touched on disability and Mr. Tyndall mentioned it in his opening statement. It is a bugbear of mine because I feel they have always been treated as second-class citizens. A lift or ramp on a bus or train or an adaptation of a bike for a beach has always been perceived as a luxury and not a necessity. I had a dog licence exemption Bill in the last sitting of the Dáil to remedy the current situation which differentiates between somebody blind with a guide dog and somebody with autism and an assistance dog. The latter has to pay for a licence. It was discriminatory. We will certainly visit that.

One issue that worries me relates to the additional supports given to carers to allow those people to remain in the community. It is pertinent because we are coming out of the world's worst pandemic. Mental health issues are going off the scale and we have a mental health centre, the Owenacurra centre in Midleton, which in all its years has never had a suicide and has never had a Covid case. It has 19 long-stay patients. It provided short respite and mental health day care services. Now, because of inefficiencies in a Department which did not maintain the buildings, it is being used as an excuse to close it. These are the most vulnerable people in it. How does Mr. Tyndall feel about carers keeping people in the community who were in the mental health system and are integrated into society? The threat of moving them and putting them into isolated settings will be detrimental. How would he feel and react if this was happening today? It actually is happening today.

**Mr. Peter Tyndall:** The default position over the years in dealing with people with requirements which are not met in the community has been to go to institutional care. Thankfully, over the decades we have seen many institutions closed. Institutions have been a theme of my time as Ombudsman.

The first instinct of any State should be to support people to continue to live at home and, if they cannot live at home, to find alternatives in the community to support them. Our first instinct too often has been to support people in institutional settings. Many older people in nursing homes could have been supported in their homes and would have been happier. That is not a criticism of nursing homes, but people are in them because they cannot be supported to stay where they want to be, which is in their homes where supports and adaptations could be made. We are moving in the right direction and need to continue to do so.

There are a particular set of issues affecting people with mental health problems. Closing the old large mental hospitals was obviously desirable, but alternative means of access to support must be provided for people with mental illness who otherwise would not thrive in the community. Facilities need to be provided to support them so they can live decent lives and so that clinical interventions are available to them in clinical settings when required. Closing the institution is not the end of it. I have tried persistently and consistently to say we have to provide proper support for people, not just to enable them to live a bare existence in the com-

munity but to be engaged in the community and to have work, social lives and relationships so they can live proper, fulfilled lives.

I do not know the facts and do not want to comment but I will say we cannot provide all services for people with mental illness purely in a community setting without some kind of inpatient services for people in crisis at times when they cannot manage. That does not and should not mean permanently being absent from the community, but it should mean they can be supported when they need help in appropriate settings.

**Acting Chairman (Deputy Pat Buckley):** I will go back to Senator Murphy if he is there. He is gone. If Mr. Tyndall has any closing remarks, we will take them now.

**Mr. Peter Tyndall:** It is an enormous privilege to serve as Ombudsman in Ireland. It is a job where you feel you have the opportunity to make a difference. I am pleased to have had that opportunity. There are areas in the broader work of the office which have been particularly rewarding for me. I was pleased to sit as a member of the referendum commission during some key referendums that have taken place during my time in office. That was a great privilege. I am pleased to see some change is happening there and the electoral commission is being established. That will take some of the work that currently sits with the Standards in Public Office Commission, SIPO.

My office provides support to SIPO, including in the context of the ethics legislation. I have never known anything more unfit for purpose than our current ethics legislation. Having to assemble four of the busiest people in the country, namely, the clerks of both Houses, the Comptroller and Auditor General and me, along with two independent members to hear cases about supposed cheating on travel expenses is ridiculous. The moves to reform ethics legislation must not be left any longer. SIPO had no possibility of doing anything in respect of sanction. There were no sanctions. It is legislation that is completely not fit for purpose and needs to be replaced as quickly as possible.

I am pleased to see the ongoing work on reform of freedom of information. I hope it leads to all bodies in receipt of substantial public funding being properly brought into the ambit of the legislation and proper resourcing to enable public bodies to respond to the requirements of individuals for transparency and openness. I have had an opportunity in the course of what I have been saying to highlight some of the outstanding issues. The number of systemic investigations has been more restricted than I would have wanted because of resource issues, and this touches on some of the issues that have been raised by members of the committee. As part of the review of the legislation, creating as other offices do the possibility of having a team of people who can take on those big hard-hitting and impactful investigations would be a very big step forward. At the moment people have to be taken away from the day job in order to do them. This limits the capacity to do that.

It has been a very fulfilling opportunity for me to work as Ombudsman. It is not too many public officials who can say that they have enjoyed their attendance at committees and their engagement with committees. It has been a very productive engagement with this committee, and I hope the members will continue to keep these issues in the public eye as time goes on. Thank you very much.

**Acting Chairman (Deputy Pat Buckley):** We certainly will. The discussion has absolutely been extremely beneficial and informative. On behalf of the committee I thank the Ombudsman for coming here today, even though it is only virtually. We wish you well in your

retirement. Hopefully someday you will actually be able to visit the Oireachtas in person. In the meantime, stay safe.

**Mr. Peter Tyndall:** Thank you very much.

### **Decisions on Public Petitions Received**

**Acting Chairman (Deputy Pat Buckley):** I propose that the petitions considered by the committee at this meeting and the previous meeting be published and that the replies from the Departments and other bodies also be published. Is that agreed? Agreed.

We will now consider the public petitions. The first petition P00013/21, is from Ms Molly O'Brien, to create a citizenship route for non-resident spouses of Irish nationals after five years of marriage. The recommendation from the private session is that the correspondence from the Department of Justice be sent to Ms O'Brien for comment. Do members have any views on this or is it agreed? Agreed.

The second petition P00017/21, concerns "Save Shannon Airport" and is from Deputy Violet-Anne Wynne on behalf of Ms Donna McGettigan. The recommendation from the private session is that the correspondence from the Department of Transport be sent to Deputy Wynne on behalf of Ms McGettigan and that this petition is closed for the following reasons: that the Government has clearly articulated in recent months that its policy with regard to Shannon Airport is that it remains part of the Shannon Group. The Government does not consider it appropriate that there be any consideration for reintegrating Shannon Airport with the DAA at this time. Throughout the Covid-19 crisis the Government has made significant funding available to Aer Lingus and other aviation enterprises through a range of business supports. It is estimated that by the end of June 2021 the aviation sector will have received approximately €300 million in such supports.

Do the members have any views on this or is this agreed? Agreed.

**Deputy Cormac Devlin:** Could I suggest that we might hold off on the remaining petitions until the next meeting given the attendance for the remainder of this meeting?

**Acting Chairman (Deputy Pat Buckley):** I will propose this to the floor. Does the committee wish to hold back the remaining petitions until the next meeting? Is that agreed? Agreed. I will make a note of that and I thank Deputy Devlin.

This concludes our consideration of public petitions. I invite members of the public to submit via our online portal. A petition may be addressed to the Houses of the Oireachtas on a matter of general concern or interest regarding the legislative powers or any issue of public policy.

Would members like to make any final comments?

**Deputy Cormac Devlin:** No. I thank the Chairman.

The joint committee adjourned at 1.35 p.m. until 11.30 a.m. on Thursday, 14 October 2021.