



Feidhmeannacht na Seirbhíse Sláinte  
Health Service Executive

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19<sup>th</sup> February 2013

**Ms. Emily O'Reilly,  
Ombudsman,  
Office of the Ombudsman,  
18 Lower Leeson Street,  
Dublin 2**

**Re: Investigation Report "Too Young for Long-Stay Care?"**  
**Complainants:**

Dear Ms. O'Reilly,

I refer to your correspondence dated 21<sup>st</sup> January 2013 enclosing a copy of your investigation report "Too Young for Long-Stay Care?"

It is noted that this report resulted from original complaints received from \_\_\_\_\_, who had been refused repayment under the Health Repayment Scheme 2006.

The HSE responded fully to the original complaints received, and outlined that the complainants were correctly refused a repayment under the Health Repayment Scheme, as payments made by the complainants towards nursing home costs were not 'recoverable health charges' as defined under the Health (Repayment Scheme) Act 2006. It is the 'Services for Older Persons' office that administered the Health Repayment Scheme, and it is for this reason that this office was nominated to deal with the original complaints received.

It is noted that in this report, the Office of the Ombudsman accepts that the HSE was correct in this decision.

The Office of the Ombudsman, it appears, then broadened the investigation, as 'the Ombudsman is satisfied that the complainants have been adversely affected by the actions of the health board/HSE', as 'both complainants contend that their relative had no option but to enter long-stay nursing home care in private nursing homes because of the failure of the relevant health board to provide for their long-stay needs (letter from Fintan Butler to the CEO of the HSE dated 18<sup>th</sup> January 2012).

Tús Áite do  
Shábháilteacht 1 Othar  
Patient Safety 1 First

However, at that time, each of the health boards did make provision for long-stay care for persons aged under 65 via subvention and 'top up' funding – from within available resources.

The HSE response to the Ombudsman report 'Who Cares' set out the HSE position that each health board had a statutory responsibility to provide services within the resources allocated – quote from HSE submission on 'Who Cares' below:

***“Resources Issue”***

*It is important to note that for the period from 1996 to 2004, the HSE/Health Boards were bound by the Health (Amendment) (No. 3) Act 1996 and subsequent to this the Health Act 2004.*

*The Health (Amendment) (No. 3) Act 1996 states as follows:*

***‘A health board, in performing the functions conferred on it by or under this Act or any other enactment, shall have regard to the resources, wherever originating, that are available to the board for the purpose of such performance and the need to secure the most beneficial, effective and efficient use of such resources.’***

***‘If the amount of net expenditure incurred by a health board in a financial year is either greater or less than the amount determined by the Minister for that year, the health board shall charge the amount of such excess or credit the amount of such surplus in its income and expenditure account for the next financial year’***

*It should be further noted from the Department of Finance’s ‘Public Financial Procedures’ that public monies may be appropriated only on the authority of Dáil Éireann where appropriated means ‘to assign stated amounts for specific purposes’.*

*Under Department of Finance procedures, delegated administrative budgets are formally agreed between the Minister for Finance and the Minister for Health and Children. This agreement commits the Minister for Health & Children to stay within the agreed amounts for the period in question. As a result, it is important to understand that funding for health services in the State are resource capped.*

*All accounting officers including the CEO of the HSE may be held personally responsible for any excess sum that the Public Accounts Committee recommends should be disallowed and agencies must monitor and manage their expenditure within allocations approved by the Dáil.*

*As a result, the HSE is of the view that people had no automatic entitlement to the provision of long stay services without charge. People were entitled to have such services made available to them, subject to the ability and capacity, including financial capacity of the HSE/Health Boards to make those services available having regard to all of the obligations commitments and responsibilities of the HSE/Health Boards.*

### **Obstruction of the Ombudsman**

It is noted that in this report the Ombudsman states:

“that the HSE is obstructing and hindering an Ombudsman investigation contrary to section 7 (3) of the Ombudsman Act 1980”. This information was also requested by the office of the Ombudsman in relation to the ‘Who Cares;’ report, and was refused then – with the reasons for such refusal outlined in the HSE response to this report.

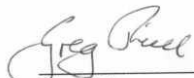
The HSE notes that Section 7 of the Ombudsman Act requires the production of material which, *in her opinion*, is relevant to the particular investigation. On this basis, the Office of the Ombudsman sought information relating to the settlement terms in cases where legal proceedings had been taken against the HSE.

As previously advised in correspondence from the HSE dated 11<sup>th</sup> May 2012 , these nursing home litigation cases were managed by the Department of Health (not the Health Service Executive) in accordance with the Health Service Executive / Department of Health Memorandum of Understanding on the handling of legal cases.

The Department of Health advised that it has received legal advice from the Office of the Attorney General to the effect that as it appears the complaints are unrelated and unconnected to the settlements of **the cases at issue** there is no obligation under the Ombudsman's Act 1980 to provide this documentation and it would not be appropriate to do so.

Given the HSE view expressed above, it is regrettable that the Ombudsman is still of the view that the HSE is ‘obstructing and hindering an Ombudsman investigation’.

Yours sincerely,



Greg Price  
Director of Advocacy