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MAGAZINE**

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MAGAZINE PAGES 24-25



PLUS

6-page
TV crime
special

MAGAZINE
PAGES 4-9

AGE LIMIT ON MENTAL HEALTH MEDICINES IS ILLEGAL

Yet State denies free drug scheme to patients once they become 16

TEENAGERS over the age of 16 and adults with mental illnesses are being denied free medication because the State has refused to correct defective legislation, confidential documents reveal.

Leaked documents obtained by the Irish Mail on Sunday show the Government has known that legislation – under which only those under 16 with a mental

EXCLUSIVE

By Michael O'Farrell

illness are entitled to free medication – is discriminatory and legally unsound for more than a decade.

The revelation will heap further pressure on the Coalition, which has come

Turn to Page 6 >>



Court papers
reveal toxic
rows over
Brooklyn's
wedding

SEE PAGES 22-23

State resisted attorney

THE HSE FILES

► From Page One

under fire in recent weeks after this newspaper uncovered details of a secret legal strategy to block nursing home fee refunds for people who paid for private beds when no public beds were available.

Documents provided to the MoS in a protected disclosure from Department of Health whistleblower Shane Corr reveal the office of the former Attorney General (now Court of Appeal judge) Máire Whelan, warned the Government as far back as 2012 that sections of the legislation governing the entitlement of free medication were 'ultra vires', meaning they were 'beyond the powers' granted to the Government by

'LTI card patients could lose access'

law. The flawed legislation remains in place today, meaning thousands of citizens have been – and are being – denied free access to drugs and medication to which they are legally entitled.

Other parts of the defective legislation were secretly corrected when it came to light in 2012 by quietly, and without debate, tacking on an amendment to an unrelated health bill.

When pressed on the matter, a spokesman for Taoiseach Leo Varadkar last night claimed the Government was concerned that changing the flawed legislation preventing those over 16 being provided with free medication 'could jeopardise the entire existence [of the scheme] if found ultra vires [invalid].'

The spokesman said: 'Patients with LTI (Long-Term Illness) cards could then lose access to free medication if it were found their entitlement was not and had not been legally sound.'

However, Mr Corr last night accused the State of keeping 'this issue under the carpet for a decade, denying entitlement to untold thousands'.

Mr Corr added: 'It now needs to deal with this ongoing issue by correcting failures and compensating those who lost out.'

The latest disclosures involve Government decisions that were made as the Department of Health was aggressively implementing its secret strategy to limit payouts to families that were illegally over-charged nursing home fees.

In April 2012, the attorney general provided a detailed briefing to the secretary general of the Department of Health in which she outlined serious concerns about the legal basis for the legislation governing free medication.

This was just a month after former Taoiseach Enda Kenny and a handful of his senior Cabinet ministers were given an update on the State's controversial legal approach to the nursing home payouts.

In her briefing to the department chief, the attorney general expressed concern over anomalies in the LTI Scheme, which came into effect in 1971.

The legal basis for the LTI scheme is underlined in Section 59(3) of the 1970 Health Act. This authorised the then health minister, Erskine

TIMELINE...

FEBRUARY 24, 1970

The Health Act 1970 is signed into law establishing the legal basis for the Long-Term Illness (LTI) scheme. Rather than list who will benefit, the Act empowers the health minister to make regulations listing the illnesses to be covered under the scheme.

The wording of the Act does not mention anything about limiting any of the scheme's benefits by age. The Act also says nothing about limiting free medicine entitlements to only those products specifically required for treating the listed diseases.

SEPTEMBER 27, 1971

Health minister Erskine Childers signs statutory instrument No. 277 of 1971 to bring the Long-Term Illness scheme into effect. He nominates 16 conditions that the scheme will cover – including mental illness.

However, he limits the entitlement available to those suffering from mental illness only to those aged under 16. The department issues a circular to the health boards instructing them to provide free medicine only for the listed conditions.

The circular also instructs that only those aged under 16 should be provided with free 'mental illness' benefits.

APRIL 26, 2000

The Equal Status Act is signed into law by President Mary McAleese, making it illegal for providers of public services to discriminate against anyone on age grounds. The Department of Health continues to exclude those aged over 16 from the LTI scheme.

JUNE 6, 2012

After seeking advice from the office of the attorney general, the Department of Health is told it is illegal to exclude over-16s from the LTI scheme.

The attorney general also warns the department it would likely lose any case taken by a scheme participant who argues that, as the law stands, they should be entitled to all medicines for free – not just those related to the listed illness.

The department is further advised to change the law to address these issues – and warned that failure to do so could result in a finding of misfeasance against State officials.

MAY 28, 2013

To avoid having to pay compensation, the Government secretly adds a provision into a largely unrelated Bill to limit LTI scheme entitlements only to medicine for the listed illnesses. Once the statute of limitations passes, this closes the door to potential claims relating to that issue.

However, nothing is done to rectify the illegal discrimination against over-16s suffering from mental illness. The measure remains in place.

'Revelation is salt in the wound of my loss'



TRAGEDY: Elaine Clear and her late son Dan, who died when he took his own life, aged 17

THE mother of a teenage boy who took his own life while under the care of CAMHS (Child and Adolescent Mental Health Services) said the revelation that the Government was told legislation that denies free medication to anyone over the age of 16 was legally unsound 'adds salt' to her family's 'already deep wound'.

Dan Hogan died by suicide when he was 17, four years after he began experiencing low moods and feelings of depression. His heartbroken mother, Elaine Clear, remembers how the change came over her 'vivacious', 'witty' and 'handsome' son who loved sports when his voice broke and he developed acne.

To combat this, Dan was initially prescribed Roaccutane for six months, and then Risperidone, a powerful anti-psychotic drug. The medications were initially provided free by the State, as per the terms of the Long-Term Illness scheme. Dan later came under the care of CAMHS after he told his parents he was hearing voices, but after two years of unsuccessful treatment, their son's depression got worse.

Two years later, at the age of 15, he was prescribed Prozac, but it did not have a positive impact and his mood swings and bouts of depression got worse.

Dan was later admitted to St Joseph's adolescent unit at St Vincent's Psychiatric Hospital in Fairview, but this, according to his mother, was where 'our worst

nightmare began'. In the hospital, Dan was put into a suicide-proof room with all his freedoms – including his phone and contact with the outside world – removed.

Ms Clear said the experience had a devastating impact on her son. Just three weeks after his release from St Vincent's, on July 8, 2014, Dan tragically took his own life. Speaking to the Irish Mail on Sunday, Ms Clear said the cost of paying for Dan's medication after he turned 16 had a significant impact on the family's finances, at a time when they were already hugely concerned about their son's welfare.

Responding to the revelation that former attorney general advised the Government in 2012 that the 1970 Health Act, which continues to deny free medication to people with a mental illness over the age of 16, was legally unsound, Ms Clear asked: 'When will our children's mental health needs be treated with the urgency it deserves? This new revelation is shocking to say the least.'

'He likely should never have been prescribed his medication in the first place; but to discover now that we shouldn't have paid for it just adds salt to the already deep wound.'

■ Elaine Clear is member of HUGG, a support group for those bereaved by suicide. If you have been affected by any issues raised in this article, you can contact HUGG on (01) 513 4048.

EXCLUSIVE

By MICHAEL O'FARRELL

INVESTIGATIONS EDITOR



Childers, to identify illnesses that would qualify for free medicine under the scheme.

Mr Childers signed off on regulations that listed 16 illnesses, including diabetes, epilepsy, spina bifida and 'mental illness'. Uniquely among the listed illnesses, the regulations limited the entitlement of those suffering from 'mental illness' to those aged under 16.

The scheme operated for more than 40 years until 2012, when officials at the Department of Health sought legal advice from the attorney general.

This appears to have been prompted by an Ombudsman investigation at the time into a successful complaint from a member of the public with ADHD [attention deficit hyperactivity disorder] who had

been excluded from the scheme.

After examining the legislation, the Attorney General found that two parts of the scheme had been operating without a proper legal basis.

Firstly, Ms Whelan's office advised that limiting the 'mental illness' benefit to those under 16 had no legal basis following the passing of the Equal Status Act in 2000 and was discriminatory.

The other anomaly was an inference in the 1970 Act that anyone who qualified for free medication was entitled to drugs for all types of conditions.

Addressing the age limitation of the mental illness benefit, the Government's top lawyer warned the department: 'Either the limitation

in the regulation should be deleted or primary legislation amended.'

At the time the Government was faced with two options; to remove the 'mental illness' category from the LTI scheme, which would have

Scheme operated for more than 40 years

resulted in those under 16 losing their entitlement, or to include older teenagers and adults.

However, the latter option would have cost the State more money and risked exposing the Government to awkward questions about why those

Attorney general's warning

AG LEGAL ADVICE IN 2012 CONFIRMS U-16 RESTRICTION IS ILLEGAL

1. EXCLUSION OF OVER-16s FROM FREE MENTAL HEALTH DRUGS

IN April 2012, a Department of Health (DoH) official outlines his view that a 42-year policy of excluding those aged over 16 from free mental health medication has never been legally sound. In June, the AG's office agrees that the policy of excluding over-16s is not legally sound. They advise any proposed new legislation will have to meet the requirements of equality laws which prohibit age-based discrimination.

- A** 'EITHER the limitation in the regulation should be deleted or primary legislation amended.'
 - B** 'THERE must be objective justification for any qualification or limitation that the Department may wish to adopt in selecting the classes or groups it wishes to include or exclude and in setting age limits. This issue will have to be considered further, depending upon what policy the Department intends to adopt.'
- Advice from the Attorney General's office - June 6, 2012.

A 41. It is also agreed that Article 9 of the Health Service (Amendment) Regulations 1971 is *ultra vires* Section 59(3) of the Health Act 1970 in limiting the supply of drugs and medicines to persons suffering from mental illness to persons under the age of 16. Either the limitation in the regulation should be deleted or primary legislation amended. There will have to be objective justification for any distinctions that might be drawn in the primary legislation.

B 28. I agree with your concerns on equality issues. There must be objective justification for any qualification or limitation that the Department may wish to adopt in selecting the classes or groups it wishes to exclude or include and in setting age limits. This issue will have to be considered further depending upon what policy the Department intends to adopt.

2. LIMITING FREE MEDICINE ENTITLEMENTS

The official in the Department of Health also expresses concern that the 1970 Health Act says nothing about limiting free medicine entitlements to only those products specifically required for treating the listed diseases – which has been Government policy for decades. In response, the AG's office agrees that legislation should be changed.

3. THE SECRET LEGISLATION

A provision is quietly inserted into an otherwise unrelated Bill to change the law – without any announcement of its intention. No one notices and the new law is passed.

30.—Section 59 of the Act of 1970 is amended —
 (a) in subsection (1) —
 (i) by substituting "Subject to sections 20 and 23 of the Health (Pricing and Supply of Medical Goods) Act 2013, a" for "A", and
 (ii) by inserting ", for the time being on the Reimbursement List within the meaning of section 2(1) of that Act," after "surgical appliances",
 (b) in subsection (2), by inserting ", for the time being on the Reimbursement List within the meaning of section 2(1) of that Act," after "surgical appliances".
 Amendment of section 59 of Act of 1970.

4. NO LIABILITY FOR REFUNDS UNTIL CAUGHT

The State adopted the approach that it had not been discovered to be acting illegally, and so long as this remained the case, no refunds would be required.

'Unless a court decision is made, the circular stands and remains valid and in full effect. In these circumstances, there is no question from a legal perspective of having to contemplate a refund of costs that may otherwise have been improperly charged. 'If, however, the matter is litigated and a court makes a decision that the circular is *ultra vires*, the issue of having to provide refunds then becomes a very material one.'

- Advice from the Attorney General's office - June 6, 2012.

26. In light of these legal principles it can be said that while there is a serious risk of invalidity by reason of *ultra vires* in respect of the circular, unless a Court decision is made the circular stands and remains valid and of full effect. In these circumstances there is no question from a legal perspective of having to contemplate a refund of costs that may otherwise have been improperly charged. If however the matter is litigated and a court makes a decision that the circular is *ultra vires* the issue of having to provide refunds then becomes a very material one. Accordingly the sooner the practice is changed or the legislation is amended the better.

5. MISFEASANCE ONLY AN ISSUE IF RESTRICTION NOT DROPPED, OR LAW CHANGED

The AG's office advised that the issue of misfeasance – being held responsible for negligence – would be avoided if the law was changed quickly. But this only applies to the law that was changed, not to that left untouched.

'IT should be noted that once the Department has received legal advice to the effect that there is a question mark over Section 59(3) and that there is a risk of finding that it may be *ultra vires* it is incumbent upon the Department to take steps to either terminate the practice which may be *ultra vires* or alternatively amend the legislation as soon as possible... This would be sufficient to avoid the risks of any finding of a misfeasance if litigation was commenced ...'

- Advice from the Attorney General's office - June 6, 2012.

23. It should be noted that once the Department has received legal advice to the effect that there is a question mark over Section 59(3) and that there is a risk of finding that it may be *ultra vires* it is incumbent upon the Department to take steps to either terminate the practice which may be *ultra vires* or alternatively amend the legislation as soon as possible. Assuming the Health (Pricing and Supply of Medical Goods) Bill 2012 was to go to the Houses and be passed before July it is submitted that this would be sufficient to avoid the risks of any finding of a misfeasance if litigation was commenced on this section.

16. If the Oireachtas had intended to limit the drugs and appliances to be supplied to those which were capable of treating the particular long term illness suffered then the Oireachtas could have very easily done so. The fact is that it did not do so. Equally if the policy intention had always been to limit the drugs and appliances supplied to those capable of treating the particular long term illness the wording could have been changed at any time in the last 42 years. Even if there was a doubt about its meaning, and I do not think there is, that doubt would more than likely be resolved against the Department than for it because it will be taken to have always been in control of what was to be said in the legislation.

18. On this basis it is submitted that there is a very real risk that if this matter was to be litigated that a Court would find in favour of a plaintiff who is arguing that he was entitled to drugs free of charge and without limitation on the nature of such drugs. Such a plaintiff would have the sympathy of the Court and the defence on the action would be difficult. There is therefore a real risk that the circular may be considered to be *ultra vires*.

- A** 'If the Oireachtas had intended to limit the drugs and appliances which were to be supplied to those capable of treating the particular long-term illness suffered, then the Oireachtas could have very easily done so. The fact is that it did not do so. Equally if the policy intention had always been to limit the drugs and appliances to those capable of treating the particular long-term illness, the wording could have been changed at any time in the past 42 years.'
 - B** 'On this basis it is submitted that there is a very real risk that if this matter was to be litigated that a court would find in favour of the plaintiff who is arguing that he is entitled to drugs free of charge and without limitation on the nature of such drugs. Such a plaintiff would have the sympathy of the court and the defence on the action would be difficult.'
- Advice from the Attorney General's office - June 6, 2012.

over 16 were excluded in the first place. Ultimately, the Department of Health did neither, even after the attorney general's office warned that a failure to act risked a misfeasance finding, a civil wrongdoing by public officials or State entities who fail to discharge their public obligations. The attorney general's 2012 legal advice states: 'It should be noted that once the Department has received legal advice to the effect that there is a question mark over Section 59(3) and that there is a risk of finding that it may be *ultra vires*, it is incumbent upon the Department to take steps to either terminate the practice... or amend the legislation as soon as possible.'

Despite the warning, the

Government did not amend this part of the legislation, which remains in place. And since 2012, whenever successive health ministers have received parliamentary questions from TDs representing constituents who queried the age restriction, they issued the same stock answer. In their responses, the ministers referred back to the 1970 Health Act and the flawed 1971 regulations, which the Department knows have been deemed '*ultra vires*', or invalid, by the attorney general's office and say the Health Service Executive (HSE) has no choice but to comply with the law. The failure to act for a full decade after the 2012 legal warning has cost millions in refunds to those

who were excluded from the LTI scheme on age grounds. In contrast with its failure to act on the illegal age restrictions, the Department of Health moved to deal with the attorney general's

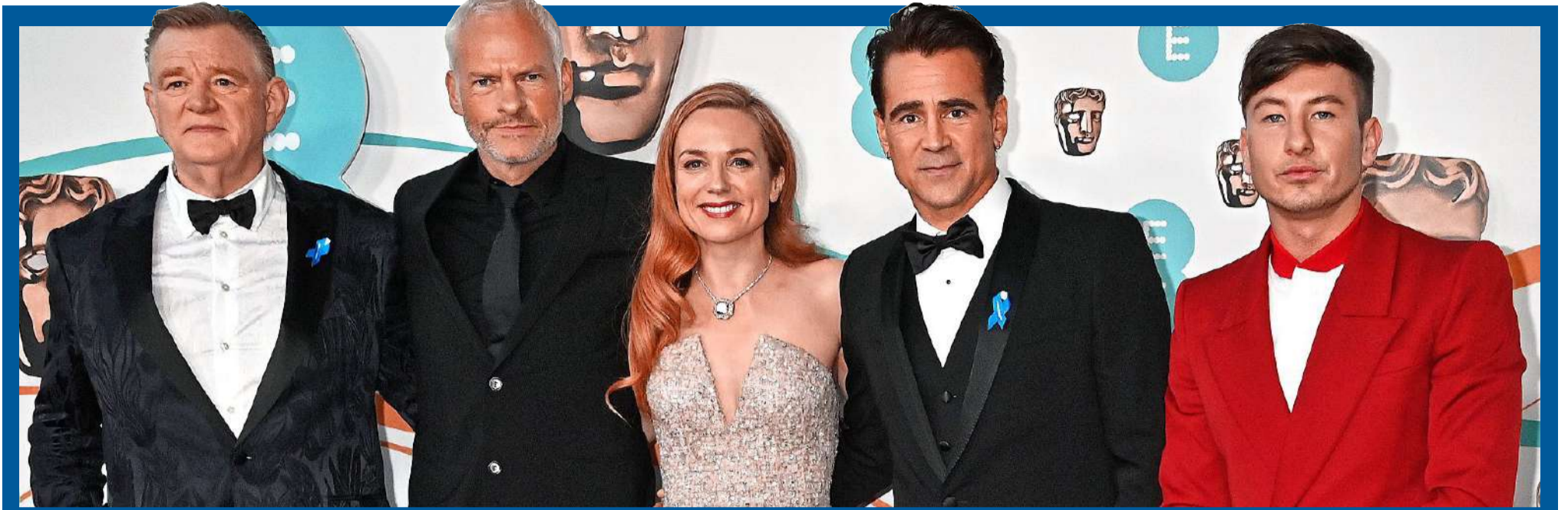
'Terminate practice, or amend legislation'

concerns that those on the LTI scheme may have been entitled to all medicines for free, rather than just those relating to their condition. The attorney general warned that, in the event of a court challenge,

the legislation was unlikely to stand up to scrutiny. To resolve this, the Government quietly added a provision into a largely unrelated Bill that was scheduled to pass through the Oireachtas. This provision amended the 1970 Health Act to stipulate that only those medicines related to the LTI scheme's listed illnesses would be covered. The real intent of this measure was not announced by the Government, and the significance of the change went unnoticed as the legislation was debated and eventually became law in 2013. Since the statute of limitations – the six-year period within which a case can be taken – has now passed, this cannot now be challenged in

the courts. This week, the MoS asked the Department of Health what action it will now take to address its failures. We also asked how many people have had their entitlements denied and to what cost? In response, a spokesperson said its Sláintecare reform programme was reviewing how 'current eligibility and entitlement policies ... align with population needs.' The department also said the medical cards scheme and the Drugs Payment Scheme meant no citizen had to pay more than €80 a month for medicine. However, the department said it could not speak about the latest revelations for legal reasons.

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THE PRIDE OF ERIN Big Bafta night for the Banshees PAGES 2&3

DÁIL 'MISLED' OVER ILLEGAL DRUGS POLICY

EXCLUSIVE: TDs were informed at least 14 times that defective law is the reason over 16s are being denied free medication

THE illegality of the Government policy of excluding mental illness sufferers over the age of 16 from the Long-Term Illness (LTI) scheme was hidden from the Dáil for

By Michael O'Farrell
Investigations Editor

years, the Irish Daily Mail can reveal.

Dáil records confirm the discriminatory and legally unsound policy has been the subject of frequent Parliamentary Questions (PQs)

since the Department of Health was advised the legislative basis for the practice was unsound in 2012.

Yet, each time the matter was raised in the Dáil, successive Health Ministers stood over the policy.

They did this even though the Department knew the legislation referred to was not legally valid.

As recently as October last year, for example, Health Minister Stephen

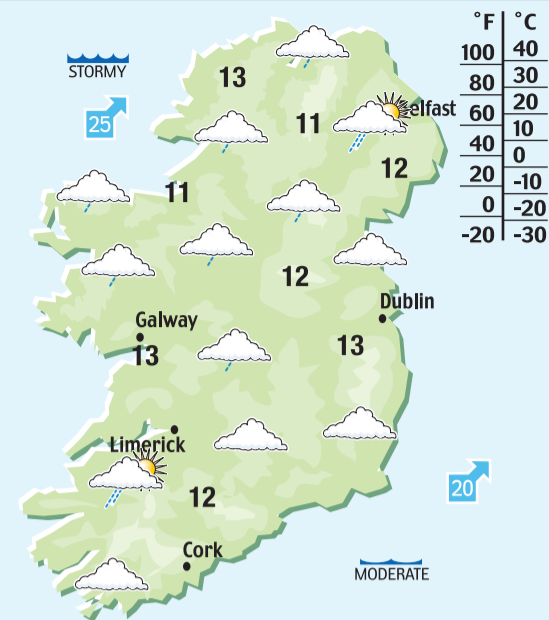
Donnelly answered three separate PQs about why over 16s with mental illness were excluded from receiving free medication under the LTI scheme.

In response to each, he cited the relevant legislation and Statutory Instrument – which the Department knows to be invalid – before saying: 'Therefore, the HSE must regard 16 years as the upper age limit in terms of eligibility

Turn to Page 4

MISSING NICOLA: BODY FOUND A MILE FROM WHERE SHE VANISHED PAGES 8&9

Weather forecast



Summary: Light showers

IRELAND TODAY: Showery skies to begin across Ulster and Connacht, cloudy elsewhere with clear spells. Later, showers will persist in Ulster, bringing light intermittent rain. Munster will have more showers developing also. Moderate westerly winds. Max 14c.

Today's weather

	9am	12noon	3pm	6pm	9pm
Belfast	11c	11c	12c	12c	11c
Cork	10c	12c	12c	10c	9c
Dublin	11c	12c	13c	12c	11c
Galway	10c	11c	11c	10c	10c
Limerick	11c	12c	12c	11c	11c
Derry	12c	13c	12c	12c	11c
Valentia	11c	11c	11c	11c	11c
Wexford	10c	12c	11c	10c	9c
Mullingar	10c	11c	11c	11c	10c
Belmullet	10c	11c	11c	10c	10c

5 day forecast

	Tue	Wed	Thu	Fri	Sat
Belfast	11c	7c	8c	10c	9c
Cork	10c	8c	9c	10c	9c
Dublin	13c	8c	9c	10c	10c
Galway	11c	7c	9c	10c	10c
Limerick	12c	9c	10c	11c	11c

Around the world yesterday

City	Weather	C	F	City	Weather	C	F	City	Weather	C	F
Algiers	Sunny	21	70	Florence	Showers	13	55	New Delhi	Sunny	25	77
Amsterdam	Cloudy	8	46	Geneva	Sunny	12	54	New York	Sunny	2	36
Athens	Sunny	17	63	Gibraltar	Cloudy	16	61	Nice	Sunny	15	59
Auckland	Showers	23	73	Guernsey	Fair	10	50	Oslo	Sunny	2	36
Bahrain	Sunny	20	68	Helsinki	Snow	-3	27	Palma	Sunny	16	61
Barcelona	Sunny	15	59	Hong Kong	Sunny	23	73	Paris	Cloudy	11	52
Basra	Sunny	17	63	Innsbruck	Fair	11	52	Perth	Sunny	35	95
Beijing	Sunny	8	46	Istanbul	Sunny	13	55	Prague	Rain	8	46
Beirut	Sunny	17	63	Jersey	Fair	11	52	Rhodes	Fair	16	61
Belfast	Cloudy	10	50	Larnaca	Sunny	17	63	Riga	Snow	2	36
Belgrade	Sunny	16	61	Las Palmas	Fair	20	68	Rome	Showers	14	57
Berlin	Cloudy	6	43	Lisbon	Sunny	17	63	Singapore	Showers	30	86
Biarritz	Fair	14	57	London	Fair	11	52	Stockholm	Sunny	1	34
Brussels	Showers	10	50	Los Angeles	Cloudy	18	64	Strasbourg	Showers	11	52
Bucharest	Sunny	15	59	Luxor	Sunny	22	72	Sydney	Cloudy	24	75
Budapest	Rain	12	54	Madrid	Sunny	14	57	Tangier	Fair	18	64
Cairo	Sunny	17	63	Malaga	Sunny	18	64	Tel Aviv	Sunny	21	70
Cape Town	Sunny	24	75	Malta	Sunny	15	59	Tenerife	Fair	22	72
Casablanca	Fair	21	70	Melbourne	Sunny	23	73	Tokyo	Rain	13	55
Copenhagen	Sunny	6	43	Mexico City	Sunny	20	68	Toronto	Fair	0	32
Corfu	Fair	16	61	Miami	Cloudy	24	75	Tunis	Sunny	19	66
Dubai	Sunny	23	73	Milan	Fair	13	55	Vancouver	Cloudy	7	45
Dublin	Cloudy	10	50	Montreal	Cloudy	-5	23	Venice	Cloudy	8	46
Dubrovnik	Fair	12	54	Moscow	Snow	-8	18	Vienna	Cloudy	14	57
Faro	Sunny	17	63	Mumbai	Sunny	36	97	Warsaw	Cloudy	4	39
				Nairobi	Sunny	24	75	Wellington	Sunny	22	72

Ireland yesterday

24 hours	Sun (hrs)	Rain (ins)	Temp (min)	Temp (max)	24 hours	Sun (hrs)	Rain (ins)	Temp (min)	Temp (max)
Belfast	0.1	0.02	5	11	Glenanne	0.2	0.02	5	11
Birr	0.1	0.01	7	11	Ballykelly	0.1	0.02	6	12
Castlederg	0.2	0.01	5	12	Lough Fea	0.0	0.02	5	10
Claremorris	0.3	0.02	7	11	Malin Head	0.4	0.00	7	11
Clones	0.0	0.01	7	12	Valentia	0.5	0.02	8	12
Mullingar	0.0	0.00	6	12	Cork	1.4	0.00	4	12
Rosslare	3.3	0.00	8	10	Kilkenny	1.6	0.00	7	13
Knock	0.4	0.02	5	11	Shannon	0.4	0.00	8	12
					Dublin	3.0	0.00	7	12
					Belmullet	0.0	0.03	8	11

Information supplied by MeteoGroup

Moon and Sun

Moon rises: 8:13am, sets: 5:58pm
Sun rises Dublin: 7:32am, sets: 5:44pm
Cork rises: 7:39am, sets: 5:57pm
High tide: Dublin: 11:25am
Cork: 5:51pm

Extremes

(24 hrs to 6pm y'day) Warmest: Finner, Co Donegal, 13c (55f). Coldest: Killylane, Co Antrim, 3c (37f). Wettest: Ballypatrick Forest, Co Antrim, 0.04 ins. Sunniest: Johnstown Castle, Co Wexford, 3.3hrs.

WEATHER ALERTS

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- CONM Connacht SMS Alerts
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Legal advice in 2012 warned age limit on mental health drugs is illegal

Continued from Page One

under the LTI scheme for those with a diagnosis of mental illness.'

Each time the issue has been raised in PQs in recent years, successive ministers and junior ministers – including Simon Harris, Alex White and Kathleen Lynch – gave similar answers, as though the legislation they cited was valid.

An Irish Daily Mail examination of Dáil records shows at least 14 occasions in which PQs have referred to the LTI legislation as if it were legitimate since 2013.

Yet, as revealed in the Irish Mail on Sunday yesterday, the Department of Health was first informed more than a decade ago that there was no valid legal justification for excluding those aged over 16.

According to confidential 2012 legal advice, provided to the Department by the Attorney General's (AG) office, the exclusion policy was 'ultra vires' – meaning it had no legislative backing and was therefore invalid.

The AG's advice and related files were provided to the MoS by Department of Health whistleblower, Shane Corr, who expressed shock at the behaviour of the State. He

'Compensate those who lost out'

said: 'This was central Government going outside the laws of the State and human decency to dispossess the most vulnerable people in the State of their rights – and it succeeded.'

'The State kept the issue under the carpet for a decade, denying entitlements to untold thousands.'

'It needs to deal with this ongoing issue by correcting failures and compensating those who lost out.'

This week's revelations will heap further pressure on the Coalition, which has been criticised recently after the MoS revealed details of its secret litigation strategy to limit illegal nursing home fee refunds.

An added difficulty for the Government is the fact that the flawed policy remains in place today, meaning thousands of citizens suffering from mental illness who have been denied free access to drugs they are legally entitled to are likely to seek redress.

The latest disclosures involve Government decisions that were made as the Department of Health was also aggressively implementing its



EXCLUSIVE: Yesterday's front page story

secret strategy to limit payouts to families that were illegally overcharged nursing home fees.

In June 2012, the AG's office provided a detailed briefing to the Secretary General of the Department of Health which outlined serious concerns about the operation of the Long-Term Illness scheme.

The briefing expressed concern over anomalies in the LTI, which came into effect in 1971. The legal basis for the LTI scheme is underlined in Section 59(3) of the 1970 Health Act.

This authorised the then Minister for Health, Erskine Childers, to identify illnesses that would qualify for free medicine under the scheme.

Mr Childers signed off on regulations listing 16 illnesses, including diabetes, epilepsy, spina bifida and 'mental illness'. But uniquely among the listed illnesses, the

regulations did not include those suffering from 'mental illness' who are 16 and over.

The scheme operated for more than 40 years until 2012, when Health Department officials sought legal advice from the AG.

This appears to have been prompted by an Ombudsman investigation at the time into a successful complaint from a member of the public with ADHD who had been excluded from the scheme.

After examining the legislation, the AG's office found two parts of scheme had been operating without a proper legal basis.

Firstly, the AG advised that limiting the 'mental illness' benefit to under 16s was

'Department is likely to lose'

discriminatory and had no legal basis following the passing of the Equal Status Act in 2000.

The other anomaly was an inference in the 1970 Act that anyone who qualified for free medication was entitled to drugs for any conditions.

Addressing the age limitation of the mental illness benefit, the AG told the Department: 'Either the limitation in the regulation should be deleted or primary legislation amended.'

At the time the Government was faced with two options; remove the 'mental illness' category from the LTI scheme, which would have resulted in those under 16 losing their entitlement, or to include older teenagers and adults.

Ultimately, the Department of Health did neither, even after the Attorney General's office warned that a failure to act risked a misfeasance finding; a civil wrongdoing by public officials or State entities who fail to discharge their public obligations.

The consequences of the failure to act for a decade after the legal warning could mean millions in refunds to those who were excluded from the LTI scheme on age grounds.

In contrast with its failure to act on the illegal age restrictions, the Department of Health did move to deal with the AG's concerns that those on the LTI scheme may have been entitled to all medicines for free, rather than just those relating to their condition.

The AG warned that, in the event of a court challenge, the legislation was unlikely to stand up to scrutiny.

'If the matter were to be litigated, the Department would be more likely to lose the case than to win it.'

To resolve this, the Government quietly added a provision into a largely unrelated Bill that was scheduled to pass through the Oireachtas.

This provision amended the 1970 Health Act to stipulate that only medicines related to the LTI scheme's listed illnesses would be covered.

The real intent of this measure was not announced by the Government, and the significance of the change went unnoticed as the legislation was debated and eventually became law in 2013.

Since the statute of limitations has passed, this cannot now be challenged in court.

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IF YOU HAVE A STORY, CALL US ON **01-256 0811**

Generation' warning as waiting list for child health services DOUBLES over four years

UNDER PRESSURE: Health Minister Stephen Donnelly

violent, aggressive behaviour, high levels of eating disorders'.

Ms O'Keefe said parents 'anxious to address the mental health needs of their children, faced with long waiting lists in CAMHS' are now turning to private services.

But she noted these services often don't consist of multi-disciplinary teams and are 'not often able to provide the much-needed parental support services essential to positive outcomes for children'.

Ms O'Keefe also pointed out that parents often cannot afford to pay for both parental support and therapy privately, and that paying for private therapy can put 'huge financial strain on family resources'.

Veteran community activist and youth worker Trina O'Connor described the waiting lists to access mental health services as 'very bleak'. And she warned the figures 'would be an under-representation' because many young people are not even in the CAMHS system.

Ms O'Connor said there is 'a real problem in the retention and recruitment' of qualified psychologists and child psychiatrists was part of the reason for the high numbers, 'particularly in rural areas'.

She told the MoS: 'Psychologists, for example, are only recruited into the HSE through certain

'Three in five jobs in the service are occupied'

masters courses. So some courses are not equivalent for somebody to go in as an assistant psychologist, and it's a very difficult process to get into the HSE. You have to go in as an assistant psychologist - kind of like an apprentice. And that whole recruitment has stalled.'

A spokesman for the HSE admitted that just three in five jobs within the service are currently occupied.

'Throughout 2022 and 2023 we have advertised nationally and internationally for CAMHS professionals and have engaged with international recruitment agencies with little success due to worldwide shortages in the field,' he said.

The HSE said it is 'actively working to reduce the waiting list and there are a number of service improvement initiatives taking place both under [the Maskey Report, which exposed serious shortcomings in South Kerry CAMHS] as well as a specific waiting list initiative that commenced in 2022 and will continue into 2023.'

The spokesman added: 'A CAMHS improvement process [is] underway. The recruitment process for the post of Child and Youth Mental Health Lead, at Assistant National Director level in the HSE, is at advanced stages. This key new role, supported by a dedicated team will provide leadership, operational oversight and delegated management of all service delivery across child and youth mental health services across the country. Recruitment for the new post of National Clinical Lead for Youth Mental Health is also underway.'

The spokesman said that 750 additional young people had been seen from the waiting list following additional once-off funding last year.

news@mailonsunday.ie

By Michael O'Farrell

PEOPLE who suffer from severe mental illness are being forced to choose between food and their medication because the State has let them down by refusing to correct defective legislation, a leading patient advocate has warned.

Gary Kiernan, the chairman of the Service User and Supports Council of Dublin's St Patrick's Hospital, also described how people are being admitted to psychiatric hospital as a result.

He told the Irish Mail on Sunday: 'I'm lucky, I can pay for my meds every month. But I know, from talking to service users, that a lot of them can't.'

Mr Kiernan, who works as a senior social worker with child protection agency Tusla, suffers from severe long-term depression, for which he has been hospitalised in the past.

He is excluded from receiving free medication via the Government's Long Term Illness (LTI) scheme because the scheme only applies to those with mental illness aged under 16.

This remains the case even though the Government was warned by the Attorney General more than a decade ago that this age discrimination is illegal.

Because of this Mr Kiernan, and thousands like him, have been forced into a separate scheme - the Drugs Payment Scheme - which covers his monthly drugs costs above €80.

'Lots of people are going to be paying €80 per month for the rest of their lives,' he said.

'It's a large expense and there are people that I know who simply cannot afford it.'

Mr Kiernan said the absence of free mental health drugs for the over 16s is an issue that comes up frequently.

'If you have somebody who can't afford or is cutting down on their meds... It's a cumulative and it will take that three to four weeks before that really starts to kick in and then at that stage you're looking at hospitalisation because if somebody comes off their meds you have to under medical supervision be brought back up the level they should be at. It's not cost effective.'



CALLING FOR CHANGE: Gary Kiernan is a senior social worker

'Defective legislation' sees many forego meds

The Government's continued failure to allow adults with mental illness into the LTI scheme - despite its own legal advice - has attracted considerable criticism even from figures within the HSE.

These include HSE consultant psychiatrist, Dr Camilla Curtis, who said in a recent tweet

addressed directly to Health Minister Stephen Donnelly: 'The HSE provides a long-term illness scheme but adults with severe enduring illness do not exist on their illness list.'

'This is despite some patients remaining under the care of a general adult mental health team for more than 30 years.'

Silence of the ombudsman

By Valerie Hanley

year - would only say: 'The Ombudsman for Children's Office has not engaged with Government in relation to the long-term illness scheme being extended.'

'We have received complaints about the long-term illness scheme and some of these complaints related to accessing the benefits of the scheme and a lack of review regarding the rigidity of the scheme.'

'As far as I am aware the complaints did not relate to the age aspect of the scheme.'

Last week, a survey commissioned by the Ombudsman for Children revealed some startling findings.

Up to 2,166 children aged between 12-17 were interviewed as part of the online survey and 78% of those questioned revealed they had mental health problems.

Over a quarter of the youngsters using the national mental health service for children and teenagers - CAMHS (Child and Adolescent Mental Health Service) - claimed its staff were dismissive of their problems. Just 11% said CAMHS staff listened to them.



support in relation to how to help their children. I think CAMHS have actually been abandoned a bit to pick up the pieces and they don't have the resources to do it.

'And there aren't enough people being trained.'

'In the NHS in the UK, if you want to do training, there are funded places for child and adolescent psychotherapists. There are funded places for all different kinds of professionals who work with children, and they're tied in then to working for the health service afterwards.'

'We don't have that. We do it with psychology, but we don't do it with therapists. I don't know why.'

Ms O'Keefe, who chairs the Irish Forum for Child and Adolescent Psychoanalytic Psychotherapy, said referrals and waiting lists have increased 'significantly' within both the public and private sector, 'putting huge pressure on clinicians and services who have not been financially resourced to respond to this increased demand'.

The psychotherapist also revealed 'some of the best clinicians' she has worked with in CAMHS are leaving 'due to the level of risk and stress. High levels of suicidal behaviour,

State braced for class-action suit over at-risk over 16s being denied free meds

Taxpayer faces multi-million euro bill over mental health drugs breach

THE State is facing the prospect of a multi-million euro compensation bill over faulty legislation that illegally denies access to free medication to people over 16 who suffer from a mental illness.

As first revealed by the Irish Mail on Sunday earlier this year, successive governments have known since 2012 that restricting the Long Term Illness (LTI) scheme on age grounds is discriminatory and illegal. Despite being aware of the defective legislation, successive administrations have never acted to amend the law.

This means that, every year, between 35,000 and 60,000 people

'It now needs to correct failures and compensate'

over the age of 16 are being illegally excluded from the scheme.

Solicitor David Coleman, who specialises in multi-action medical lawsuits, confirmed his firm is preparing cases on behalf of those who were improperly denied free mental health drugs.

Mr Coleman said: 'We have received instructions and are preparing the necessary High Court action to vindicate peoples' rights.'

A declaratory judgment will be sought from the court, which will be asked to give an opinion on the legality or otherwise of the legislation. If the courts find the State has acted illegally, it will fall to the authorities to remedy any rights denied. One way of doing this could involve a formal compensation mechanism, along the lines of the Army deafness scheme.

By **Michael O'Farrell**

INVESTIGATIONS EDITOR

According to a MoS analysis of available data, the amount of money people over 16 with a mental illness, who were illegally denied free medication since the Government was first made aware of the issue more than a decade ago, ranges from €500m to €1bn.

Previous cases highlighted in this newspaper showed how some people who suffer from severe mental illness are being forced to choose between food and medication.

Trinity professor and consultant psychiatrist Brendan Kelly said access to life-saving treatments, such as mental health medication, should always be equitable.

He told the MoS: 'Access to all treatments should be facilitated and supported. Pathways to care should be clear, equitable, sustained and reliable.'

Legal experts who examined the failure of successive governments to amend the defective legislation said the State would struggle to defend any demands for refunds and compensation.

The illegal exclusion of people over 16 from the LTI scheme was revealed by this newspaper via a protected disclosure from the Department of Health whistleblower, Shane Corr, three months ago. At the time, Mr Corr accused the State of keeping 'the issue under the carpet for a decade, denying entitlement to untold thousands'.

Mr Corr said at the time: 'It now needs to deal with this ongoing issue by correcting failures and compensating those who lost out.'

When pressed on the matter again earlier this month, Health Minister Stephen Donnelly reiterated that his officials are continuing to review the matter.

Mr Donnelly has so far ignored widespread calls to correct the Dáil record about the LTI scheme after the MoS revealed 14 Government and opposition TDs were misled by his department in the past decade.

According to confidential Government files provided in Mr Corr's protected disclosure, the Government was first warned about the issue in the summer of 2012.

That warning was contained in legal advice to the Department of Health from the Attorney General. The advice made it clear the

'You have to give people the support they need'

exclusion of people over 16 from the LTI scheme was illegal, and any failure to correct the situation would risk the department being found guilty of misfeasance.

But more than a decade on from receiving this advice, successive health ministers – including current Taoiseach Leo Varadkar – have never moved to change the law.

Fiona Coyle, the chief of Mental Health Reform – a coalition of more than 80 Irish charities in the sector – said the Government's failure to act is another example of how the State continues to discriminate against those with mental illness.

Ms Coyle told the MoS: 'People with mental health difficulties, they are some of the most



FUNDING: Health Minister Stephen Donnelly said he is looking at options after legal advice

discriminated against in Irish society. Under the UN Convention on the Rights of Persons with Disabilities there's no scenario where people with mental health difficulties should be discriminated against in relation to access to social protection payments, goods, services, or any other types of rights on the basis that they have a mental health difficulty.'

Ms Coyle pointed to the Government's failure even to respond to its own research.

She cited the example of a November 2021 Government report into the cost of disabilities. This found people with a mental illness faced additional costs to live – which they often could not afford – amounting to more than €13,000 annually.

'That's a substantial additional financial burden,' Ms Coyle added. 'All of this research was done

before the huge cost of living and inflation crisis and the Government, unfortunately, didn't do anything to address what was on unearched in that report.

'You have to give people the support they need at the right time to ensure they are able to recover and they don't need additional support,' she added.

When tackled on the issue at the launch of Fianna Fáil's Delivering Universal Healthcare conference yesterday, Mr Donnelly told the MoS: 'It [defective legislation] is something we're looking at.'

'The legal advice, however, is not that the funding is such that it has deprived some people of access to medicines or access to healthcare. It's that there may not have been a legal basis to make it free for those who it was made free for.'

michaelofarrell@protonmail.com



ETHICS: Mr Donohoe

Donohoe cleared by Sipo of impropriety

PUBLIC Expenditure Minister Paschal Donohoe has been cleared of any impropriety by Sipo, the State's ethics watchdog, concerning a complaint made against him regarding donations from businessman Michael Stone.

By **John Drennan**

Mr Donohoe faced a two-week barrage of attacks after it was revealed that Mr Stone had paid six people to put up election posters for

him during the 2016 campaign. The six workers were paid €917, while Mr Stone also provided Mr Donohoe with the use of a van, which was valued at €140.

It also subsequently emerged Mr Stone had bought Fine Gael

'superdraw' tickets from him in 2020 and 2021 at a cost of €1,716.

Sipo yesterday confirmed it has notified Mr Donohoe that the complaint made against him is now closed and that no further action will be taken.



DETAILS PAGE 16

WIN A TRIP TO WALT DISNEY WORLD FLORIDA RESORT

SECRET PLAN TO BLOCK REFUNDS FOR OLD AND SICK

Repayment of illegal nursing home charges hindered by State

EXCLUSIVE

By Michael O'Farrell

INVESTIGATIONS EDITOR

SUCCESSIVE taoisigh and health ministers – including current Cabinet members – agreed a secret plan to hide the true scale of the State's liability for illegal nursing home charges to prevent massive payouts, confidential Government records reveal.

The top-secret files confirm the State faced the prospect of a €12bn liability in compensation for hundreds of thousands of families who were wrongly charged for the care of their loved ones over a 30-year period. In many cases, vulnerable

Turn to Page 6 >>



WORLD EXCLUSIVE

THE PROOF ANDREW 'SEX ABUSE' PICTURE IS NOT A FAKE

FULL STORY PAGES 22-23

THE HSE FILES

► From Page One

families suffered extreme financial hardship as a result of the illegal charges.

Documents obtained by the Irish Mail on Sunday reveal how successive senior government leaders from Fianna Fáil, Fine Gael, Labour and the Progressive Democrats acted in unison to thwart repayments worth billions to those wrongly charged.

They did this by backing a covert legal strategy designed to cover up the fact that the State knew it could not win hundreds of cases – some of which are still outstanding – taken by families affected by the scandal.

As a result of this strategy, compensation was denied to anyone who did not have the resources to fight legal cases. The rest of the cases were all quietly settled by the State.

The strategy is outlined in a confidential and high-level government memorandum first prepared by the Department of Health in 2011.

Dated July 13, 2011, the memorandum is marked 'SECRET' and was

'People were wrongly stripped of assets'

restricted to just four government heads in addition to then-Health Minister James Reilly and former attorney general Máire Whelan.

Included in the tight loop, were then-Taoiseach Enda Kenny, former tánaiste Eamon Gilmore, Michael Noonan the finance minister at the time, and ex-minister for public expenditure Brendan Howlin.

The strategy, which is still current, was in turn reaffirmed while successive health ministers, including current Taoiseach Leo Varadkar and current Justice Minister Simon Harris, were in office. A new attorney general, Séamus Woulfe, who is now a Supreme Court judge, was also aware of the controversial strategy.

The memorandum and accompanying files were provided to the MoS in a protected disclosure by Department of Health whistleblower Shane Corr.

Last night Mr Corr, who has been to the fore in exposing numerous public interest scandals, said he was 'shocked by the scale of the cover up'. 'Vulnerable people in the care of the State were wrongly stripped of their assets and in some cases their families disinherited,' he told the MoS.

'Many would have been denied that one last family holiday or the funeral that they saved for, so that political promises could be funded elsewhere.'

The files make it clear complete secrecy was essential if the plan was to succeed.

'Confidentiality has been a central element of the legal strategy,' one memorandum reads.

The aim of this strategy, which was subsequently passed down and reaffirmed by successive governments up to the present day, was that none of the cases taken by hundreds of families could proceed because the State did not believe it could win.

The plan was to drag out and prolong cases before settling, but only at the point of discovery when the

Strategy denied compensation to anyone who did not have the resources to take legal action

EXCLUSIVE

By **MICHAEL O'FARRELL**

INVESTIGATIONS EDITOR



State would be ordered by the courts to provide documents to other parties.

A 2011 document stated: 'The fear is that if details of the cases, the legal strategy and settlements were

to gain a high public profile, it would spark a large number of claims. It is therefore important that this litigation is handled with extreme care, discretion and confidentiality.'

'The liability to which the State could, potentially, be exposed if a case were to be lost and set an adverse precedent would be very substantial indeed.'

According to the files, this liability could have amounted to as much

as €12bn, an estimate made up of two separate categories of cases.

The first was 'a potential exposure of €5bn' relating to up to 250,000 patients with medical cards who had been improperly charged in public nursing homes since 1976. The second category of claim involved residents who had no choice but to pay for private nursing homes because no public places were available. According to government estimates, these claims

'I have to pay for my wife's care and I have just €28 to live on...'

THIS is a 1989 letter from a pensioner who was left with just £28 a week to live on after funding his wife's nursing home care.

'I am in receipt of a contributory old age pension at £93 per week. My wife, Mary, is in [redacted] nursing home, which costs £130 per week.

'I asked the Community Welfare Officer ... for help with this, and they got the Nursing Home Section in St Mary's Hospital to increase the grant to the nursing home to £65 per week.

'This means that I also have to pay £65 per week to the nursing home, leaving me with only £28 to live on.

'Out of this I have to feed and clothe myself, pay bills, and also buy essentials for my wife and sometimes a few 'luxury' items like diabetic orange and sweets.

'I went back to [the] health centre, but they said they couldn't help and to contact the Nursing Homes Section again. My social worker wrote to them, but they said they couldn't help either.'

The following is a caseworker note from a 2005 complaint to the Ombudsman from a son – a pensioner himself – who had to rent out the family home to pay for his mother's

private nursing home care.

'His late mother had been in a private nursing home for three years from 1999 to 2002. She had a medical card and was over 90 years of age when she died in August 2002.

'Mr [redacted] had no option but to put her in a private nursing home as there were no public beds available. She was getting a subvention from the [health board], handing up her pension and he had to make up the shortfall in nursing home fees.

'In order to do this he had to vacate the family home and rent it out. His only income was his Contributory Old Age Pension.

'He is 76-years-old now. He went to stay with friends and paid rent there.

'While his mother was in the nursing home he had just finished a course of chemotherapy for a tumour on the lung. He had been attending hospital for check-ups and treatment.'

The following is from a 2001 complaint to the Ombudsman from a

EX-INVESTIGATOR:
Fintan Butler

daughter who has used all her savings to cover her mother's care and no longer knows what to do.

'... my mother has been in the [private] nursing home for the past 10 years. She is a widow with no assets [she only had a rented house].

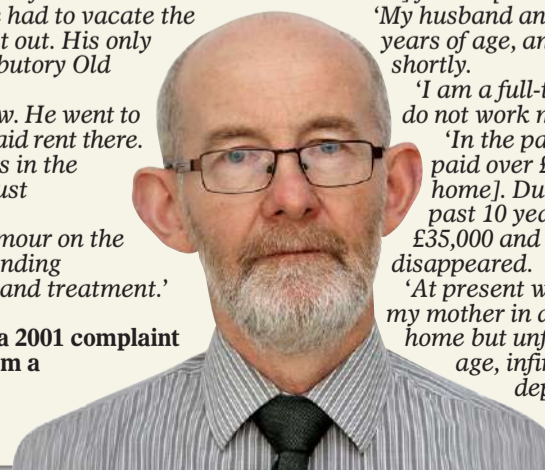
'She is just 93 years of age... as a family we have been making up the shortfall [between nursing home fees and health board subvention] for the past 10 years.

'My husband and I are both over 60 years of age, and he needs to retire shortly.

'I am a full-time housewife and do not work myself.

'In the past 12 months we have paid over £6,500 to the [nursing home]. During the course of the past 10 years it has cost us over £35,000 and all our savings have disappeared.

'At present we are trying to place my mother in a cheaper nursing home but unfortunately due to her age, infirmity and dependence it is proving very difficult.'





A FIFTY-YEAR SCANDAL Pages 8 & 9



DEFIANT: Bridget McCole, left, and Vicky Phelan had to fight for justice

THREE TIMES OUR HEALTH CHIEFS LET THE COUNTRY DOWN

HEPATITIS C

Bridget McCole was one of 1,600 people who became infected with Hepatitis C after being given contaminated blood provided by the Blood Transfusion Service Board.

On July 21, 1995 the Positive Action group was told that unless its members agreed to accept compensation awarded to them by a tribunal, they would face 'uncertainties, delays, stresses, confrontation and costs'.

But when the Donegal mother-of-12 instead sought compensation through the courts, the State responded by insisting she could not protect her privacy by taking the case under an assumed name.

Meanwhile, in a further bid to prevent the full extent of the scandal emerging, the blood transfusion service lodged a sum of money in court.

This is a legal device often used to settle an action before it is heard because it means that if the court awards a lesser sum of money, then the person taking the action is liable for the entire costs of the case. Just hours before her death on October 2,

1997, Ms McCole settled for £175,000, and this led to a tribunal which exposed the true extent of the scandal.

CERVICALCHECK

In 2018, mother-of-two Vicky Phelan settled her case against a US laboratory that had incorrectly misread her smear test. The HSE was also a named party in the case because the lab worked for the national CervicalCheck screening service. As a result of the Limerick woman's refusal to sign a confidentiality agreement thousands of other women discovered their smear tests had also been misread.

AUTISM DOSSIERS

In 2021, it emerged the Department of Health had compiled dossiers on children with autism whose families were taking legal action. These files held sensitive medical and educational information about each child, unbeknownst to their families. Officials used this information to determine the best time to approach a family about settling their case.

represented 'a potential exposure of approximately €7bn in respect of existing and potential private cases'.

Several examples of both categories of cases have been documented in more than 1,000 complaints to the Ombudsman over the years.

In 2010, the Ombudsman published a report entitled 'Who Cares?' into the illegal charging scandal. The report reads: 'We now know that the department and the health boards were in no real doubt as to what the law provided and that they persisted with an illegal charging regime because of, amongst other things, the need to maintain an important source of funding.'

The report goes on to conclude that the 'State agencies concerned have displayed intransigence, lack of transparency and accountability as well as a very poor sense of the public interest'.

'At the administrative and institutional level, the continuation over

such a long period of such unacceptable practices suggests inflexibility, non-responsiveness and a reluctance to face reality. It also suggests, at times, a disregard for the law.'

According to the files obtained by the MoS, the government agreed its

'The litigation is being successfully managed'

secret containment strategy just a year after the critical Ombudsman report. They also reveal how the government ensured the cost of any settlements – and the size of the potential liability it faced – would not be publicly reported by its spending watchdog. To achieve this, agreement had to be reached with the Comptroller & Auditor General (C&AG). Any mention of the matter

in C&AG reports to the Oireachtas could have alerted the wider public to the matter and results in a flood of new cases. 'Ultimately it proved possible to agree a form of wording which complied with government accounting requirements without jeopardising the confidentiality of the State's strategy in defending this litigation,' the memorandum states.

Further confidential files confirm successive administrations continued the containment policy, monitoring developments closely as some cases were quietly settled, while others were discontinued.

By 2012, a confidential briefing for Minister Reilly showed that, of the 510 cases launched against the State, just 340 remained active.

The document warned: 'There has been a marked increase in activity levels relating to existing cases over recent months.'

It also reported: 'The overall increase in activity gives rise to

some concern regarding the possible emergence of further cases.'

In May 2016, as Leo Varadkar was succeeded by Simon Harris as health minister, a brief prepared within the Department of Health confirmed the number of live cases had dropped to 233, with none launched since 2013.

'The number of cases each year has steadily decreased which would indicate that the litigation is being successfully managed,' it reads.

The brief also confirms the government's policy remained one of settling cases, at the point of discovery, for between 40% to 60% of the claim value. It also showed the Government was able to successfully have a number of cases discontinued by simply writing to the solicitors concerned with a request that the litigation be dropped.

In April 2017, a further update was provided for then-Health Minister Simon Harris and Helen McEntee who was minister of state for mental health and older people. At this point, 220 live cases remained unresolved and – with no new cases emerging – the strategy remained one of slowly settling.

'Discovery would carry very significant risks and should therefore be avoided,' the 2017 brief reads.

The document adds the original 2011 approach, 'has to date been successful in resolving cases including 80 settlements [and 21 discontinuations] since 2013.'

By 2017 these settlements had reached at least €2.6m, the briefing reveals.

'The current approach is working well... litigation is being managed successfully,' it adds.

Fintan Butler, a former senior investigator for the Ombudsman's office, said families who did not have recourse to legal resources were ignored as a result of the secret strategy.

Mr Butler told the MoS: 'The consequence of the department's strategy is that only those people who initiate legal action, and who

have the patience and the resolve to pursue the case, will get any level of compensation.'

Before retiring, Mr Butler was centrally involved in investigating and compiling the 2010 Ombudsman's report into the legal charges scandal. He was later an adviser to the European Ombudsman in Strasbourg from 2013 before he retired in October 2018.

He said: 'Only a small minority of people, and their families, have the knowledge, the confidence and the legal support to initiate court action. The vast majority of the people adversely affected have not,

'Clearly the strategy does work'

and will not, take court action. They will not get any compensation. Clearly, the department's strategy of containment does work.'

Mr Butler added that the practice of secretly settling cases with public resources, 'suggests a huge failure in governmental transparency and accountability'.

'From the documents acquired by the Mail on Sunday, we now know that 80 cases were settled between 2013 and 2016 at a cost of €2.6m. But this kind of information is not being published. It seems that the Dáil and Seanad are not being informed... and that questions raised at Oireachtas committees are not answered.'

When contacted by the MoS in relation to the State's legal strategy, the Departments of the Taoiseach, Finance, Public Expenditure and Reform and the Office of the Attorney General all directed our queries to the Department of Health. The Department of Health said: 'The department does not comment on matters pertaining to litigation.' *michaelofarrell@protonmail.com*

I still feel emotional when I think about my mother's case

THE daughter of an illegally charged care home resident whose family received a settlement from the State has hit out at the unfair treatment of others who could not afford to mount a legal challenge.

Her family's settlement was agreed just as the State were being compelled to release documents to back up its defence, several years after her mother had passed away.

'It took me ten years to fight this case for my mother and it's emotional for me to go back there,' she told the Irish Mail on Sunday.

'It wasn't easy, but I went ahead with it for clarity and transparency, and for my mother because I knew the injustice.'

The daughter said she had written to then minister Mary

Harney about her mother's plight over the years, but without any result.

In the end, she went to a lawyer after hearing him speak on the radio about the issue.

'It was stressful,' she said of her family's legal battle with the State. 'And I had to keep track of everything – I had a file the length of your arm.'

'When it was settled, I was verbally told I can't disclose what

the outcome was but that was ridiculous, and I signed nothing. It's very emotional for me to go back there.'

The daughter said she liked to think her mother 'would have been delighted to know that I was doing this on her behalf'.

And she said she was always conscious, throughout the legal process, that the State's strategy was to delay her case as much as possible.

RIGHTS DELAYED

THE HSE FILES

By Michael O'Farrell

INVESTIGATIONS EDITOR

ENDA KENNY and James Reilly were not unfamiliar with the hardship and suffering caused by the illegal long-stay charges issue when they received a top-secret Government memorandum on Wednesday, July 13, 2011.

The memorandum detailed the State's secret strategy of dragging out cases for as long as possible before settling quietly.

The strategy was adopted because the State knew it could not win, and billions were at stake.

Details of this strategy may have been new to Mr Kenny and Mr Reilly in July 2011 – but it was not the first time they had come across the litigation. In fact both politicians, while previously in opposition, had railed against the possibility of the State engaging in such a tactic.

Just eight months prior to receiving the secret memo, Fine Gael were in opposition when a landmark report into the issue was published.

The 'Who Cares?' report by then Ombudsman Emily O'Reilly was based on more than 1,200 complaints spanning decades. During her investigation, the Ombudsman clashed with then health

'Practice to ensure no case came to hearing before the courts'

minister Mary Harney as her department refused to allow sight of the litigation details.

The Ombudsman's report in November 2010, directly questioned the State's motivation in defending hundreds of cases taken by families from whom money had been illegally taken. The Ombudsman also noticed cases seemed to be inevitably settled just at the point of discovery. 'The question certainly arises as to whether the State side becomes amenable to settlement in situations in which an order of discovery has become likely,' the report states.

It also pointed out that, if indeed this was the case, it would be an unjustifiable repeat of the behaviour of the health boards – with the backing of the Department of Health – for decades.

'The practice then was to ensure no case actually came to hearing before the courts thus avoiding a judgment which would have wider implications,' the Ombudsman wrote.

'In effect, the practice then was one of "buying off" the individual patient, by way of a settlement, while continuing with the practice generally.'

In opposition at the time, Mr Reilly was sufficiently concerned about the State's behaviour to table a Dáil motion to discuss the Ombudsman's report. He told the Dáil at the time: 'Knowing what one's entitlements from the State are – and being able to count on being given one's entitlements – is a basic right, a right that is more important in the case of vulnerable groups such as older people.'

'Fine Gael believes the law should be clear and that the State agencies should implement the law as it is,

rather than as they would wish it to be... if resources to meet statutory duties are not available, the legislation should be amended to reflect practice.'

Mr Reilly also addressed the litigation being taken by those seeking their rights.

'At present, the State is defending in the High Court more than 300 legal actions taken by or on behalf of people who claim that their right to long-stay nursing home care has

not been honoured,' he told the Dáil. 'To date, none of these cases has gone to hearing and judgment in the High Court.'

'The Ombudsman points out that this is surprising since many of the cases were commenced more than five years ago.'

Mr Reilly then raised a vital question: 'Why, if the State maintained the cases had no merit, were they being settled? One can only wonder why, in these circumstances, the

State is paying public money to people whose claims it believes to be without foundation,' he asked Ms Harney.

'Fine Gael believes the minister must clearly point out why and on what basis these cases were settled. Does the State consider that settling individual cases by way of compensation is less costly than the case going to a hearing in court? What about the hundreds of outstanding cases?'

Eight months later, now on the other side of the fence in government, Mr Reilly got his answer – and quickly changed his tune. Enda Kenny underwent a similar conversion. He too, in opposition, had been damning of the Fianna Fáil/Progressive Democrats' handling of the legal cases. In February 2006, he told the Dáil that the government could not have it both ways – by privately defending cases for compensation before the courts, while

Political leaders condemned illegal nursing home charges for the old and sick – and then devised a strategy to ensure as few people as possible got their money back

28 The number in years of how long successive governments allowed illegal charges to continue

11 The number of successive governments since 1976 aware that charges were illegal

300,000

The estimated number of those illegally charged since 1976

19,000

The number compensated via the narrow terms applied to the Health Repayment Scheme



REPORT:
Former
Ombudsman
Emily O'Reilly

1970 The Health Act 1970 is passed, entitling all to free long-stay care services in public institutions.

1975 A High Court judgment finds a patient had been unjustly charged. This prompts the Department of Health to consider ways of maintaining charges as an important source of income.

1976 The Department makes new ministerial regulations, and issues circular to health boards telling them they

Timeline of the State's

can continue to charge.

1978 The Eastern Health Board provides the Department with legal opinions showing that the charges are not legally sound. The Department continues to advise health boards to settle out of court when individuals challenge charges. This becomes the default position for decades.

1979 The legal adviser to the Department again expresses the view that charges are not legally sound and new legislation will be required. His advice is ignored.

1982 A Department review finds there is 'no legal basis' for charges. No action is taken.

1987 The Fianna Fáil government drafts a Bill which would have made charges legal. The proposed law is dropped.

1989 The Commission on Health Funding urges that the law be revised. No such change occurs.

1991 Minister for Health, Mary O'Rourke, announces a review of charges which recommends new legislation to achieve legal

clarity regarding charges. Nothing happens.

1994 Health minister Brendan Howlin publishes a new health strategy which recognises the long-stay charges legislation as 'inadequate'. New legislation is promised. This does not materialise.

2001 The Ombudsman highlights how successive governments have failed to rectify the basis for illegal charges. Health Minister Micheál Martin extends free medical cards by legislation to all over-70s. Because more people are now entitled to free care – and because

JUSTICE DENIED



SENIOR CABINET MEMBERS WHO OVERSAW POLICY ON ILLEGAL CHARGES : From left: Micheál Martin, Mary Harney, Enda Kenny, Marie Whelan, Eamon Gilmore, Michael Noonan



STOOD OVER STRATEGY OF DEFEND AND DELAY: Brendan Howlin, James Reilly, Leo Varadkar, Simon Harris and Helen McEntee

477M The cost in euros of the 19,000 compensation scheme payouts made

7BN The amount in euros of the estimated State liability for those who were forced to pay for private long-stay care

5BN The amount in euros of potential liability for illegally charged medical card holders

516 The number of families who sued for compensation

2.6M The amount in euros of 80 secret settlements made by the State between 2011 and 2017

publicly moving to legislate to make the previously unauthorised charges legal. At the time, Mr Kenny accused the Government of engaging in a 'dishonest defence'. 'In that defence, the Tánaiste [Ms Harney] and her co-defendants deny any liability,' he said. 'They deny the illegality of charges and deny that monies were taken. They deny the entitlement to restitution.' But once in office – and privy to the secret strategy – he backed the

approach, as successive governments have done since. Several more Fine Gael TDs also took part in the debate that day. Fine Gael TD Seymour Crawford told the house: 'I will never forget the case in which a relatively young woman in her early 70s and her more elderly husband, both diagnosed with Alzheimer's disease, had to be put into a private nursing home as no other accommodation was made available for them.

'All their family members were married with their own family structures to maintain, leaving them in an extremely difficult position as the cost of care came to €900 a week for each parent.' And he spoke of a 'close friend' who was placed by the health authorities in a private nursing home 'because no other bed was available'. 'Her old-age pension was part of the funding to that home. Her neighbour who went into a pub-

lic nursing home later, however, received a refund under the refund scheme. No wonder there are legal cases,' he added. Cork Fine Gael TD, Michael Creed, also spoke: 'Insofar as we on this side of the house may have been implicated in the denial of those rights, I wish to apologise personally to people who were adversely affected. The Ombudsman's report clearly states that there was a denial of entitlement.'

Mayo TD Michael Ring spoke out on behalf of the people who, he said, had been 'badly let down' by the State. 'People have been hard done by and there are many cases in the Four Courts awaiting adjudication. I cannot understand why these have not been adjudicated on by now. Some cases have been settled and we should know what ones have been settled and why. Many feel injustice was done.'

However, perhaps the best summation delivered in the Dáil over the years came from Ms Harney. It was delivered in 2005 – five years before she clashed with the Ombudsman and refused to supply details about settlements in long-stay cases.

'Over 300,000 people were charged illegally during 28 years,' she said. 'This was entirely wrong. They were old, they were poor, they suffered from mental illness, they had intellectual disabilities, they were physically disabled. As vulnerable people, they were especially entitled to the protection of the law and to legal clarity about their situation... We are a society ruled by law. No one and no organisation can dispense with or alter a law.'

'If one long-term bed occupant had a lawyer who could help him or her to take a case, he or she would no longer be charged while somebody not so fortunate in the bed beside him or her was charged in all those years,' she told her fellow TDs. 'Besides the legal issues involved here, there are significant inequality issues that are unacceptable.'

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50-year care-charging scandal

illegal charges continue regardless – this exacerbates the problem.

2002 The South Eastern Health Board, facing a number of cases, forwards legal advice from senior counsel to the effect that charges remain unjustifiable. A draft Bill to address the issue is prepared but does not proceed.

2003 A Human Rights Commission report once again details the inadequate legal grounds upon which charges are being levied.

2004 Mary Harney

becomes health minister and requests advice from the attorney general about the validity of charges. She then quickly passes a Bill to retrospectively make the historical charges legal, thereby preventing anyone from suing for recompense. President Mary McAleese refuses to sign the Bill which is referred to the Supreme Court.

2005 The Supreme Court rules that people who had paid unlawful charges – or their descendants – were entitled to recover monies. A report into the charging scandal, commissioned by

Mary Harney, is published. The report highlights 'systemic corporate failure within the Department of Health for almost 30 years'.

2006 The Health Repayment Scheme is established to compensate those medical card patients still living and the estates of those who had died on or after December 9, 1988. Patients forced into funding their own private care for the lack of a public place were also excluded. Hundreds of thousands of families affected are excluded by these limitations as €477m is paid out to 20,000 families.

2009 The Fair Deal Scheme – which finally put charges on a legal basis – becomes law.

2010 Hundreds of families, excluded from the compensation scheme, seek to sue the State. Ombudsman Emily O'Reilly publishes a damning report based on more than 1,000 complaints from those improperly charged.

2011 Faced with a potential liability of €12bn, new Health Minister James Reilly circulates a top secret memorandum. Based on advice from

Attorney General Máire Whelan, the government, knowing it cannot win any case, adopts a confidential containment policy of secretly settling cases to prevent more claimants coming forward. The policy is successful and cases begin to dwindle.

2016 The secret strategy continues as Health Minister Leo Varadkar is replaced by Simon Harris.

2017 Health minister Simon Harris and Junior Health Minister Helen McEntee receive a confidential update. With no new cases emerging, the containment strategy is reaffirmed again. 'The current approach is working well... litigation is being managed successfully,' the brief reads.



Which of your memory lapses are **NORMAL** – and which are warning signs of **DEMENTIA**?

SEE PAGES 26-28

DO NOT RISK DISCLOSURE!

REVEALED: How the State increased its settlement offer from €30k to €100k in effort to deny son of care home resident access to sensitive material – and avoid making its strategy public

THE State was so desperate to avoid making its illegal nursing home charges strategy public that it greatly increased its settlement offer in one case from €30,000 to €100,000.

This is the latest detail to emerge from records provided by whistleblower Shane Corr, with

EXCLUSIVE

By Michael O'Farrell
Investigations Editor

documents also showing former health minister Simon Harris and minister of state Helen McEntee reaffirmed the State's secret litigation approach after a high-level strategy meeting.

The increased offer was made to avoid the case reaching the discovery

stage in litigation, which is a part of a lawsuit where each side gets to see all documents that the other side has that are relevant to the claim.

These revelations come as the current Attorney General prepares a report on the State's legal tactic for Cabinet on Tuesday.

Acting Justice Minister Simon Harris acknowledged, on Thursday, revelations in the Irish Mail on Sunday by saying that 'a briefing note came to myself and Minister McEntee'

Turn to Page 4

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FOUR-PAGE SPECIAL
TOMORROW IN

The IRISH Mail

ON SUNDAY

Pros and

Continued from Page One

relating to the secret strategy of settling cases at the point of discovery while he was minister for health. He did not respond directly when asked by the Irish Daily Mail, and on RTE's Morning Ireland, if he authorised the strategy while health minister.

However, department records show Mr Harris and Ms McEntee, then his junior minister in health, gave the green light to the continuance of the strategy at a high-level meeting in 2017.

Internal correspondence from a civil servant involved in the litigation team, dated May 26, 2017 – first published in yesterday's Irish Times – refers to a: 'Recent high-level strategy review on long-stay litigation with the Attorney General and Ministers Harris and McEntee.'

According to the correspondence, this review reaffirmed the State's position 'that discovery should be avoided in all cases'.

At the time of the strategy review, Minister Harris had been health minister for a year.

Ms McEntee, now the Minister for Justice and currently on maternity leave, was serving as junior minister with responsibility for older people.

The correspondence confirming the agreement to continue the strategy is part of an urgent series of emails sparked by a significant case that had reached the point of discovery in May 2017.

The case was taken by a man whose mother spent more than eight years in a private nursing home before she was finally given a place in a public facility.

Because a discovery order against the department had been granted – and had just expired –

'Continues to be too risky'

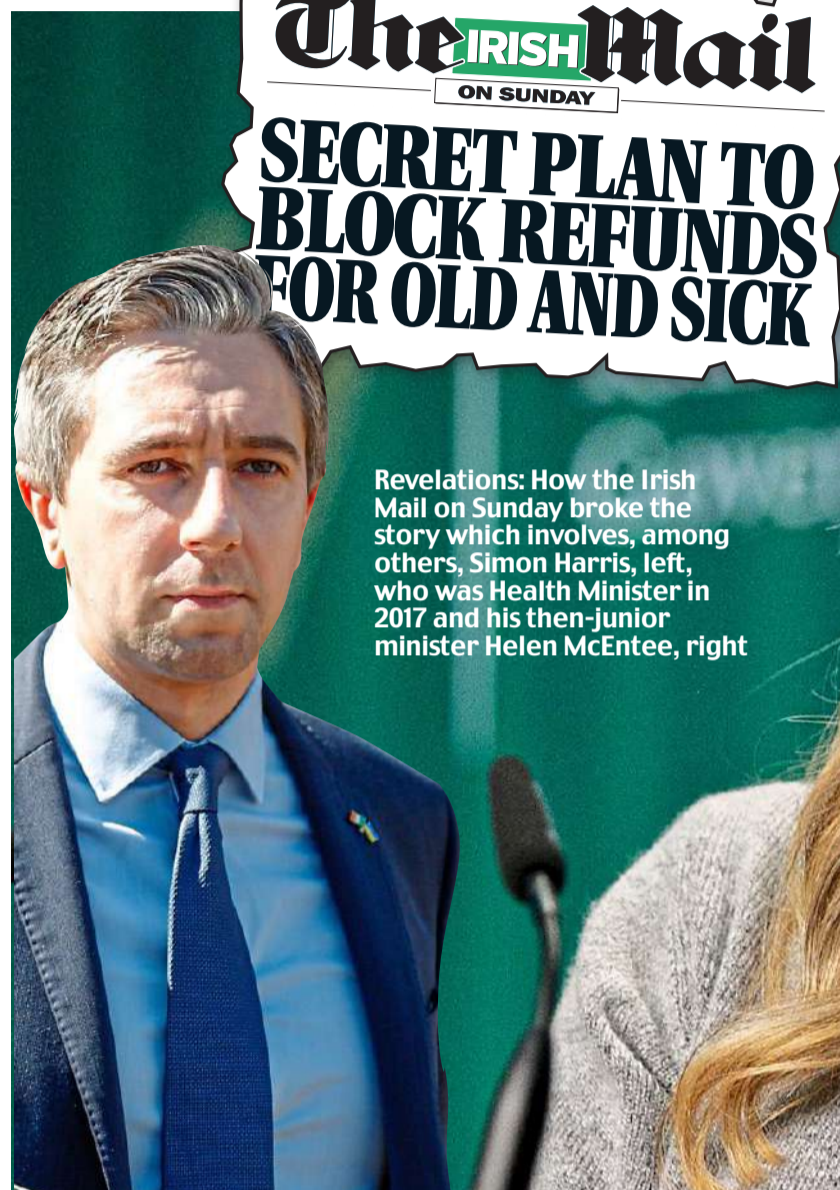
settling the case had become particularly urgent for the department.

An email from an official involved in the department's long-stay litigation stated: 'I confirm that having failed in our attempt to negotiate a settlement last Tuesday and having considered our legal advices we had no realistic option other than to consent to a discovery order...'

'There is no change in the department's policy position – informed by legal advices to date from the Office of the Attorney General and confirmed at the recent high-level strategy review on long-stay litigation with the Attorney General and Ministers Harris and McEntee – that discovery should be avoided in all cases including the [NAME REDACTED] case,' the message continues.

'The reality of making discovery or running a hearing in one of these cases continues to be too risky to be seriously contemplated and, whether we like it or not, settling the [NAME REDACTED] case – if necessary on terms we may find somewhat unpalatable – appears to be the only way forward,' it adds.

This desperation is further evidenced in records tracing the history of the case which show that discovery in the case was first sought in late 2015, when current Taoiseach Leo Varadkar was minister for health. This prompted formal settlement



Revelations: How the Irish Mail on Sunday broke the story which involves, among others, Simon Harris, left, who was Health Minister in 2017 and his then-junior minister Helen McEntee, right

negotiations, which commenced in June 2016, by which time Mr Harris had replaced Mr Varadkar as health minister.

Ultimately, with then-attorney general Seamus Woulfe also acting as senior counsel in the case, an initial offer of under €30,000 was made and rejected in July 2016. When the discovery order was granted in May 2017, Mr Woulfe offered his counterpart just under €60,000.

According to the documents, the plaintiff in the case reduced his claim to €100,000 shortly thereafter – from an initial claim of nearly €265,000.

In July 2017, the department increased the offer to €80,000. Eventually, with the State facing a judgment in default because it had missed the discovery deadline in September 2017, a €100,000 settlement was authorised by the department in November 2017.

The increased settlement figure is confirmed in an urgent memo about the case, which noted discovery, 'is not a realistic option in view of the legal strategy'.

The memo goes on to list pros and cons for the €100,000 settlement, with the first pro: 'Would avert the very high risks attendant on making discovery.'

Another pro listed was: 'Would avert public airing of motion(s) on discovery issues and possible public criticism of department.'

Confirmation of the documented involvement of ministers

Harris and McEntee in the reaffirmation of the State's litigation strategy comes as the current Attorney General, Rossa Fanning, prepares a report on the strategy for the Cabinet on Tuesday. The scandal will be debated in the Dáil this week.

It will also be examined by the Public Accounts Committee, which will investigate if successive governments hid the potential scale of the State's liability and settlement figures from public view.

As reported by the Irish Mail on Sunday, the issue of keeping the finances of the long-stay litigation strategy out of public view was first addressed in the secret

'Agree a form of wording'

2011 memo devised when Enda Kenny was taoiseach.

To achieve this, agreement had to be reached with the Comptroller & Auditor General (C&AG), the guardian of public expenditure. The 2011 memorandum states: 'Ultimately it proved possible to agree a form of wording which complied with government accounting requirements without jeopardising the confidentiality of the State's strategy in defending this litigation.'

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SHANE McGRATH
WE'RE CITIZENS... NOT CLIENTS!

SEE
PAGE
15

cons of settling...



Call for redress of denied payments

AN ADVOCACY group has called on the State to redress wrongly denied disability payments.

The Disability Federation of Ireland (DFI) said it found the revelation that 12,000 disabled people living in institutional care were denied payments was 'deeply troubling'.

On Tuesday, RTE Investigates revealed through documents provided by Department of Health whistleblower Shane Corr that it was the State's legal policy not to trawl through HSE records to determine who else was eligible for the payments.

The DFI has called on the State to identify everyone who has been affected and to establish a statutory repayment scheme, saying: 'The case highlights historical and more recent approaches to deny disabled people their rights.'

It said the people affected were often living with significant disability and not in a position to advocate for themselves.'

A spokesman added that disabled people 'continue to be at a much higher risk of poverty and continue to face barriers to full inclusion'

By **Craig Hughes** and **Brian Mahon**

and that 'people with disabilities need to hear a clear message from the State that there is a commitment to the full implementation' of the UN Convention on the Rights of Persons with Disabilities.

Minister for Finance Michael McGrath said yesterday that a report to Cabinet from Attorney General Rossa Fanning would outline the State's liability.

'I would expect that the report we get from the Attorney General will examine those related issues as well and will give us an account of the background to that and give us an assessment of what is the State's liability, if any,' he said.

Mr McGrath indicated that he expected payments would be made in cases where liability was not disputed by the State.

'Where there is a clear liability which we are advised that we have to face up to, then we will do that and we will meet whatever liability we have. But we do need to bottom that out and look at it with all of the documentation at our disposal.'

WHO is impacted by the State's secret legal strategies to conceal the extent of its liabilities on historic long-stay care and disability payments?

1. NURSING HOMES:

The Health Act 1970 entitled all people in the State to free long-term care in public institutions. The diversion from this law creates two separate but related legal issues.

The first is related to people in public nursing homes being unlawfully charged for aspects of their care. A compensation scheme was eventually put in place in 2006 and €450 million was paid out to 20,303 people.

The current controversy relates predominately to people with medical cards who were in private nursing homes.

In 2010, hundreds of families who were excluded from the compensation scheme sought to sue the State. Ombudsman Emily O'Reilly published a damning report based on more than 1,000 complaints from those improperly charged. In 2011, faced with a potential liability of €12 billion for the charges which spanned 30 years, new health minister James Reilly circulates a top-secret memorandum. Based on advice from attorney general Máire Whelan, the government, knowing it was unlikely to win any case, adopted a confidential containment policy of secretly settling cases to prevent more claimants coming forward. The policy was successful and cases began to dwindle.

This week, Taoiseach Leo Varadkar said that the State never admitted liability and that there was never a test case to establish the State's liability.

However, there was no test case because of the State's legal strategy was to settle cases to avoid losing a test case.

In the Dáil this week, the Taoiseach defended the strategy, saying it was legally 'sound' and that if he was asked to sign off on it while in office, he would have.

The Attorney General Rossa Fanning is preparing a review of the policy for Cabinet when it meets on Tuesday.

2. PEOPLE IN INSTITUTIONAL CARE IN RECEIPT OF DISABILITY PAYMENT:

In the 1980s, regulations were introduced to stop the payment of maintenance allowances to people with disabilities living in residential care. The thinking of the State was that the payment was due to cover costs associated with accommodation and subsistence, and this was being met by the State in these cases.

In late 2008, the State settled for €60,000 a case taken on behalf of a woman whose allowance ceased when she was admitted to a psychiatric facility in 1983.

The legal advice was that the regulations were unconstitutional and that the State had little chance of defending claims

TWISTS AND TURNS IN THE STATE'S PLOY TO CONCEAL LIABILITIES



by **Craig Hughes**

POLITICAL CORRESPONDENT

against them. A secret Government memo obtained by RTE estimated that between 4,000 and 10,000 people could be impacted and the liability to the State ranged from €350 million to €700 million.

In the Dáil on Wednesday, Mr Varadkar said the State 'didn't have a leg to stand on' legally.

3. DISABLED PEOPLE IN SECTION 39 RESIDENTIAL CARE SETTINGS:

In addition to those in nursing homes, those in Section 38/39 State-funded voluntary residential care also argued they were entitled to have their care paid for.

A 2011 secret memo obtained by the Irish Daily Mail shows that a HSE appeals officer sampled three files from 515 appeals from people who had been denied reimbursement for their care in the facilities and found them all to be eligible.

The department

Critical: **Emily O'Reilly**

ment and the HSE lodged three appeals against the decision by the HSE's appeals officer.

However, legal advice that the appeal would not be successful led to the case being dropped.

The Oireachtas Public Accounts Committee was told by Sinn Féin TD Matt Carty that subsequent financial statements for the HSE's annual accounts show that €20 million was made available for what appears to be compensation payments to the 515.

'On a worst case scenario, the HSE estimates a potential liability of some €360 million,' the secret memo states.

However, despite an admission of liability, the HSE has refused to say whether it contacted other eligible people to inform them of their entitlement.

The document also shows that new appeals likely did not arise because of advice from the HSE.

'Claims rejected under the Repayment Scheme were not appealed or no claims were made under the scheme, probably on the basis of advice from the HSE that the payments did not come within the definition of recoverable health charges,' it states.



EXCLUSIVE



By **MICHAEL O'FARRELL**

INVESTIGATIONS EDITOR

DEPARTMENT of Health whistleblower Shane Corr has challenged the Government to explain exactly why none of the private long-stay litigation cases ever came to court.

Mr Corr was speaking after it emerged on Friday that two members of the current Cabinet, Simon Harris and Helen McEntee, gave the green light to the continued 'deny, delay, and settle before discovery' strategy following a review in 2017.

Fresh details also emerged revealing how a desperate department agreed to offer nearly 100% of a

'What were they afraid of in discovery'

claim of a contested case, because it had missed a discovery deadline.

New and unpublished papers show the secret legal strategy – revealed in last week's Irish Mail on Sunday – was founded on a distinct fear that 'a number of problematic documents' relating to the 1993 nursing home subvention could be released under any discovery order granted by a court.

'This comes down to the issue of discovery. What were they afraid of in discovery?' Mr Corr asks.

'The Government says their secret policy was a sound one – and that the State had a valid defence – but the litigation files show their lines of defence had serious weaknesses.'

Speaking in the Dáil this week after last week's MoS revelations, Taoiseach Leo Varadkar insisted the State had a justifiable defence to cases seeking recompense for private nursing home fees, and that it had never conceded liability for private care.

But the litigation files reveal the reality of the State's position is not that straightforward. The need to settle all but a winnable test case was identified by the State in an early 2006 action that was settled at the point of discovery.

This case is referenced in a 2012 briefing update for the then-health minister, Fine Gael's James Reilly.

The brief reads: 'In relation to the relevant documents identified through the 2006 discovery, the legal team have identified a number of problematic documents for the Department.'

It adds the problematic files include 'several which relate to



the introduction of the subvention scheme in 1993 and are therefore particularly relevant to private cases.'

The document does not state what was so problematic for the State about these subvention files. The 1993 Act allowed for those in private care to have a part of the costs subvented by the State.

The 2012 file stated that, if it came to it, the State could try arguing the problematic files were legally privileged, meaning they could not be released in discovery.

However, the memo states: 'There

can be no certainty about the success of the legal privilege claim and it is at least possible that a number of the problematic documents may ultimately have to be released in the absence of a decision to settle the cases.'

The 2012 document also makes the point that any future discovery order could lead to an even wider discovery order being granted.

Discovery has also been sought in 30 further cases and could necessitate an even wider trawl of documents depending on the individual case. The current discovery order is an extension to an earlier discovery order made in relation to another case in 2006, which was subsequently settled on legal advice.

A review of documents provided by Mr Corr reveal that, upon legal advice, all public cases were settled, regardless of when the costs had been incurred. This applied even if the patient had died before the 1998 cut-off point

used for the Government's 2006 refund scheme.

In relation to private cases, the State wanted to find a winnable case to fight but it could not find a single one. And it was the same with mixed cases involving people who were forced into private care before they got a public place.

'Difficulty in identifying witnesses within HSE'

Time after time, the State was unable to find a winnable private case – from the hundreds it faced – for a variety of reasons. One problem identified by the State's senior counsel was a difficulty securing witnesses for the State.

'There has been some difficulty in identifying witnesses for individual cases within the HSE due to the large number of retirements

and also the historic nature of some of the cases,' a 2012 update to minister Reilly reads.

A further issue, identified in the original secret 2011 memorandum, was the failure of health boards to act on a request for public care from a person in private care. More specifically, the memo notes, there was 'a failure to have any system for dealing with such a request'.

Other issues complicating private cases involved further 'mismanagement by the health board' which 'confused the fundamental issue as to whether the State is liable'.

These health board and institutional failings would have emerged in discovery and fatally undermined related cases. In the event of a case coming to court, the State planned to rely on three strategic defences.

One was an argument that many cases should be statute barred. But the main defence was that any entitlement to care under the 1970 legislation, which the government failed to replace for three decades, must always be subject to the available resources of the State.

'If this key defence in relation to finite resources were to be defeated not only would the State be exposed to substantial financial liabilities in relation to this particular litigation, it could also result in liabilities for a number of other areas, and a dangerous precedent would have been set,' the State's legal advice warned.

The final defence was the argument that 'even if a person has an entitlement to a public bed irrespective of resources,' the courts would not likely award historical compensation.

Instead, it was foreseen that, in the event of a judicial review being lost, the courts would likely make an order of mandamus against the State. Such

State's review of 1993 files found 'problematic documents' they knew would hit their defence

C&AG backchannel to ensure secrecy

THE Department of Health created a backchannel with the Comptroller and Auditor General (C&AG) to ensure the State's litigation strategy in dealing with long-stay care cases remained a secret.

The secret 2011 memorandum relating to the strategy, which was circulated among senior members of the then-Fine Gael/Labour government, referred to 'a form of wording' which had been agreed with the guardian of public finances.

This wording was required to ensure the 'confidentiality of the State's strategy' was not jeopardised.

Separate confidential documents obtained by the Irish Mail on Sunday detail how a back-door mechanism that remained out of public sight was established between the C&AG and the department. The channel is mentioned in a May 2014

By **Michael O'Farrell**

letter from then-secretary-general at the Department of Health Ambrose McLoughlin, to a C&AG auditor. The letter followed a 2014 request from the C&AG's office to the Department of Health's finance unit and included an appendix detailing out-of-court settlements for that year.

Similar updates were provided to the C&AG in July 2010 and April 2012 as the secret strategy and potential liabilities of billions were kept out of public view.

The 2014 letter states: 'I would reiterate that the strategy adopted to manage this litigation, in consultation with the Office of the Attorney General and the Chief State Solicitor's Office, has been very successful.'

'On foot of our ongoing intensive

consultations with the legal team, this Department is satisfied that, in the absence of a suitable case where proceeding to trial would clearly be of advantage to the State, settlement remains the best and most cost-effective option to manage this litigation.'

The letter warns: 'The consequence of losing a case at trial would be very serious for both the Department and the Exchequer. Our colleagues in the Department of Public Expenditure and Reform are fully briefed and are in agreement with this approach.'

The letter says that the management and resolution of the long-stay litigation, 'is highly sensitive and the details attached are therefore, as before, being provided on a strictly confidential basis and are not for further circulation or publication'.

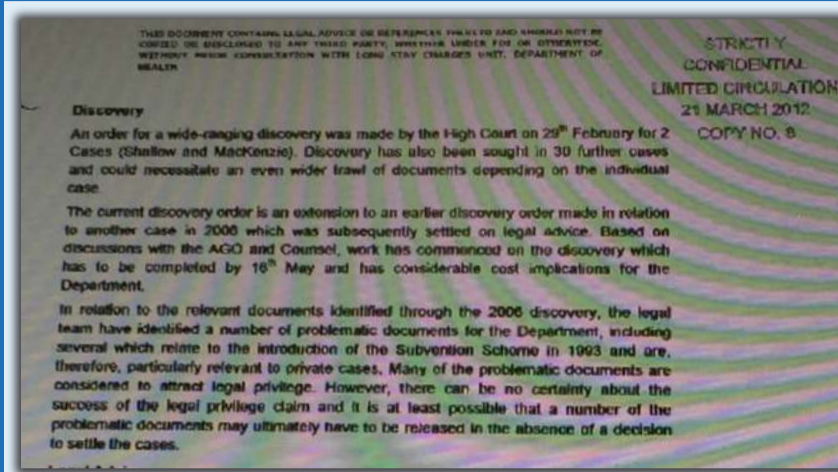
Public Accounts Committee chairman and Sinn Féin TD Brian Stanley has said the Dáil oversight committee will investigate the strategy to block refunds to patients who were in private nursing homes because no public facilities were available.

INQUIRY: PAC chair Brian Stanley

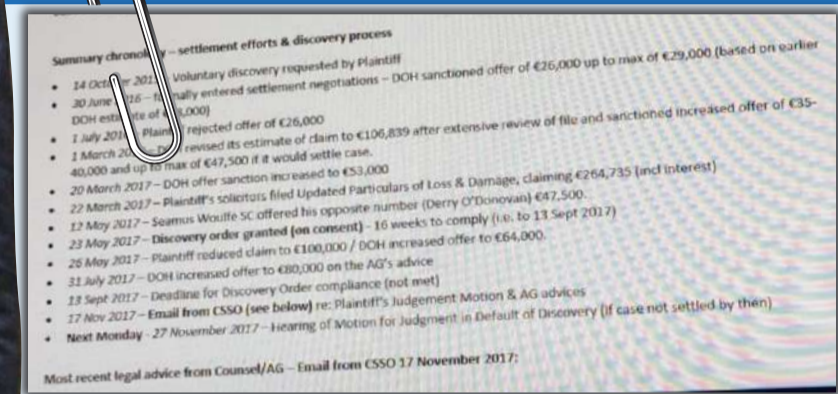


STRATEGY LEO AGREES WITH WAS A 'NO DISCOVERY AT ALL COSTS' PLAN

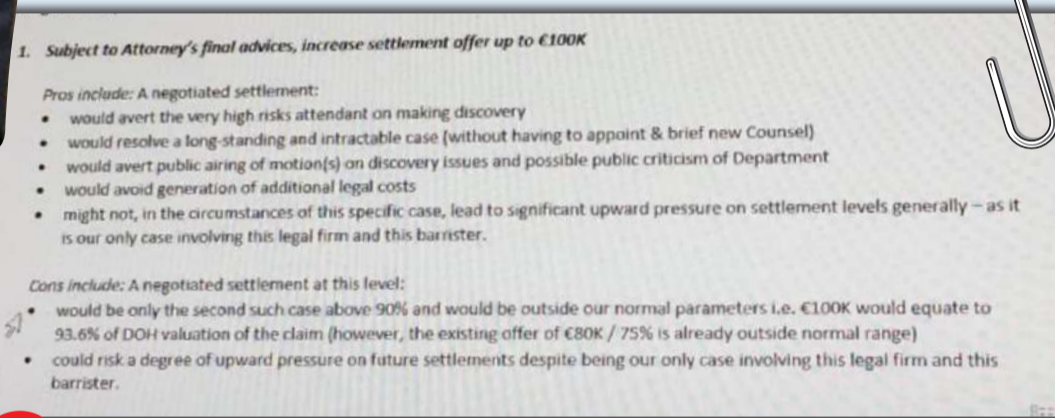
'SOUND POLICY':
Taoiseach Leo Varadkar still backs the strategy



1
LEGAL STRATEGY UPDATE MARCH 2012



2
LONG-STAY BRIEF FOR MINISTER NOVEMBER 2017



3
LONG-STAY MINISTERIAL BRIEF NOVEMBER 2017

an order would oblige the State to fulfil its obligations, but it stops short of compelling historical compensation to be paid.

Ultimately, however, these defences were never tested in court because of the State's inability to identify a winnable case due to the weaknesses that would be exposed by discovery.

Any winnable case would have to get over whatever is in the 'problematic' documents, and this ultimately proved an insurmountable problem for the State as demonstrated by individual case files.

One such case was taken by a son whose mother spent more than eight years in a private nursing home before finally being given a place in a public facility. The case spanned a period during which Simon Harris and Helen McEntee reaffirmed the State's secret settlement strategy in a 'high level' review.

This reaffirmation is confirmed in case correspondence from the Chief State Solicitor's office, dated May 26, 2017. According to the correspondence, the review reaffirmed the State's position 'that discovery should be avoided in all cases'.

Because a discovery order had been granted – and had just expired – settling the case had become particularly urgent for the department. 'I confirm that having failed in our

attempt to negotiate a settlement last Tuesday and having considered our legal advices we had no realistic option other than to consent to a discovery order...' the email from an official involved in the department's long-stay litigation states.

'... there is no change in the department's policy position – informed by legal advices to date from the Office of the Attorney General and confirmed at the recent high-level strategy review on long-stay litigation with

'Discovery should be avoided in all cases'

the Attorney General and Ministers Harris & McEntee – that discovery should be avoided in all cases including the [REDACTED NAME] case,' the message continues.

'The reality of making discovery or running a hearing in one of these cases continues to be too risky to be seriously contemplated and, whether we like it or not, settling the [REDACTED NAME] case – if necessary on terms we may find somewhat unpalatable – appears to be the only way forward,' it adds.

Further records tracing the history of the case, show the State moved up from an initial €30,000 settlement

offer to eventually authorise an offer of €100,000 – or almost 100% of the claim – in November 2017. The State was particularly anxious to avoid discovery after previously missing a court ordered deadline to hand over documents in September 2017.

The documents show a 'pros' and 'cons' list of consenting to the full €100,000 that the plaintiff was seeking. The very first pro listed said: 'Would avert the very high risks attendant on making discovery.'

Another read: 'Would avert public airing of motion(s) on discovery issues and possible public criticism of department.'

The memo also lists 'cons' saying 'a negotiated settlement at this level... would be only the second such case above 90% and would be outside our normal parameters – i.e. €100k would equate to 93.6% of DOH [department] valuation of the claim (however, the existing offer of €80k/75% is already outside the normal range).'

The memo added a settlement 'could risk a degree of upward pressure on future settlements despite being our only case involving this legal firm and this barrister'.

The increased authorised settlement figure is then finally confirmed in an urgent note about the case, which says discovery 'is not a realistic option in view of the legal strategy'.

It is not clear from the documents what the case finally settled for.

SUCCESSIVE governments were aware that the litigation strategy to argue that being 'eligible' for compensation does not mean that a person has an 'entitlement' to redress was legally questionable.

Taoiseach Leo Varadkar has insisted people with medical cards were not entitled to free care in private nursing homes.

However, the State was warned in 2003 in a report by the Human Rights Commission about the practice of charging impoverished elderly people to live in private nursing homes.

The 74-page report, titled *Older People in Long Stay Care*, was authored by welfare law specialist, Ita Mangan. The eminent barrister wrote: 'The argument is that the Health Acts distinguish between eligibility for services and entitlement to them and that being eligible does not mean a person has an entitlement.'

'The Ombudsman does not accept that there is any doubt as to the obligation on a health board to provide in-patient services. The writer strongly agrees with the Ombudsman.'

The latest revelations come as the Attorney General, Rossa Fanning, prepares a report on the strategy for the Cabinet on Tuesday. The scandal will be debated in the Dáil this week.

It will also be examined by the Oireachtas spending watchdog, the Public Accounts Committee, which will investigate if successive governments hid the potential scale of the State's liability and settlement figures from public view.

As reported by the MoS last week, the issue of keeping the finances of the long-stay litigation strategy out of public view was first addressed in the secret 2011 government memo devised when Enda Kenny was Taoiseach.

To achieve this, agreement had to be reached with the Comptroller & Auditor General (C&AG), the guardian of public expenditure. Any mention of the matter in C&AG reports to the Oireachtas could have alerted the wider public to the matter and resulted in a flood of new cases.

The 2011 memorandum states: 'Ultimately it proved possible to agree a form of wording which complied with Government accounting require-

'It proved possible to agree a form of wording'

ments without jeopardising the confidentiality of the State's strategy in defending this litigation.'

In addition to dealing with nursing home charges, the 2011 memorandum also warned a handful of Cabinet members of the State's illegal withdrawal of Disabled Persons Maintenance Allowance (DPMA) from thousands of vulnerable people in care. The document – circulated to Enda Kenny, James Reilly, then-tánaiste Eamon Gilmore, former finance minister Michael Noonan and ex-public expenditure minister Brendan Howlin – estimated there could be between 4,000 and 10,000 potential cases, 'with associated repayment costs in the range of €230m to €580m plus interests and costs'.

But 12 years later, no repayments have been made. Mr Varadkar conceded this week that the State does not 'have a leg to stand on' in relation to the disability payments.

He has also pledged to do 'whatever is legally required and morally just' to address the illegally withheld disability payments.

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State dragged out case in the hope that grandfather would give

THE HSE FILES

By Michael O'Farrell

INVESTIGATIONS EDITOR

NOW-SUPREME COURT judge Séamus Woulfe continued to act as the State's barrister in a case against a grandfather who was attempting to recoup more than €100,000 in illegal nursing home charges, for months after his appointment as attorney general. This was confirmed by the Government after the *Irish Mail on Sunday* obtained discovery documents that were issued to Joseph Conroy following his 10-year legal battle with the State.

The discovery order triggered the State to triple a settlement offer to ensure the Government's litigation strategy to limit illegal nursing home payments to families remained a secret.

Mr Woulfe, who had represented the State as a barrister in the case against Mr Conroy, was appointed to the position of attorney general in June 2017.

A Government spokesman this weekend confirmed Mr Woulfe continued to represent the State in the months after his appointment.

The spokesman told the MoS: 'Séamus Woulfe, then practising as a senior counsel, had been retained by the State in the case in question prior to his appointment as attorney general in 2017. Upon being

'When the discovery order was granted, everything changed'

appointed attorney general he continued to represent the State in this case. This approach is adopted as and when such circumstances arise in order to ensure continuity in the State's legal representation.'

However, the spokesman refused to say if Mr Woulfe continued to be paid barrister's fees for his work on the case following his appointment at the then-government's top lawyer.

Documents obtained by the MoS from a protected disclosure made by the Department of Health whistleblower Shane Corr, show that, a month after Mr Woulfe's appointment, the then attorney general significantly increased its settlement offer to Mr Conroy to €100,000 from its initial offer of €30,000.

The retired carpenter and businessman, from a prominent family in Portlaoise, had paid more than €100,000 in fees later deemed to be illegal for his late mother Helen's nursing home care before she died in 2004.

And he got virtually every cent of this back in late 2017 when the department panicked at the prospect of having to show its hand.

'We had no realistic option other than to consent to a discovery order,' Mr



CASE:
Supreme Court judge Séamus Woulfe

Séamus Woulfe was the State's lead barrister while also attorney general



Woulfe's team concluded, before indicating that handing over the documents was not an option for the State.

'The reality of making discovery or running a hearing in one of these cases continues to be too risky to be seriously contemplated.'

The retention of Mr Woulfe as lead barrister for the State despite becoming attorney general was an indication of how seriously the State took the matter.

Mr Conroy's Mullingar-based solicitor David Nohilly, told the MoS, 'I knew there was something significant

when I saw Séamus Woulfe as the senior [counsel] on the case'.

He continued: 'He was present at all stages throughout the settlement talks that we were having. He was always present, always there.'

Once the discovery order was granted, Mr Nohilly knew the tone of his team's negotiations with Mr Woulfe had changed.

From originally offering less than €30,000, the State suddenly began upping its offer.

'The initial figure was derisory,' Mr Nohilly, said. 'It was an insult and that probably showed that they viewed us as a nuisance more than anything else. But when this discovery order was granted, everything changed.'

According to files seen by the MoS, the State upped its offer from less than €30,000, to just under €60,000 and then to €80,000 before a €100,000 settlement was eventually sanctioned. This meant the State agreed to pay virtually 100% of what it estimated the claim to be – far more than the 40% to 60% it had set for settling similar cases.

Mr Nohilly said it was, in his experience, unusual to be in settlement talks with the State.

'The State very rarely has settlement talks with the plain-

tiff,' he added.

'It's very difficult to reach a settlement with the State because they have the resources to run a trial... they tend to fight cases.'

When asked what he believes the State was afraid of, Mr Conroy replied, 'The truth'.

Referring to Taoiseach Leo Varadkar's defence of the State's legal strategy this week, Mr Conroy said, 'Thursday evening, Leo Varadkar

'This is wrong... my mother had a right and that will be proven'

said the legal grounds were sound. Friday evening, he said it wasn't worth the paper it was written on – then the [current] Attorney General [Rossa Fanning] says the law stands up. I know it doesn't stand up.

'There's right and wrong. And this was wrong. I've nothing against Government or politicians, but law is law; right and wrong. And this is wrong... my mother had a right and that will be proven. I have no doubt about that.'

One way or another, the documents sought in the Conroy discovery would certainly have shed light on who was in the right.

The discovery order sought all files relating to any health board subventions paid for Mrs Conroy's nursing home care, which could have been significant for a couple of reasons.

Firstly, several years after Mrs Conroy's death, the HSE conceded some element of error in the manner in which it had been granting subventions for her care and refunded almost €11,000 to Mr Conroy. The letter accompanying the cheque informed Mr Conroy that the department had directed that people who were adversely affected by the implementation of subvention rules issued in 1993, 'should be compensated by way of an ex-gratia payment'.

Secondly, secret Government memos show the State has identified 'problematic documents' relating to the introduction of subvention deemed too dangerous to disclose.

The State hoped some of the documents would attract legal privilege and be excluded in discovery.

The existence of these 'problematic documents' – and the State's failure to ever fight a case – appears

up his battle to recoup €100k of illegal nursing home charges



FIGHT: Joseph Conroy took on a 10-year legal battle

By Michael O'Farrell

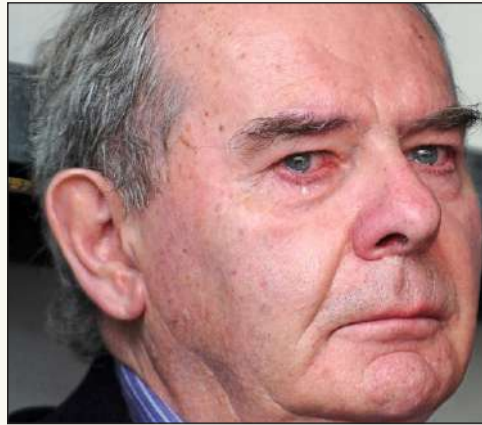
DURING his time as a leading barrister in the Commercial Court, Rossa Fanning developed and implemented legal strategies for a wide range of clients – including some infamous household names such as Michael Fingleton and Sean Quinn.

He also represented former minister Michael Lowry at the Moriarty Tribunal, as well as various banks, financial institutions and businesses in post Celtic Tiger Ireland.

Often that work saw Mr Fanning zero in on perceived weaknesses, gaps or omissions in the documents provided by the opposing side during the discovery process – a process successive Governments have not been willing to allow the State to be exposed to when it comes to the illegal nursing home charges scandal.

In 2010, Mr Fanning was senior counsel for former Irish Nationwide chief, Michael Fingleton, when Ulster Bank secured a €13.6m judgment against him for unpaid loans.

As such he attacked the bank's records, obtained



HIGH PROFILE CLIENTS: Fallen tycoon Sean Quinn, left, and the former Irish Nationwide chief Michael Fingleton, right



NEW AG OFTEN TARGETED THE DISCOVERY PROCESS

under discovery, saying there were defects in the bank's documents and the manner in which the loan had been granted.

During the case, it emerged that Mr Fingleton had failed to declare his largest asset – a €27m pension portfolio – in a list of assets and liabilities that was given by him to the bank. In that instance, Mr

Fanning described Mr Fingleton's omission as a 'genuine error' adding that there had been no intention to mislead.

Mr Fanning was also a core part of the Sean Quinn's legal team in 2012 after the Quinn family implemented a global asset stripping scheme to move millions of euro beyond the reach of the

State. However, Mr Fanning quit this role after the Mail on Sunday published explosive video footage of family members in Kiev in which Peter Quinn – the person tasked with implementing the asset stripping scheme – spoke of not being bothered about lying in court.

HOW CAN WE TRUST THOSE WITHOUT A MORAL COMPASS TO REPRESENT US? A victim writes Pages 26&27

AG can't say if he reviewed 'problem' files

THE Mail on Sunday asked Taoiseach Leo Varadkar and Attorney General Rossa Fanning if they had reviewed the 'problematic documents' relating to the State's controversial litigation strategy.

According to files revealed by this newspaper in recent weeks, these documents relate to the introduction of a subvention scheme in 1993 in which some families of people who were illegally overcharged for nursing home fees received funding back from the State. These were identified in a 2012 briefing update – for then health minister James Reilly – which warned they 'may ultimately have to be released in the absence of a decision to settle the cases'.

Asked if the Taoiseach or AG had read or reviewed the 'problematic documents', a Government spokesman said, 'There are many documents, edits and draft documents in the Department of Health and a false impression can be drawn by looking at them or quoting from them selectively. It cannot give a full and accurate picture. The report of the Attorney General was

a high-level review prepared in a short timespan which sought to consider the legitimacy of the legal strategy adopted by the State in defending these cases. As the report makes clear, while there was risk in defending the cases and while the State elected to settle certain cases, there was at all times advice on file that the State had viable legal defences to the litigation. The Department of Health is at present considering the matter in light of the report of the Attorney General.'

As this didn't answer the question asked, the MoS contacted the AG directly yesterday.

After he agreed to hear what our question was Mr Fanning told the MoS: 'I can't answer questions from newspapers about a report I did for the Government. I'm answerable to the Government, not to the media.'

ON THE RECORD: Attorney General Rossa Fanning



GER COLLERAN See Page 23

to contradict robust claims made by Mr Varadkar and the Attorney General Mr Fanning, that the State has a valid legal defence.

Other files sought in the Conroy discovery order included 'circulars, mandates and directions' from the department and the attorney general, 'concerning the manner in which charges were to be applied to long-stay patients in public and/or private facilities'.

The discovery order also sought the department's own legal advice in relation to concerns about illegal charges raised by various health boards over the years.

This material could have been devastating to the State's case, as revealed by a report commissioned by then health minister Mary Harney in 2005 after the Supreme Court's ruling on illegal nursing home charges. The Travers Report, which had access to all government files, found the department's own rules for charges would not stand up in court.

Rather than have this material disclosed – and risk a flood of cases – it was the State's policy to settle. But its strategy was to drag cases out to make it as difficult as possible for the plaintiffs.

However, they did not reckon on

the determination of Joe Conroy and his solicitor, who was working on a no foal [win], no fee basis.

'It's a case that wouldn't suit every client,' Mr Nohilly told the MoS.

'Joe is robust – but not every client would be suited for 10 years of litigation against the State.'

For his part, Joe – whose mother ran Conroy's hairdressers on the Main Street in Portlaoise for decades – was never going to quit.

'I never thought of giving up. I didn't – that wouldn't be in me,' he said. 'It's not about the compensation. This is about right and wrong. It's about how many other people are in limbo. For me it was settled because they just wanted to keep me happy and get rid of me, which means that they didn't see the justice in the end.'

The State's indifference as seen in the Conroy case file is striking. It describes how, in late 1994, Mrs Conroy was 79 and suffering from 'severe rheumatoid arthritis, chronic obstructive pulmonary disease, diabetes, depression, hypertension, peptic ulcer disease, incontinence and had eye cataracts, bilateral knee arthroplasties, was immobile, wheelchair bound, disabled and confined to bed'.

It adds she had been, 'for a number

of years prior to her admission to a nursing home, unable to properly look after or fend for herself, to feed, clothe or wash herself and was severely curtailed and limited in and about all of her activities of daily living.'

The file says how she had 'fallen down the stairs from her first-floor apartment and had fallen out of bed a number of times and was, on at least three separate occasions,

'This is not about the compensation. This is about right and wrong'

found unconscious by her son'.

It also describes how Mrs Conroy's son and his wife cared for her as best they could, but could not take care of medical needs.

And it details how the family could not find any public beds – despite Helen having a full medical card – when a GP advised that a care home was necessary.

But none of this mattered to the State legal team; the case files show their job was to drag out the case

regardless of the circumstances.

They demanded proof Mrs Conroy had been entitled to a medical card and that she really had suffered all the ailments described.

'The defendants require proof that the deceased held and/or was entitled to hold a medical card,' one of a long list of demands reads.

They also accused the family of being 'vexatious' in its claims and of acquiescing, 'in the matters that are the subject of the claim'.

And they forced Mr Conroy to provide discovery to the State – knowing they were not prepared to do likewise. This involved seeking 20 years' worth of bank statements from financial institutions and going back through stubs of countless decades-old cheque books.

'They actually just bog you down in paperwork in the hope that you'll just give up,' said Mr Nohilly.

'We have folders of cheque stubs because we had to go through and prove every payment we made.'

For a decade, the paperwork – amounting to thousands of pages – went to and fro, until the time came time for the State's discovery.

At that point, the State's team finally increased its offers. While referring in its internal correspondence to the settlement being

'unpalatable' and the case being 'difficult'. Mr Conroy said he takes particular exception to these comments which he describes as 'stomach-wrenching' after 15 years of 'being treated with disdain'.

'That comment "unpalatable" – that I find a step too far,' he said. 'I want an apology. I've been besmirched.'

While his own case has been resolved, Mr Conroy remains conscious of all the others who could not pursue the issue as he did.

'I feel sorry for the people that might have had to sell property – that weren't in the position I was in at the time – and they just didn't have the money to do what I did.'

Mr Nohilly has already begun fielding calls from such cases.

'She was in tears on the phone,' he said of a teacher who contacted him this week about the losses incurred paying for her parents' care. 'She lost her house; the mortgage went into arrears.'

Mr Conroy said the Government will ultimately move to address the unfairness of its legal strategy.

He had this message for Mr Varadkar, 'I'd ask him to go back and check out the law. I think this just has to be sorted out'.

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By MICHAEL O'FARRELL
INVESTIGATIONS EDITOR

Misconduct action against care home whistleblower – day after we publish story

THE Department of Health triggered disciplinary proceedings against whistleblower Shane Corr – the day after the publication of his protected disclosure that exposed the Government's secret litigation strategy to limit payouts to families who were illegally overcharged for nursing home payments.

On Monday, January 30, the department wrote to Mr Corr, who has repeatedly exposed public interest failures in the health service, to confirm a disciplinary hearing.

This was the day after his protected disclosure published in the Irish Mail on Sunday unveiled the widely condemned strategy pursued by successive governments to hide the true scale of the State's €12bn liability for illegal nursing home charges. It is one of many revelations Mr Corr has made public after he first tried to raise his concerns via an internal protected disclosure within the Department of Health, but which was stonewalled.

In addition to revealing the care home charges scandal, Mr Corr has collaborated with the MoS to reveal many other public interest stories in recent months.

These stories revealed how:

- Taoiseach Leo Varadkar brought a memo to Cabinet that proposed to secretly cut the entitlements of relatives of those affected by the Hep C scandal;

- No one in the Department of Health was responsible for overseeing the A&E crisis for significant periods in recent years as overcrowding spiralled;

- €50m within the department was improperly accounted for, due to what senior civil servants

'He is performing a very valuable public service'

described as 'Arthur Daley-style accounting';

- The Department went against its own economist's warnings to spend €25m to the Citywest Hotel for Covid accommodation that went largely unused;

- The department did not notice for almost a decade that Parkrun Ireland was breaking grant rules relating to State funds provided by the department;

- The State's residential disability sector is facing 'systematic breakdown' with services to thousands of vulnerable users at risk.

Mr Corr also made protected disclosures to media organisations in the public interest. In 2021 these led to revelations on RTE's Prime Time about how the Department of Health compiled legal dossiers on families with autistic children who were suing the State.

And in 2022, he provided recordings of internal finance meetings at the department to the Business Post. These recordings have been acknowledged by Health Minister Stephen Donnelly as being in the public interest.

Last month, in the wake of Mr Corr's continuing disclosures to the MoS, Public Expenditure Minister Paschal Donohoe praised his whistleblowing at the Oireachtas Finance Committee.

'Mr Corr is performing a very valuable public service and the issues that he's raising, and whistleblowers have in general,' Mr Donohoe said.

Following the Business Post stories, Mr Corr was suspended on full pay in May 2021 pending an investigation under the Civil



IN THE PUBLIC GOOD: Shane Corr

STATE WIELDS BIG STICK RATHER THAN REFORM

SUNDAY, JANUARY 29

THE Irish Mail on Sunday reveals successive taoisigh and health ministers – including current Cabinet members – agreed a secret plan to hide the true scale of the State's liability for illegal nursing home charges, to prevent massive payouts. The story is based on information provided in a protected disclosure by Department of Health whistleblower Shane Corr.

MONDAY, JANUARY 30

Mr Corr's revelations top the news agenda

throughout the day. The Department of Health sends a registered letter to Mr Corr informing him that a disciplinary hearing will take place in March. Taoiseach Leo Varadkar insists he had no input into any legal strategy in relation to nursing home charges: 'I was never party to devising or agreeing a legal strategy in relation to nursing home charges.'

TUESDAY, JANUARY 31

The Government asks the Attorney General to prepare a report on its secret care-home strategy as the issue

dominates the political agenda. The Department of Health launches its own inquiry to report back in three months. The Taoiseach gives a different version of events, conceding in the Dáil that he 'must have been briefed' about the litigation strategy on nursing home charges. But he insists he 'would have agreed' to sign off on it if he had been asked.

TUESDAY, FEBRUARY 7

Public Expenditure Minister Paschal Donohoe praises Mr Corr for providing 'a very valuable public service'. Months earlier, in November 2022, Health Minister Stephen Donnelly also stated that Mr Corr's disclosures were in the public interest.

MONDAY, MARCH 20

The date on which Mr Corr has been told to attend a disciplinary hearing under threat of possible dismissal.

SECRET PLAN TO BLOCK REFUNDS FOR OLD AND SICK

SCANDAL: How we reported illegal nursing home charges

Service Disciplinary Code, which was carried out by barrister Mary Paula Guinness.

The probe was tasked with establishing whether or not Mr Corr had made recordings of internal meetings without the knowledge of participants and passed them on to journalists, something Mr Corr has always acknowledged, from the time he first tried to make disclosures within the Department of Health before going to the media.

The day after the care home charges story was revealed, the Department of Health wrote to Mr Corr to initiate disciplinary proceedings. In a registered letter sent on January 30, Mr Corr was told the department was convening a disciplinary hearing. The correspondence included a copy of the investigation report compiled by Ms Guinness which concluded he had recorded internal meetings.

The letter, from Department of Health HR manager Kenneth Mooney, states: 'The conclusions of

the investigator give rise to serious concerns that you may have engaged in misconduct and/or serious misconduct within the meaning of the disciplinary code.'

The alleged misconduct referred to involves possible breaches of IT rules relating to the privacy and safety of others. The letter also refers to the Civil Service Code of Standards which obliges civil servants to 'show due respect for their colleagues'.

Mr Corr now faces a disciplinary hearing on March 20, with a formal outcome due five days later. The letter added that the outcome may include 'a recommendation for disciplinary action as provided in the Disciplinary Code, up to and including dismissal.'

In his written response to the department, Mr Corr argued that he is being unfairly punished. He wrote: 'Given that the Minister of Health, Mr Donnelly, has publicly declared that my protected disclosures are in the public interest, I believe that any disciplinary process is unfair, unsound and unwarranted. Any such process while I am actively making protected disclosures will penalise me.'

Mr Corr referred to the praise he received from Mr Donohoe and noted that the department had triggered disciplinary action 'within hours of my protected disclosures on illegal nursing home charges'.

He again asked that his disclosures be accepted by the department.

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Legislation provides protection for workers

UNDER whistleblowing laws, people who are aware of wrongdoing can legally make public interest disclosures to journalists if their concerns are not treated properly when they first disclose them internally.

Those who raise concerns about possible wrongdoing in the workplace are protected by the Protected Disclosures Act 2014.

The legislation provides protection and compensation for workers who are threatened or punished for such whistleblowing.

A dismissal, for example, would entitle an employee to up to five years' pay as compensation.

It is up to the employer to prove that the whistleblowing was not justified.



Shania Twain talks to Magazine

SEE MAGAZINE PAGES 4-5



FREE INSIDE

Get fit at any age

with Pat Henry

STARTS PAGE 38



VARADKAR'S PLAN TO CUT HEP C PAYMENTS

Then-health minister's Cabinet memo proposed secretly stopping compensation to 'bad blood' scandal families

THE HSE FILES

WHEN Leo Varadkar was health minister in 2015 he brought a memo to Cabinet proposing to secretly remove redress entitlements of family members affected by the hepatitis C scandal.

The revelation – contained in leaked confidential documents obtained by the Irish Mail on Sunday – will heap further pressure on the Taoiseach as the Government comes under fire over its continuing litigation strategy that pits the firepower of the State against

EXCLUSIVE

By Michael O'Farrell

INVESTIGATIONS EDITOR

some of its most vulnerable citizens.

According to a leaked Government document, Mr Varadkar proposed making

Turn to Page 4 >>

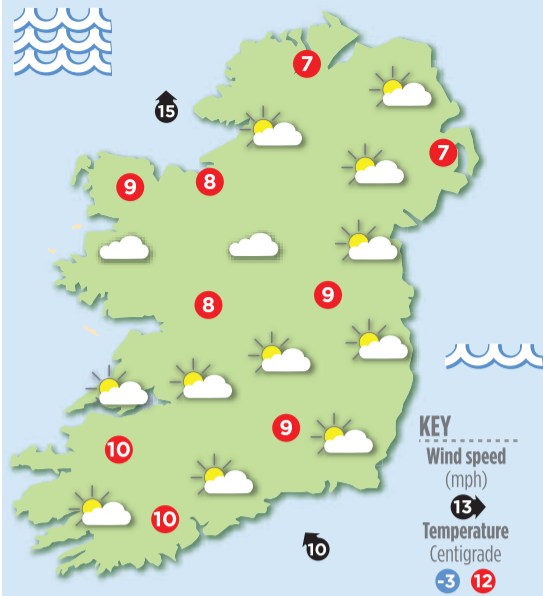


WORLD EXCLUSIVE

I'm the older woman who took Harry's virginity

PAGES 32-35

Weather



FORECAST

GENERAL FORECAST

A bright start for most today, with cloud pushing in across southern areas this morning. There will be lengthy dry spells for all, with the best of sunny spells in the east. Gentle southerly winds.

REGIONAL FORECASTS

Leinster: A fine day for most, with light cloud building in the south. Dry spells. Light south-easterly winds. Tonight, light cloud. Max temp 10C (50F). Min temp 3C (37F).

Dublin: A fine and bright day, with no rain forecast and plenty of sunny spells. Light southerly winds. Tonight, light cloud. Max temp 9C (48F). Min temp 3C (37F).

Ulster: A settled day, with plenty of sunny spells and no rain forecast. Winds will be a gentle southerly. Tonight, dry and cloudy. Max temp 8C (46F). Min temp 4C (39F).

Connacht: A bright start, before light cloud moves into the area. No rain expected. Gentle south-

easterly wind. Tonight, dry with light cloud. Max temp 8C (46F). Min temp 5C (41F).

Munster: Bright spells, then cloud pushes in from the south. Dry spells for most. Gentle south-easterly winds. Tonight, light cloud. Max temp 10C (50F). Min temp 6C (43F).

Waterford: Settled conditions, as dry and sunny spells extend across the region. Light south-easterly winds. Tonight, dry spells. Max temp 9C (48F). Min temp 5C (41F).

WEEK AHEAD

Tomorrow, light showers will push in from the west, bringing intermittent bursts of drizzle and rain across western areas. Elsewhere, it will be rather cloudy. Tuesday is a similar picture, with showers extending across southern areas. Wednesday will be a cloudy day, with southerly winds strengthening, as a band of rain pushes through overnight. Thursday will bring sunny spells.

SIX-DAY FORECAST

	MON	TUE	WED	THU	FRI	SAT
DUBLIN	9	9	8	8	8	9
CORK	9	9	8	8	8	9
BELFAST	10	9	9	9	8	9
GALWAY	10	9	8	8	8	9
LIMERICK	10	9	9	9	9	10
DERRY	9	8	7	7	7	8
KILKENNY	9	9	8	8	8	9
WATERFORD	9	9	8	8	8	9

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LOTTO NUMBERS

6 13 14 BONUS **34**
15 26 42

There was no winner of last night's Lotto jackpot of €3.2 million

LOTTO PLUS DRAW

5 13 15 26 28 36 3

LOTTO PLUS2 DRAW

8 12 14 15 27 28 3

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LETTERS & PUZZLES

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From Page 3

savings of between €260m and €1bn from a draft law that would have made a series of cuts to Hepatitis C compensation measures in May 2015 when he was minister for health.

Six months earlier, in November 2014, Mr Varadkar told the Irish Times that his department had no plans to make any changes to the Hepatitis C Compensation scheme.

The proposed cuts outlined in the May 2015 memo involved legislative changes to limit various entitlements and to exclude dependent relatives of those infected completely from the scheme in the future.

To ensure that news of the planned measures did not spark a new wave of claims from dependants, the Memorandum for Government stressed the proposal must remain secret until the Bill was published – and then proposed that the publication date of the Bill would be the new deadline for receipt of claims.

It states: 'The Minister for Health considers it important that the drafting of the legislation remains secret to protect the financial interests of the State.'

Echoing the controversial litigation strategy pursued by the State to limit refunds to people who were illegally charged nursing home fees – first revealed by the MoS last week – the document warns: 'Public knowledge of possible changes to the compensation

'Plan is to tough this one out'

arrangements could encourage early compensation claims.'

Ultimately, however, the plans did not proceed, and the terms of the compensation tribunal remain unaffected.

The latest revelations come as the current Attorney General prepares a report on the State's continuing controversial litigation strategy for the Cabinet on Tuesday. The issue will also be debated in the Dáil.

Senior Cabinet sources who spoke to the MoS about the deepening controversy this weekend said Government leaders plan to 'tough it out' in the hope public anger will dissipate with time.

Explaining the thinking, one minister said: 'The issue does not have a public face. Cervical cancer had Vicki Phelan. Hepatitis C had Brigid McCole.'

'This does not have a public face that can be put on the Six One News,' they said.

Another senior Government source added: 'It is not pretty, it looks terrible but the plan is to hang tough and see it out. The public will forget.'

However, these sources were speaking without knowledge of the latest revelation.

The Taoiseach has defended

Whistleblower wants to know 'What were they afraid of in discovery?'



REVELATIONS: How we broke news of the scandal last Sunday

HEP C Victim's shock at proposal Pages 8 & 9 NURSING HOMES SCANDAL Pages 10 & 11

the approach to litigation aimed at limiting the State's potential liability on private nursing home charges, describing it as, 'a legitimate legal strategy by the Government'.

However, Department of Health whistleblower Shane Corr – whose protected disclosures to the MoS have lifted the lid on the State's legal strategy – has challenged the Government to explain why none of the private home care litigation cases ever came to court.

Instead, these cases were all settled at the point of discovery, when the State would have been obliged to hand over documents.

'This comes down to the issue of discovery. What were they afraid of in discovery?' Mr Corr asked.

Mr Corr was speaking after it emerged on Friday that two members of the current Cabinet, Simon Harris and Helen McEntee, gave the green light to the continued 'deny, delay, and settle before discovery' strategy following a review in 2017.

Separate documents show the State's legal strategy was

founded on a distinct fear that 'a number of problematic documents' relating to the 1993 nursing home subvention could be released under any discovery order that might be granted by a court.

Another leaked document shows how a desperate Department of Health agreed to offer nearly 100% of a claim in a contested case because it had missed a discovery deadline.

'This does not have a face for the news'

In response to queries from the MoS, a spokesman for the Taoiseach this weekend confirmed Mr Varadkar's proposal to change the terms of the Hepatitis C and HIV Compensation Tribunal was considered by Cabinet members at the time.

The spokesman stressed the proposal was 'considered in 2014 and 2015 when health budgets were being cut due to the deep recession the country

was enduring at the time'.

They added: 'Ireland was in a bailout, the IMF was monitoring public finances and very difficult decisions were being taken monthly.'

'The then Minister for Health had a duty to consider all options for savings that would not adversely affect patients in need of medical care.'

'This was one of those decisions. It would have not affected the entitlement to compensation of anyone infected with Hepatitis C or HIV.'

Mr Varadkar's spokesman said resources at the time 'were focused on patients, including the provision of direct-acting anti-viral drugs for Hepatitis C patients with the greatest clinical need, such as the life-saving Sovaldi medication'.

He added: 'The Minister ultimately decided not to proceed with the proposal. He discussed it with senior Cabinet colleagues who agreed with him that the proposal should not proceed and there was no Cabinet decision.'

Ireland exited the three-year IMF bailout programme on December 15, 2013.

The Department of Health's budget was not cut in 2014 or in 2015.

Conversely, the expenditure on health rose from €13.4bn in 2013, to €13.7bn in 2014, to 14.3bn in 2015, according to Government figures.

Asked about the secret nature of the proposal to make the date of the publication of the Bill the final deadline for accepting compensation claims for Hepatitis C families, a Department of Health spokesman said that it was 'normal practice' for Government memos 'to be prepared on a confidential/secret basis'.

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CORRECTIONS & CLARIFICATIONS

THE Irish Mail on Sunday strives for complete accuracy in every article but it is inevitable when working against deadlines that mistakes are sometimes made and misunderstandings arise. We have always been ready to publish corrections and we do our utmost to ensure this happens quickly and prominently. If you feel that any of our coverage is incorrect or incomplete, please email: corrections@mailonsunday.ie Letters for publication should still be sent to: letters@mailonsunday.ie



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Victims' children

LEO VARADKAR brought a memo to Cabinet when he was health minister proposing to secretly remove redress entitlements of family members affected by the Hepatitis C scandal in 2015.

More than 1,600 people contracted Hepatitis C from contaminated blood transfusions provided by the health service in what was described as the 'biggest health scandal in the history of the State'.

To date, more than 340 of these people have died and an ongoing compensation tribunal has so far dealt with more than 5,000 claims from victims and their relatives.

But according to a leaked government document, in May 2015 Mr Varadkar proposed savings of between €260m and €1bn that could be made through a series of cuts to the compensation measures.

The proposed cuts involved legislative changes to limit various entitlements and to completely exclude dependent relatives of those infected from the scheme in the future.

In order to ensure that news of the planned measures did not spark a new wave of claims from dependants, the Memorandum for Government stressed the proposal must remain secret.

The memorandum states: 'The Minister for Health considers it important that the drafting of the legislation remains secret to protect the financial interests of the State.'

'It is proposed that the legislation includes a provision whereby it would take effect from the date of publication of the Bill, the document continues.

'In light of the above, the Minister for Health is seeking that the drafting of this legislation be prioritised.'

If these proposals had been accepted, the entitlements of dependants of Hepatitis C victims would have been cut off without warning.

Ultimately, however, the plans did not

'One death usually leads to many claims'

proceed, and the terms of the compensation tribunal remain unaffected.

According to confidential records from the Department of Health when Mr Varadkar was minister, months of planning went into the proposal to limit entitlements.

Work on the proposals continued even after Mr Varadkar publicly declared in 2014 that he had no plans to amend the entitlements of victims.

'I have no proposals to make changes to the Hepatitis C Compensation Tribunal Acts or to alter the terms of the Hepatitis C/HIV Tribunal,' he told the Irish Times on November 10, 2014.

Mr Varadkar's denial was sparked by revelations that a previous health minister, Mary Harney, had drawn up similar plans several years beforehand.

Despite Mr Varadkar's denial, Department of Health records show his most senior officials continued to develop plans that would have cut entitlements for victims' dependants, culminating in the May 2015 Memorandum for Government.

The memorandum and associated files were provided to the MoS in a protected disclosure by the Department of Health whistleblower, Shane Corr.

The records show that, just before Mr Varadkar took office as minister on July 11, 2014, the department was holding a number of top-level meetings on the matter.

The idea of amending the tribunal legislation appears to stem from 2009, when the attorney general

Hepatitis C victim's shock at proposals

By Nicola Byrne

A WOMAN who was infected with Hepatitis C from contaminated blood products has described draft proposals intended to limit compensation for survivors' dependants as 'shocking'.

Mother-of-three Laura O'Brien was responding to the proposals in a Cabinet briefing document in 2015 by then-health minister Leo Varadkar, which aimed to make it harder for survivors and their families to seek compensation after being infected in Irish hospitals.

The proposals also related to people who contracted HIV from contaminated products.

Ms O'Brien, 69, who has a bleeding disorder, was infected five times with the blood product Anti-D in the 1980s. She was given a terminal diagnosis twice and still suffers with multiple health problems.

In 2017, the Limerick woman was appointed to the Consultative Council on Hepatitis C by then-minister for health Simon Harris.

Mr Varadkar's proposals suggested limiting access to State compensation only to people who received the blood products, and not their families.

It also envisaged narrowing the dates during which a person must have received blood and blood products in order to be eligible to apply for compensation.

Responding to the proposals, Ms O'Brien told the Irish Mail on Sunday: 'As a medical doctor and as the caring person he portrays himself as, I think people will be shocked at the changes Leo Varadkar sought to

EXCLUSIVE
By MICHAEL O'FARRELL

INVESTIGATIONS EDITOR

recommended an anomaly exposed by a High Court case be corrected.

The anomaly allowed dependants to make a claim to the tribunal after the death of an infected person, even if they had already received a full and final award when they were alive. It appears this anomaly has still not been rectified.

Instead of limiting the issue to the identified anomaly, the department proceeded to draft far wider plans to cut entitlements.

On June 25, a note for the department's top-level management board detailed the savings that could be made from the proposals.

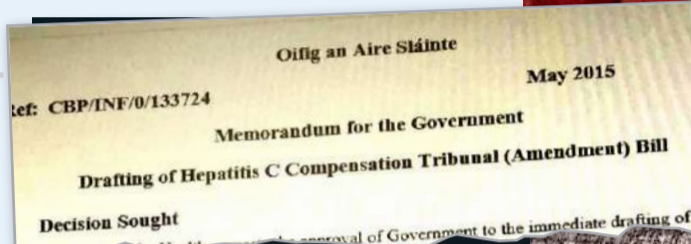
'The tribunal has cost €1.086bn

to the end of 2013,' it reads.

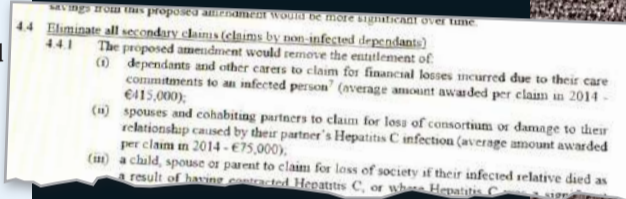
The document further warns the estimated future cost could come to an additional €1.23bn.

'This actuarial forecast predicts that two-thirds of the future expenditure will go on awards made to the never-infected relatives of infected people with only one-third going on awards to those who were infected,' the note states.

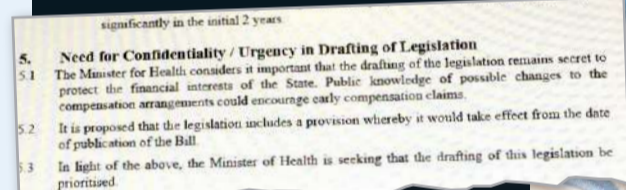
The brief confirms that, under Enda Kenny's government in 2011, the Department of Public Expenditure and Reform concluded: 'The issue of closing off options and securing savings from claims or potential claims from family mem-



CABINET MEMO MAY 2015
The proposal to limit entitlements to compensation from Hep C blood tribunal



The highly controversial plan was to eliminate entitlement to compensation of dependent family members of victims of the 'bad blood' scandal



The memo urged secrecy until a draft law was published in order to avoid a rush of compensation claims from those affected

bring in. It really makes me angry that these things were even considered.

'To attempt to deny compensation to the families of people who were infected is just so wrong. I mean, people died here. Some people just had new babies. Who was going to take care of them?'

The contaminated products were given to new mothers in

maternity hospitals between the late 1970s and early 1990s. In 2002, the compensation scheme for patients who developed Hepatitis C was extended to those who contracted the HIV virus in similar circumstances.

Ms O'Brien said of the proposal to narrow the eligibility dates: 'Infected blood was still being given as close as 1990. Narrowing the date range

[would have] shut people out. 'Attempting to deny people the right to return to the tribunal if they find more evidence relating to their infection is an absolute scandal.'

'Irish hospitals kept very poor records in those days, and the fact is that many people could not produce hard evidence of when they had been infected.'

bers (as opposed to the cohort directly affected) should be pursued for the Hepatitis C Compensation Tribunal, through legislation, if necessary.'

The note confirmed the previous Fianna Fáil/Progressive Democrat administration had approved and drafted a Bill to achieve this. This Bill was never progressed, but the issue remained live during Mr Varadkar's time in charge of the Department of Health.

Documents show the proposals were discussed at a December 3, 2014 meeting of the department's 'Senior Officials Group'. A brief on the matter was prepared in advance by an official from the department's Cancer, Blood and Organs Policy Unit. It was written

VILIFIED:
Michael Noonan



on November 27, 2014, 17 days after Mr Varadkar's reported denial of any such plans.

It appears from the brief that the development of breakthrough medications for Hepatitis C prompted the department to reopen the issue of compensation cuts.

The department had allocated €30m for the new drugs, called Direct Acting Antiviral therapies, which were found to be effective.

'Against this background of huge strides forward in the treatment of Hepatitis C, the amendment of some aspects of the Hepatitis C Compensation Tribunal Acts could be considered,' the November 2014 brief reads.

It adds that, 'without legislative change, the tribunal will continue to make payments [to non-infected relatives] for many years into the future.'

The document said it

would get nothing



INFECTED:
Laura
O'Brien now
suffers with
her health

COMMENT

Ivana Bacik Page 22
Ger Colleran Page 23
John Lee Page 28

'They had to hire people sometimes to look for that evidence and that cost a lot of money. Of course people found it hard to prove. The State shouldn't have been attempting to work against people like this. It was obviously at fault. 'I have multiple health problems and it is the State's fault. I never asked for any of this.' According to latest available

figures, the tribunal set up to compensate people infected by contaminated blood paid out more than €5m in 2020. The Hepatitis C and HIV Compensation Tribunal paid awards in 38 cases in that year, with approximately 377 initial claims still awaiting hearing at that time. The tribunal is still processing claims, 28 years after it was first established.

was estimated that removing the entitlements of non-infected relatives would save the Exchequer between €560m and €890m. It said other measures, such as limiting relatives' access to the Tribunal Reparation Fund – which allows those affected and their families to accept a payment in lieu of aggrieved damages – could save a further €160m. The memorandum also notes that, without changes, the compensation scheme would, 'continue in existence until the last person infected with Hepatitis C dies and any claim lodged by his/her relatives is heard'. It adds: 'The Department is aware of at least one case where the tribunal found that a person had been infected with Hepatitis C in utero. 'The person involved is now aged 20 and it is possible that the tribunal could continue in existence for the next 60 years.' The brief also notes that claims

for assistance from relatives tend to follow the death of an infected person. 'Approximately 20 primary claimants die each year and this is likely to increase as the cohort gets older. One death usually leads to many claims,' it states. To address this, the memorandum proposed removing dependants' entitlements to claims of financial loss due to care commitments. It also suggested taking away dependants' entitlement to claim for personal injury cases as spouses and partners of those infected. And it further proposed removing dependants' entitlements to loss of society [non-economic loss] upon the early death of a loved one and their right to claim for post-traumatic stress. The brief concludes: 'Amendments, as proposed above, were considered in previous years and some drafting work was undertaken. If it is decided to progress

By Valerie Hanley

BRIGID McCOLE fought a long battle to find out the truth of how she became infected with hepatitis C.

The Donegal mother-of-12 was one of 1,600 people who was infected by contaminated blood provided by the national blood transfusion board.

Tragically, she died less than a week before her test case against the Blood Transfusion Service Board (BTSB), the State and the National Drugs Advisory Board was due to get under way in the High Court.

Just hours before her death on October 2, 1997, she felt forced to accept a settlement of £175,000 from the BTSB, the same sum she was offered and she refused five months earlier.

Then-health minister Michael Noonan of Fine Gael was vilified for supporting an aggressive legal challenge to Mrs McCole.

Just over two years earlier, the Positive Action group – which represented all those affected by the scandal – was told that unless its members agreed to accept compensation awarded to them by a tribunal they would face 'uncertainties, delays, stresses, confrontation and costs'.

But when Brigid McCole refused and instead decided to seek compensation through the courts, the State responded by insisting she could not protect her privacy by taking the case under an assumed name.

In a further bid to prevent the full extent of the scandal emerging, the BTSB lodged a sum of money in court. This is a legal device often used to settle an action before it is heard because it means if the court awards a lesser sum of money, then the person taking the action is liable for the entire costs.

Five days after Brigid McCole's death, under intense political pressure, Mr Noonan announced the establishment of the

with the changes proposed, it is expected that the legislation could be drafted within a number of weeks.'

Separate department files show a draft memorandum for Cabinet on these proposals was being worked on in April 2015. Various edits and changes were made before the memorandum was concluded in May.

Headed 'Memorandum for the Government', the document includes a reference number beginning CBP/INF. This indicates the document was a Cabinet Briefing Paper for information.

The memorandum states: 'The Minister for Health requests the approval of Government to the immediate drafting of a Bill to amend the Hepatitis C Compensation Tribunal Acts.'

'It is estimated that these amendments will reduce the future costs of the Tribunal by in the region of €260m.'

The memorandum then details the reasoning for the proposals presented in previous briefs – often word for word – and asks the Government to consider 'removing the entitlement of non-infected



DIED BEFORE COURT CASE: Donegal mother-of-12 Brigid McCole

Brigid was put 'through hell' by the State

Hepatitis C Tribunal of Inquiry. He was later forced to make an embarrassing apology after making 'insensitive remarks' in the Dáil about Mrs McCole and her legal team. Members of Positive Action walked out of the Dáil in protest when Mr Noonan asked if her solicitors would not have 'served their client better if they had advised her to go to the compensation tribunal early this year'. Afterwards, he accepted his remarks caused 'understandable

offence' to her family and other victims and apologised 'for any hurt I have caused'. Although diagnosed with Hep C in 1994, Brigid McCole had been ill for almost 10 years. Her daughter Brid told the tribunal of inquiry how her mother had 'gone through hell', and how in the latter stages of the illness the family would hear her screams of pain at night. Her dying wish was that the truth of how she suffered and the circumstances surrounding it would be revealed.

dependants to make a claim'. The memorandum adds: 'An argument for favourable consideration of this further amendment... at this time is that it would focus resources on the provision of new treatment regimens to the people infected with Hepatitis C, rather than on the provision of compensation awards to dependants of people who contracted

'Tribunal could continue for the next 60 years'

Hepatitis C but who never had the disease themselves.' Before concluding, the memorandum warns the proposal must remain secret – with any legislation backdated to when the Bill was published – to prevent a wave of claims from dependants. 'Public knowledge of possible changes to the compensation arrangements could encourage early compensation claims,' it states. In response to queries from the

MoS, a spokesman for the Taoiseach this weekend confirmed Mr Varadkar's proposal to change the terms of the Hepatitis C and HIV Compensation Tribunal were considered by Cabinet at the time. The spokesman stressed the proposal was 'considered in 2014 and 2015 when health budgets were being cut due to the deep recession the country was enduring at the time'. He added: 'Ireland was in a bail-out, the IMF was monitoring public finances and very difficult decisions were being taken monthly. The then-Minister for Health had a duty to consider all options for savings that would not adversely affect patients in need of medical care. This was one of those decisions. It would have not affected the entitlement to compensation of anyone infected with Hepatitis C or HIV.' He added: 'The Minister ultimately decided not to proceed with the proposal. He discussed it with senior Cabinet colleagues who agreed with him that the proposal should not proceed and there was no Cabinet decision.' michaelofarrell@protonmail.com