



**Department of
Health & Children**
AN ROINN SLÁINTE AGUS LEANAÍ



Ms. Emer Doyle
Investigator
Office of the Ombudsman
18 Lower Leeson Street
Dublin 2

23 August 2010

**Re: Ombudsman Investigation – provision of in-patient services – Section 52
Health Act, 1970.**

Dear Ms. Doyle

I refer to previous correspondence and the representations sent under cover of my letter dated 20 August 2010.

I note, with regret and astonishment, that notwithstanding the said representations and the numerous other requests made to the Ombudsman to furnish a complete copy of her draft report and to afford sufficient time to the Department and its officials to respond thereto in accordance with their statutory and constitutional rights, the Ombudsman has persisted in her refusal to do so.

In these circumstances but strictly without prejudice to the rights of the Department and its officials in respect of, *inter alia*, the extremely serious breaches by the Ombudsman of their statutory and constitutional rights, the Department makes these additional representations to the Ombudsman in respect of the matters addressed in the extracts from her draft report furnished to the Department.

In view of the breaches of their statutory and constitutional rights to fair procedures by the Ombudsman – and, in particular, the refusal of the Ombudsman to furnish a complete copy of the draft report to the Department and her refusal to allow sufficient time to address the serious issues raised by the extracts from the draft report furnished – the attached additional representations are not, (and could not possibly be), a comprehensive response to all of the statements in and/or issues raised by the draft report of the Ombudsman. This is a very unfortunate but inevitable consequence of the manner in which the Ombudsman conducted her investigation, including her failure to have a genuine engagement with the body and its personnel who are the subject matter of the report, notwithstanding her assertion that the “*primary objective*” of the report is “*to encourage some serious thinking on whether our current governmental arrangements are, in fact, as healthy and resilient as they might be*”.

Cuirfear fáilte roimh chorúil fhreagras i nGaeilge

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For the avoidance of any doubt, I wish to reiterate that the representations made on 20 August 2010 and the attached additional representations are strictly without prejudice to all of the rights of the Department and its officials and all of their rights are expressly reserved.

Given the time constraints under which we have been obliged to work by reason of the deadline imposed by the Ombudsman it has not been possible to finalise all of the appendices to the Representations. This will follow tomorrow morning.

Yours sincerely



Noel Usher
Director
Office for Older People

cc **Mr. Fintan Butler, Senior Investigator, Office of the Ombudsman**

Appendices

- Appendix I Preliminary Observations of Department dated 20 August 2010;
- Appendix II List of Correspondence between Department of Health and Children and Ombudsman;
- Appendix III Speech of Ombudsman *Rights and Entitlements of Older People*;
- Appendix IV Speech of Ombudsman at MacGill Summer School
- Appendix V Public information from Department on Nursing Home Support Scheme including the Regulatory Impact Analysis and Responses to Parliamentary Questions

- Appendix VI Letter from the Department of Health and Children to the HSE on the Nursing Home Support Scheme, 21 April 2010
- Appendix VII Speech by Minister on the Adjournment of Dáil Éireann on 22 April 2010

- Appendix VIII Information Note on Nursing Homes Support Scheme

- Appendix IX Extracts from Committee Stage Debate on the Nursing Home Support Scheme Bill