



Letters to the Editor

Children in care of the HSE

Madam, - It is not correct to suggest, as Emily O'Reilly, Ombudsman and Information Commissioner does (Opinion, June 1st) that the HSE is refusing to hand over files on children who died while in care to the Independent Review Group established by the Minister for Children. It is refusing to break the law.

Ms O'Reilly contends that, based on Section 40 of the Civil Liability and Courts Acts 2004, it is "very probable" that any legal difficulty in providing files to the Independent Review Group could be resolved and "emergency legislation will not be required". The HSE cannot deal with probabilities; it must adhere to the law.

On the advice of the Attorney General, the Government will introduce emergency legislation to endeavour to make it legal for the HSE to provide the information requested by the group. We have publicly welcomed this decision and wish to co-operate fully with this group and provide all the information it needs to complete its work as comprehensively as possible.

In relation to the investigation by the Office of the Ombudsman concerning the entitlement of providers of guardian *ad litem* services to determine the level of fees they should be paid by the HSE, the suggestion by Ms O'Reilly that the HSE has displayed a capacity for "ill-founded legalism matched only by a lack of common sense" is a surprising comment on an issue of such importance.

We have never refused to provide information we are authorised to provide. When we have concerns regarding the release of highly sensitive information, such as information covered by *in camera* rules, we have sought to provide solutions which are legal. Sometimes it is simply not within our power to disclose information to third parties regardless of their statutory powers.

The HSE did not accept the recommendations from the Office of

the Ombudsman that followed this investigation for a number of reasons. One was that acceptance 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. To do so would cause the HSE to break the law. The authority to release information on children that is subject of *in camera* proceedings rests with the courts.

This is confirmed by the fact that the HSE has been strongly criticised in the past by a court for inadvertently providing some information covered by *in camera* rules to the Office of the Ombudsman and apologised to the court for doing so. The significant legal costs referred to by Ms O'Reilly arose as the Office of the Ombudsman did not accept this fact.

It is unfair therefore for the HSE and its staff to be openly criticised for operating within the law regardless of how deceptively attractive or populist alternatives may appear. - Yours, etc,

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