

Our Reference: OF/HB/003/034

Your Reference: ISD/PFM/GON/LMGsr2910

/7 June 2010

Ms Laverne McGuinness
National Director
Integrated Services Directorate
Performance and Financial Management
Room 138, Dr. Steeven's Hospital
Dublin 8.

Dear Ms McGuinness

Ombudsman Investigation - Guardian Ad Litem (GAL) Services.

I refer to your Letter to the Editor published in the Irish Times of 3 June 2010. Your letter was in response to an Opinion Page piece by Ombudsman Emily O'Reilly published in that newspaper on 1 June 2010. The Ombudsman has no difficulty in accepting that the HSE is entitled to dispute or disagree with any matter of judgement or opinion expressed in public by her. However, the Ombudsman does not accept that the HSE is entitled to mislead the public by publishing, as fact, an account which is self-evidently contrary to the facts. Your Irish Times letter gives an incorrect and very misleading account of what would have been required of the HSE had it accepted the recommendations of the Ombudsman in her investigation report of July 2008 (the "GAL" Investigation Report).

In your Irish Times letter you wrote that acceptance by the HSE of the Ombudsman's recommendations in the "GAL" case *"would require the HSE to hand over personal documentation and information (including privileged information) and information prepared in the course of in camera proceedings if requested to do so by the Ombudsman without notice to the people affected"*. As you must well know, this statement has no foundation in fact.

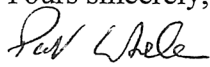
The particular investigation arose from a dispute between the HSE and two agencies providing guardian *ad litem* services and concerned the payment of fees by the HSE to these agencies. The HSE had refused to refer fee disputes for taxation back to the original courts (which had appointed the guardians) in circumstances where the agencies themselves did not have the legal right to raise the matter with the court. The investigation was not concerned with any particular child's case and the Ombudsman neither sought nor required information on any particular child's case. Despite this hard fact, the HSE has been seeking to represent the investigation as having required the provision of sensitive personal information on children and their families. Furthermore, the HSE is saying that acceptance of the recommendations will require, for the future, the provision by the HSE to the Ombudsman of sensitive personal information.

The Ombudsman's recommendations in the GAL case were that the agencies be paid outstanding fees, with appropriate interest, that "time and trouble" payments of €10,000 be paid to each of the agencies and that, for the future, the HSE should engage openly with guardian agencies to ensure that such disputes would not arise again. It is simply untrue to say that acceptance of these recommendations required the HSE to provide the Ombudsman with any sensitive information on children or other individuals. Acceptance of the recommendations required neither more nor less than is specified in the recommendations. As you know, the HSE has implemented these recommendations.

It is the case that the powers of the Ombudsman include the power to require that she be provided by "any person" (including the HSE) with any information or documentation which she deems relevant to an examination or investigation she is conducting under the Ombudsman Act. Under these powers, the Ombudsman will occasionally require the provision of sensitive personal information including material which may relate to proceedings under the Child Care Act 1991 "heard otherwise than in public". The Ombudsman is satisfied that the exercise by her of these powers in such instances creates no difficulties either in relation to the in camera rule or under the Data Protection Acts. The Ombudsman is aware that the HSE does not accept this to be the case; though the HSE has never provided a reasoned explanation as to its position. In any event these matters, concerning the Ombudsman powers to require the provision of sensitive personal information, had no bearing whatever on the conduct of the GAL investigation nor on the acceptance by the HSE of the recommendations made following the investigation.

It is inevitable that, from time to time, tensions will develop between the Ombudsman and public bodies whose actions she investigates. It is not necessarily counter-productive that these tensions should be aired in public. But where there is a public airing of such tensions, it is imperative that both parties avoid the temptation to misrepresent the facts to their own advantage. In this instance, the Ombudsman is concerned that the public record now contains an inaccurate and untrue representation of the facts, as described above. With a view to correcting that record, the Ombudsman will be publishing this correspondence in conjunction with her report to the Oireachtas on the aftermath of the GAL investigation.

Yours sincerely,



Pat Whelan
Director General