

First-ever statement of litigation principles to guide State is long overdue and extremely important

Views may differ over what is in 'the public interest'

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The 15 principles mark the first clear statement concerning how the State should conduct litigation. Photograph: Bryan O'Brien



Mary Carolan

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[The Government's approval of litigation principles](#) to guide government departments and State bodies in the conduct of litigation is an important development.

Drafted by Attorney General Rossa Fanning, the 15 principles mark the first clear statement concerning how the State should conduct litigation.

In light of several controversies over the years about the State's conduct of some litigation, including in defending claims over decades concerning illegal nursing home charges, such a statement is long overdue. Other controversies included the defence of the action brought by a dying Co Donegal woman, Brigid McCole, aimed at finding the truth behind the infected blood products scandal of the 1990s. Ms McCole was among many who contracted hepatitis C from the infected products.

Some of the controversies may have stemmed from failures of government rather than failures of lawyers. "Lawyers give advice, it's not always taken," as one senior source put it. The principles are aimed at both and designed to encourage better communication between government departments and agencies.

Admirably clear and succinct, the principles may be distilled into a policy statement that the State should act honestly, efficiently and in the public interest in the conduct of litigation. That, according to the principles, means acting honestly, promptly and efficiently; avoiding and settling litigation and apologising where appropriate; defending cases in the interest of justice; minimising legal costs and not taking advantage of poorer litigants.

The Attorney said on Wednesday the State "should act in the public interest, broadly construed, in pursuing litigation and should consider this broader public interest before taking certain procedural steps in litigation".

There may, some legal sources suggested, be divergent political and legal views about what is in "the public interest, broadly construed". How that plays out in practice remains to be seen.

The Attorney said the principles were "not intended to radically change how the State conducts litigation" and that many are already applied daily to the State's conduct of litigation. Some legal sources took issue with that, particularly concerning the State's resistance to costs applications in some matters, but others defended the State's approach as reasonable given its obligation to manage public monies efficiently.

The principles reflect a continuing move by the State towards a "model litigant" policy approach, as set out in the strategy statement of the Office of the Attorney General 2020-23, and akin to that pursued in Australia. The model litigant approach has been strongly advocated by retired High Court judge [Deirdre Murphy](#), most recently in an interview with The Irish Times.

While the principles are very much in line with the Australian model litigant approach, a legal source said there was "one important difference", that the Irish principles do not say the State will pay legitimate claims against it without the need for litigation.

"The State has a constitutional obligation to protect and vindicate the rights of citizens," the source said. "How can it ever be in the public interest not to pay a legitimate claim against the State?"

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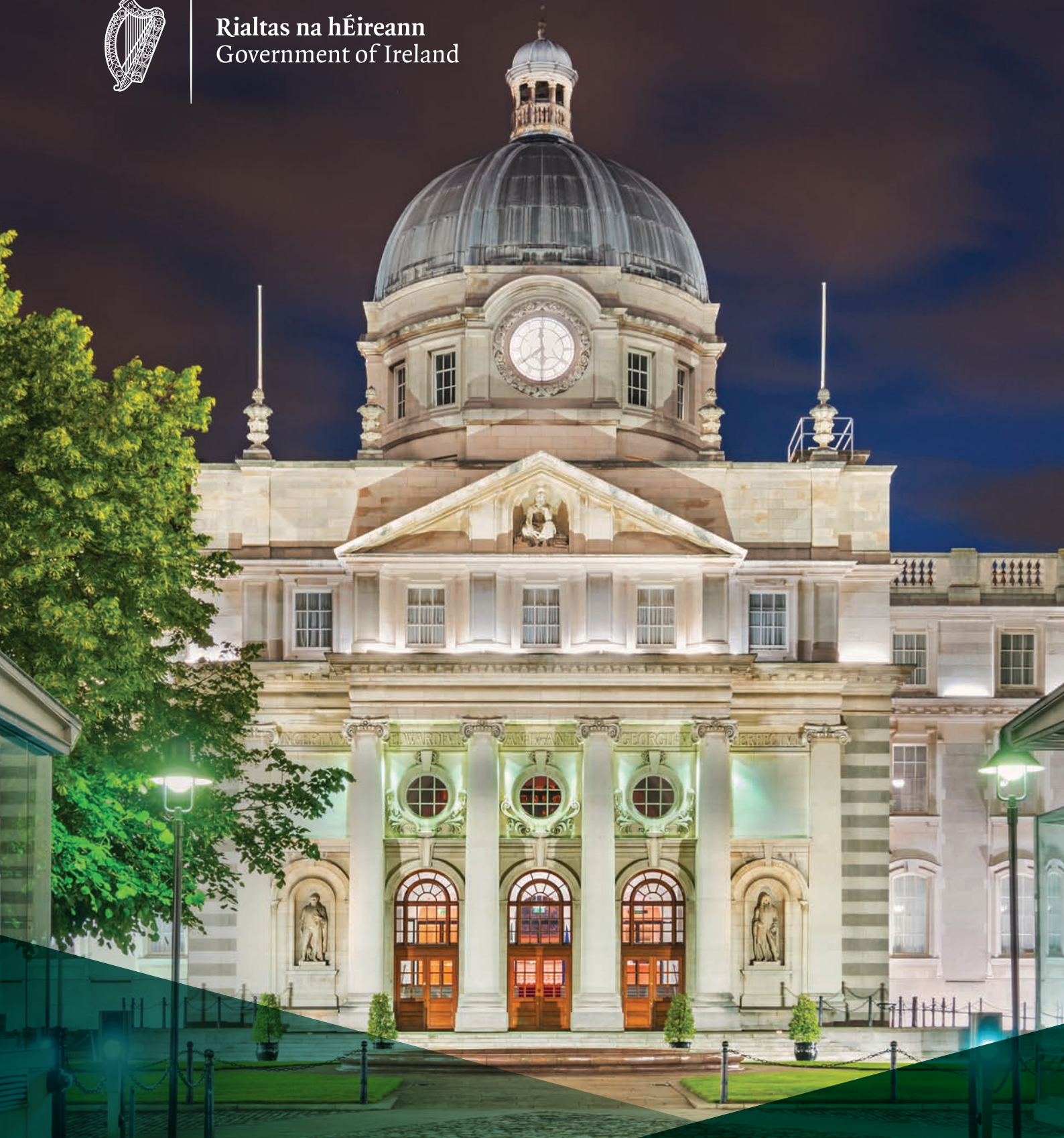
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STATE LITIGATION PRINCIPLES



INTRODUCTION

Article 30 of the Constitution provides that the Attorney General shall be the adviser to the Government in matters of law and legal opinion.

The role of the Attorney General is to act as litigator for the Government but it is the Government who is the litigant.

When the State engages in litigation, the Government and the Attorney General (through the Office of the Attorney General and the Office of the Chief State Solicitor) shall endeavour to act in accordance with these Principles.

These Principles shall serve as guidelines to assist the State in maintaining high standards of ethics and integrity in the conduct of litigation. It is also hoped that they will serve as a positive example to other litigants.

These Principles do not have, and are not intended to have, any binding legal effect. In particular, a failure to comply with these Principles cannot in itself defeat a claim or defence advanced by the State in any set of legal proceedings.



The State shall endeavour to conduct litigation in accordance with the following principles:

1. Avoid legal proceedings where possible

While the State may institute proceedings, it is more frequently the defendant or respondent in proceedings.

Nonetheless, the State will endeavour to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings, in line with the provisions of Section 14(1) of the Mediation Act, 2017 and in other cases, by participating in alternative dispute resolution processes where appropriate.

2. Deal with claims promptly

In order to facilitate the proper administration of justice, the State will seek to avoid any unnecessary delay in the management of claims and litigation.

Where possible the State will take a pragmatic approach to procedural applications and will use all reasonable endeavours to ensure that timelines imposed by legislation, rules of court, court orders or court directions are complied with.

3. Deal with litigation efficiently

The State will endeavour to conduct litigation efficiently, with an emphasis on narrowing the issues truly in controversy between the parties, and not requiring unnecessary proofs or evidence.

The State will support case management procedures that assist with the efficient progress of litigation.

4. Identify lead cases when multiple sets of proceedings on same legal issue

When defending mass claims or multiple sets of legal proceedings on the same or similar questions, the State will endeavour to assist the court and litigants by identifying appropriate lead cases with a view to facilitating the efficient and effective administration of justice.



5. Minimise legal costs for all parties

The State will seek to reduce the legal costs incurred by all parties to litigation by streamlining processes, narrowing the issues in proceedings and settling proceedings at an early stage where appropriate.

6. Make settlement offers, tenders or lodgments

Where appropriate, the State will encourage the settlement or compromise of proceedings by the making of settlement offers, tenders or lodgments.

7. Act honestly

The State will act honestly and will seek to assist the court by providing full and accurate explanations of all relevant matters of which the court requires to be aware, on affidavit, in witness statements, and in oral evidence as appropriate, depending on the nature of the proceedings.

8. Make discovery in compliance with best practice

Once ordered by a court, or once agreed by the parties, the State will seek to comply with best practice in how it makes and manages discovery.

9. Be consistent across claims

With due regard for differences between individual cases, or classes of cases, the State shall endeavour to be consistent in how similar proceedings are managed and settled.

10. Not to take advantage of the less well-resourced litigant

The State shall be conscious of the difficulties faced by under-resourced and lay litigants and shall endeavour to assist the court to manage these types of cases as fairly and expeditiously as possible.



11. Defend proceedings in accordance with the interests of justice

The State is entitled to rely on the same defences as any other litigant, but where consideration of different defences arises, the State shall consider where the interests of justice lie for all parties before relying on the defence.

12. Not to appeal unless there is a reasonable prospect of success or in the public interest

The State should not ordinarily appeal against adverse decisions unless there are valid legal or policy reasons for doing so.

The State may appeal where it is considered that the appeal has a reasonable prospect of success; clarification of the law or legal certainty is required; the appeal is supported by valid legal or policy reasons or the appeal is otherwise in the public interest.

13. Avoid bringing proceedings against another State Department or State body

Where legal issues arise between public bodies, the State will endeavour where possible to resolve such disputes without recourse to litigation. This may not apply where the State has a right of appeal under Statute against a decision of an independent agency or authority.

14. Seek to agree claimant's costs without the requirement for formal adjudication

Where a litigant has obtained a costs order against the State (that is not stayed pending an appeal or pending the conclusion of the proceedings), or the State has agreed as part of a settlement to discharge a claimant's costs, the State will seek to engage constructively on the issue with a view to consensually agreeing the legal costs, without the requirement for the costs to be formally adjudicated.



15. Apologise where the State has acted unlawfully

The State should apologise in appropriate cases and, in particular, where (a) the court has found that the State has acted unlawfully, or (b) prior to any such judicial finding, it has emerged in the course of litigation that the State has acted unlawfully.

For the avoidance of doubt, these Principles do not preclude the State from, in an appropriate case:

- (a) Contesting litigation;
- (b) Appealing a decision;
- (c) Settling proceedings, with or without admission of liability;
- (d) Relying on the entitlement to assert legal professional privilege; and
- (e) Applying, where appropriate, for recovery of the State's legal costs.

21 June 2023
ROSSA FANNING
ATTORNEY GENERAL



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

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WORLD EXCLUSIVE

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

FULL STORY PAGES 22-23

THE HSE FILES

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

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-Taioseach 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

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

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.'
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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.

'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.'



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

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

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, JUSTICE DENIED

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

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



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

'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

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.'

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.'

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.'



REPORT: Former Ombudsman Emily O'Reilly

Timeline of the State's 50-year care-charging scandal

can continue to charge.

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.

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.

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.

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.

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

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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.

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. '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.'

REVELATIONS in this newspaper today about how many of our most vulnerable citizens were treated by successive governments will tarnish the legacies of some public representatives who shaped the past two decades in Irish politics.

It has long been known that hundreds of thousands of families were illegally charged for the care of their loved ones over a 30-year period.

When some of these families sought redress in the courts, they were told they had no case, until they sought disclosure of documents that would likely prove their government was telling barefaced untruths.

It was then that the State moved to settle between 40% and 60% of their claims.

The reason was simple. Successive governments sought even one case they knew they could win, but could not do so. On a hiding to nothing, they fobbed off those seeking the justice they deserved.

This strategy initially came to light some years back, and memorably was highlighted by then-Ombudsman Emily

Leaders who failed our elderly citizens must now do the right thing

O'Reilly in the Who Cares? report in 2010. Although roundly condemned politically, these tactics were subsequently reapplied in secret by successive politicians, some of whom still serve in Government today, including at the Cabinet table.

Top-secret files shared by HSE whistleblower Shane Corr prove this. From Michael Noonan, Enda Kenny, James Reilly and Brendan Howlin all the way to now-Taoiseach Leo Varadkar, now-Justice Minister Helen McEntee, and her maternity leave stand-in Simon Harris, and successive attorneys general,

the obfuscation has been approved to prevent a dam-burst of claims that could cost the State up to €12bn in compensation. To those in power, the people seeking redress were dismissed as an underclass that could be blindsided to ensure no case was ever aired in court, lest it encourage others to launch claims of their own.

Many thousands never knew they were entitled to anything. There are families who were left in penury paying for residential care for relatives when it should have been delivered for free in public facilities to those

with medical cards, while others had to pay for private nursing homes when no public places were available.

Once again, we see those who are supposed to represent the people instead defending the State and its coffers against those very same people. Our politicians are called public representatives for good reason. We elect them, they are nominated to Cabinet, those nominations are approved by the Dáil, and they are appointed by the head of our State, the President.

Those implicated in this scandal who are still active in public

life face a choice: come out, hold your hands up, say the State was wrong, say they were wrong, reverse the strategy, and make good the appropriate redress for people affected.

Unless they do so, they will be rightly seen as an uncaring elite unworthy to fulfil the promise implicit in the foundation of our State and through subsequent legislation, that we treat our elderly and the families who care for them with the appropriate respect, dignity and support they deserve.

We have seen these tactics employed far too many times, from the Hepatitis C scandal, to providing school places for children with disabilities and, more recently, CervicalCheck. Over and over again, we have witnessed the State acting in inhumane ways to avoid estimated liabilities.

Our politicians knew what they were doing was wrong, as many of them had previously spoken out against the practice. This is not government by the people for the people – it is government against the people. And it will not stand.

Say my name, say my name ...but say it right, please

Niamh Walsh's Manifesto

THIS week, the name Niamh was ranked in the top 10 hardest names to have abroad. Casino operator Slotbox could have just asked me and I would have told them how other nations struggle with Irish names.

When I was about 14 I went on what was promised to be the holiday of a lifetime to Florida with my mum. The dream trip got off to a bumpy start after our plane stuttered just after take off from Dublin Airport.

It then had a minor crashlanding at Shannon Airport where we were turfed off and locked in a room in Shannon for the night.

RTÉ got wind of the stranded passengers and this was my first real introduction to news. After some fraught discussions, the pilot eventually agreed to fly to Florida. While some people didn't want to risk it, being a teenager, I thought if the pilot was willing to fly to Disneyland, then here I come. Thankfully we made it and a visit to Universal Studios was the reward for my youthful recklessness.

That's where my first encounter with the exoticism of my name occurred, in the unlikely form of ET. Before entering the ET ride, it was customary to input your name and when leaving the roller-coaster ET recites his famous line, and instead of saying [spoiler alert] 'I love you, Elliot', the animatronic extra-terrestrial is supposed the say: 'I love you, Niamh.'

In my case ET loved some young woman called 'NIA-AF'.

I managed to get over my disappointment, largely because my mum and I then went on a cruise around the Bahamas, where I picked up some trinkets. My shopping required me to declare my offshore spending to clear US customs. Crucially, the policy was that all passengers had to clear customs

before any passenger was allowed to leave the ship.

A cruise ship worker – more Gopher than Captain Stuber – made many repeated calls over the tannoy asking for a passenger by the name of 'Niam or Niah or Niah Walsh' to make their way to customs. This was a step too far. My terrible teen instincts took over and I refused to disembark unless they pronounced my name correctly.

A fair while later, and after a crash course in Irish name pronunciation by my mother who had heard all this unfolding, a clearly exasperated American voice boomed all over the ship, enquiring if there was a 'Niamh Walsh' on board. I answered, much to the delight of the other passengers. So remember, no matter how hard it might be to pronounce, I take the same view as Tina Turner (played by Angela Bassett) in What's Love Got To Do With It: The name is mine! So the least you can do is say it right.

Kylie's fashion faux puss

KYLIE J E N

NER looked like the cat that got the crème strutting into Paris Fashion Week, wearing a dress that had a lifelike lion's head stitched onto her shoulder.

Jenner's gown, designed by



MANE ATTRACTION: The claws were out for Kylie Jenner's dress

French fashion house Schiaparelli, was made of 'foam, wool and silk faux fur, and hand-painted to look as life-like as possible', and was one of a series of faux fur garments to appear on the catwalk. The collection also included a black wolf's head, modelled by Naomi Campbell, and a snow leopard gown, with an equally realistic head snarling from the bodice.

'NO ANIMALS WERE HARMED IN MAKING THIS LOOK,' the brand loudly proclaimed in caps on Instagram. But that totally misses the point in my view.

Stunts like this reinforce some people's world view that animals exist purely for our pleasure, entertainment or fashion.

The dress in question is, to my sartorial eye, ridiculous, non-functional, and pointless. For someone with Jenner's influence to step out with an – albeit imitation – severed lion's head stuck to her person and label it fashion is infuriating.

Intentionally or not, it promotes trophy hunting of animals, and it conveys the message that chopping off a creature's head is something that is not only socially accepted but should be celebrated and recreated.

And I am not a lone wolf in this thinking as one person posted: 'We have to stop showing animals as luxury "products". They may be made from foam but these are endangered species that have historically been

killed for their pelts to be turned into garments.'

If Kylie wants to change the world, then perhaps she should consider whether turning up with a severed synthetic human head on her dress would be acceptable.

Take your nasty bigotry elsewhere

'IF YOU'RE white and of a certain age, you're probably racist.' This statement was published in a national newspaper this week. It was uttered without a hint of irony, rancour, or regard to the truth.

Nor was it supported by any facts, figures, or peer-reviewed studies. Simply it was a case of, 'I say it, so it must be true.'

Such nonsensical inflammatory statements are akin to saying, 'if you're overweight, you're probably a glutton', or 'if you're unemployed it's likely you're lazy'. None of these utterances are true.

But sure what matter. Someone says older white people are a bunch of bigots; so it must be so.

While people are absolutely entitled to their opinions, they are most certainly not entitled to their facts. And the fact of this matter is bandying about wholly untrue tropes such as these does little but serve to anger, enrage and divide.

Keoghan's story is worthy of the screen

IRELAND'S Oscar nominations haul is a huge testament to the talent from our little island. While all the actors are worthy of praise, particular kudos must be given to Barry Keoghan.

The Dubliner's rise from foster care to global stardom is a story for the ages. Keoghan was shunted between 13 foster homes between the ages of five and 12 and in spite of his upbringing defied the odds and is now being toasted by the likes of Michelle Pfeiffer.

Keoghan is the embodiment of the maxim that while life is tougher on some, your start in life need not define your future. He has scripted his own life story, and it is one that hopefully is destined for a true Hollywood ending.

Irish Daily Mail

Good Health 12-PAGE PULLOUT INSIDE

TUESDAY, JANUARY 31, 2023

€2.20 (90P NI)

Dáithí Ó Sé: My health scare was an eye opener



Would you take pills made from poop?

Expert advice to shake off this winter's hacking cough

LEO 'SIGNED OFF SECRET NURSING HOME PAYOUTS'

Confidential documents show Taoiseach was aware of legal ploy while two other current ministers were warned over strategy

EXCLUSIVE

By Craig Hughes, Michael O'Farrell and Brian Mahon

TAOISEACH Leo Varadkar signed off on secret payouts for families who were overcharged for nursing home care, Department of Health documents show.

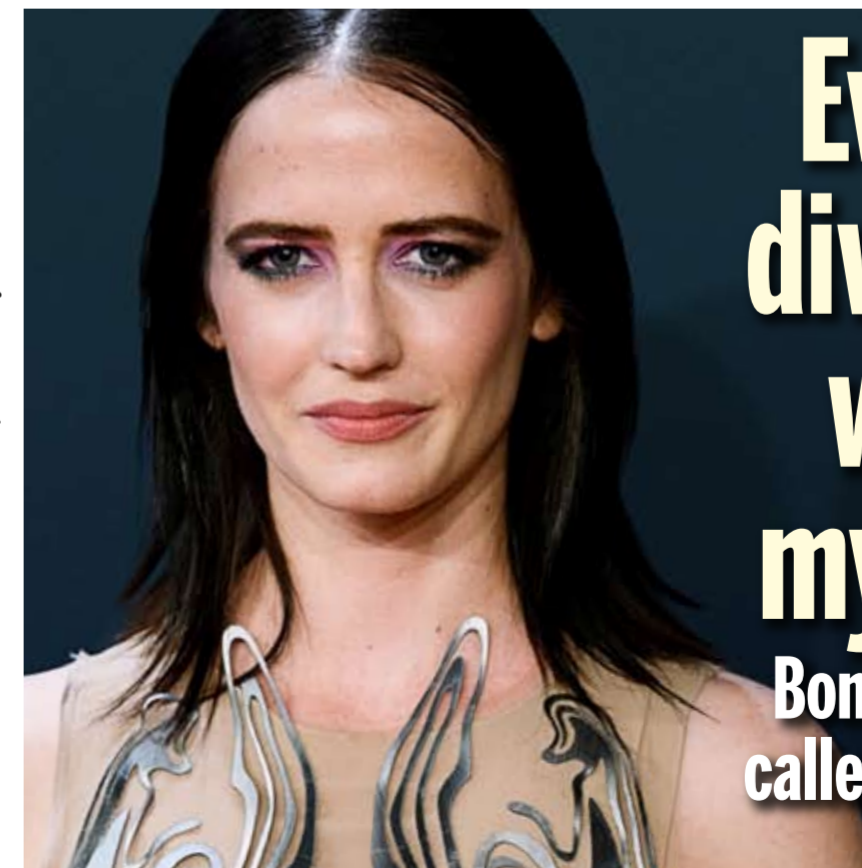
The State faced the prospect of a €12billion liability in compensation for hundreds of thousands of families who were wrongly charged for the care of their loved ones over a 30-year period.

The Taoiseach told The Pat Kenny Show on Newstalk yesterday that he 'was never party to devising or agreeing a legal strategy in relation to nursing home charges'.

However, a confidential document shows Mr Varadkar approved a continuation of a policy of compensation and that cases brought should be settled within 40%-60% of the claim's value.

A separate confidential document also shows that two current Cabinet

Turn to Page 6



Eva: I'm not a diva, rude texts were simply my Frenchness

Bond girl in \$1m court fight called producers 'super weak'

SEE PAGE FIVE

Ministers knew of secret legal ploy

FILES THAT LAY BARE HOW POLICY OF SECRECY WAS PURSUED

Continued from Page One

ministers, Further Education Minister, Simon Harris and Justice Minister Helen McEntee were warned about the explosive nature of the secret legal ploy in 2017.

The memo warned Mr Harris, Ms McEntee and then Attorney General Máire Whelan of the importance of managing the historic long-stay litigation 'with extreme care, discretion and confidentiality due to the very substantial level of liability to which the State could potentially be exposed following an adverse outcome'.

At the time of the memo, 220 cases remained unresolved. It was obtained by this newspaper through a protected disclosure by whistleblower Shane Corr.

At the weekend, The Irish Mail on Sunday revealed that successive taoiseach and health ministers agreed a secret plan to hide the true scale of the State's liability for illegal nursing home charges, in a bid to prevent massive payouts.

The secret files confirm the State faced the prospect of a €12billion liability in compensation for hundreds of thousands of families who were wrongly charged for the care of their loved ones over 30 years.

In many cases, vulnerable families suffered extreme financial hardship as a result of the illegal charges.

Senior government leaders from Fianna Fáil, Fine Gael, Labour and the Progressive Democrats acted in unison to thwart repayments worth billions.

Former taoiseach Enda Kenny yesterday declined to comment on his knowledge of the controversy, while former finance minister Michael Noonan told this newspaper: 'I don't know what you're talking about' and said he would not be commenting.

'We must consider how to manage remaining cases'

ing. A Labour Party spokesman insisted that their TD for Wexford, Brendan Howlin, a former minister for public expenditure, identified as having been briefed on the strategy, 'was not involved in any decision in relation to a legal strategy on nursing home charges'.

Former taoiseach and Labour Party leader Eamon Gilmore said he had no recollection of being briefed on the issue.

A confidential briefing document for the assistant secretary at the Department of Health on May 5, 2016, the day before Mr Varadkar stepped down as Health Minister, appears to contradict the Taoiseach's comments yesterday about being unaware of the State's ploy not to pay out on illegal nursing home charges.

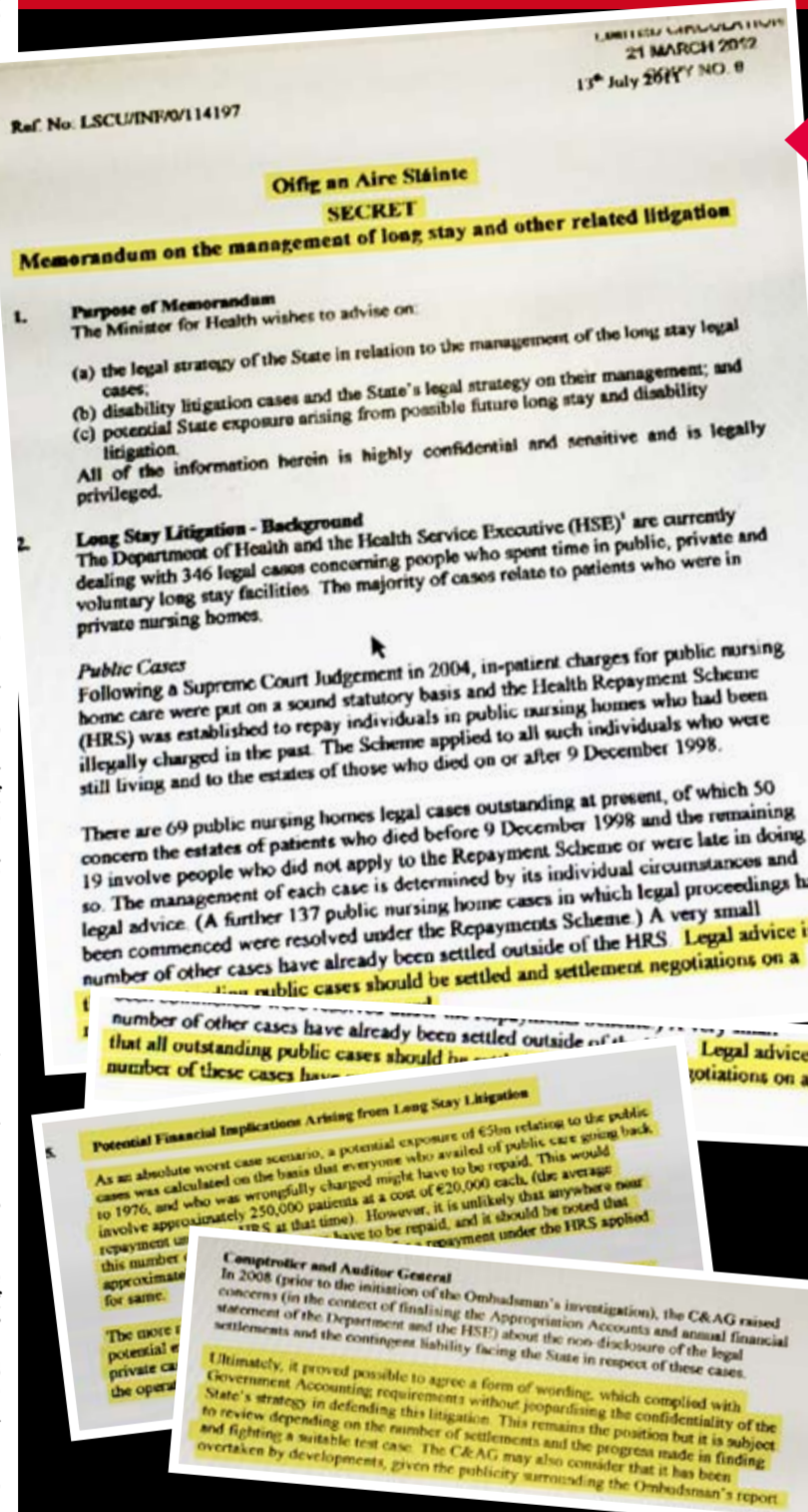
In relation to 'settlements', the note outlines the department's legal advice 'against making discovery' and says that it is 'necessary to settle the most advanced cases'.

It states: 'We must consider how to manage the remaining cases in order to achieve the most cost-effective outcome, reduce legal costs and avoid, in so far as possible, the instigation of further litigation against the State.'

'The Department has settled a number of cases every year over the last since 2007 and in each instance has explored all options in relation to running the case, or otherwise. At present, there is no obvious lead case, and therefore settling, for the best possible economic value, is the most appropriate course of action.'

Crucially, the note indicates Mr Varadkar, while Health Minister, was

Report: Former Ombudsman Emily O'Reilly



THE 2011 DOCUMENT

The following are extracts from the Government's original 2011 secret memorandum. They deal with the secret settlement strategy, the potential cost of the issue and the manner in which this potential liability was kept out of Comptroller & Auditor General reports.

EXTRACT 1

'Legal advice is that all outstanding public cases should be settled and settlement negotiations on a number of these cases have commenced.'

EXTRACT 2

'As an absolute worst case scenario, a potential exposure of €5bn relating to the public cases was calculated on the basis that everyone who availed of public care going back to 1976, and who was wrongfully charged, might have to be repaid. This would involve approximately 250,000 patients at a cost of €20,000 each...

...The more recent detailed work undertaken as part of the Risk Analysis estimates a potential exposure of approximately €7bn in respect of existing and potential private cases.'

EXTRACT 3

'In 2008 (prior to the initiation of the Ombudsman's investigation) the C&AG raised concerns (in the context of finalising the appropriation accounts and annual financial statement of the HSE) about the non-disclosure of the legal settlements and the contingent liability facing the State in respect of these 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 2016 DOCUMENT

This extract is from a brief compiled for the assistant secretary within the Department of Health on May 5, 2016 - on Leo Varadkar's second last day in office. Marked 'CONFIDENTIAL', the brief provides an update on the 233 'live cases' still being dealt with at the time - and states that 'the Minister' has agreed to the continued secret strategy.

'In the absence of a suitable test case, it has been agreed by the Minister and the AGO [Attorney General's Office], that settlements are made within the range of 40% to 60% of the capital value of the claim and on the best terms possible. Settlement amounts are kept under continuous review to ensure that there is no significant increase in the amounts paid in settlements. In 2014, the average percentage of claims settled was 41.47% of the amount claimed by the Plaintiff. In 2015 this percentage was 37.74%.'

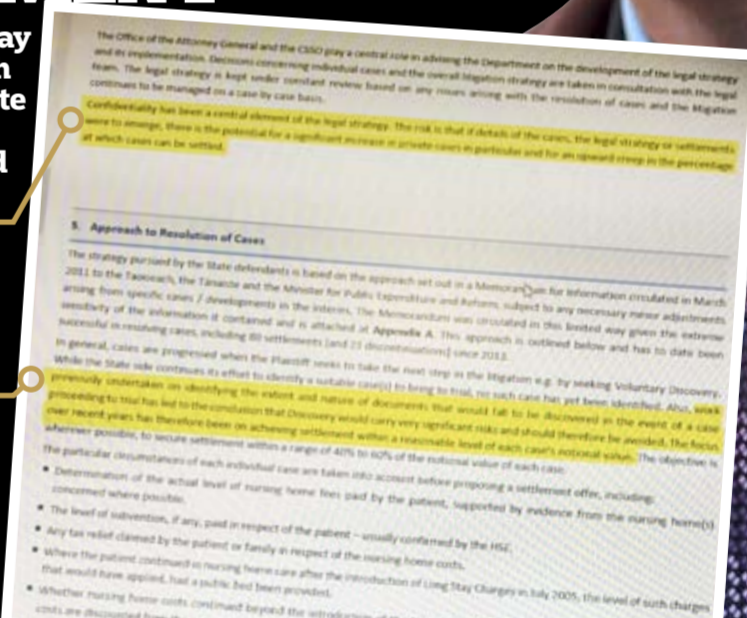
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THE 2017 DOCUMENT

These two extracts are from an April 2017 'memorandum on long stay litigation' prepared for then Attorney General Máire Whelan, Health Minister Simon Harris and Helen McEntee, who was Minister of State for Mental Health and Older People. The memorandum includes a copy of the original 'secret' 2011 memorandum as an appendix - and provides an update on the ongoing strategy.

Confidentiality has been a central element of the legal strategy. The risk is that if details of the cases, the legal strategy or settlements were to emerge there is the potential for a significant increase in private cases in particular and for an upward creep in the percentage at which cases can be settled.'

'Work previously undertaken on identifying the extent and nature of the documents that would fall to be discovered in the event of a case proceeding to trial has led to the conclusion that Discovery would carry very significant risks and should therefore be avoided. The focus over recent years has therefore been on achieving settlement within a reasonable level of each case's notional value.'



Denial: Taoiseach Leo Varadkar

involved in the continuation of the settlement policy in relation to the nursing home payments.

In the absence of a suitable text case, it has been agreed by the Minister and the AGO [Attorney

General's Office], that settlement are made within the range of 40% to 60% of the capital value of the claim and on the best terms possible', the briefing note reads.

The three Coalition party leaders 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.

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

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

The Eastern Health Board provides the department with legal opinions showing

met last night ahead of their weekly Cabinet meeting today. The Irish Daily Mail can also reveal a briefing document prepared for Mr Harris and Ms McEntee in 2017 warned of the importance of managing the long-stay litigation 'with extreme care, discretion and confidentiality due to the very substantial level of liability to which the State could potentially be exposed'.

Mr Harris's spokeswoman said he does not have access to the relevant document and has not been Health Minister since 2020. She added: 'The minister is engaging with the Department of Health on this matter. He notes the Attorney General has also been asked to examine these matters.'

Tánaiste Micheál Martin yesterday denied being aware 'of any legal strategy or memo on nursing home charges'. The Government has asked the Attorney General to look into the issue. Mr Martin's political career was almost derailed in 2005 when the controversy first emerged, after 28 years of illegitimate patient overcharging.

In 2005, the Travers Report contained conflicts of evidence from Mr Martin, then Health Minister, and his then secretary general Michael Kelly. Mr Kelly claimed he clearly recollected twice discussing the legal issues arising from the advice of a health board on the charges with Mr Martin, who said he never received such advice.

A Government spokesman said yesterday: 'The legal strategy predated July 2011 and was pursued by successive governments. It has been misrepresented. The strategy was to defend the cases relating to private nursing homes on several grounds, in particular that medical card holders did not have an unqualified entitlement to free private nursing home care. A limited number of individual cases were settled where there were complicating factors. No case ever proceeded to a hearing. In the case of public nursing homes, a scheme was put in place and €480million was paid to former residents or their families. [Health Minister Stephen] Donnelly has sought advice from the Attorney General and a detailed briefing from his department.'

TIMELINE OF THE STATE'S 50-YEAR CARE-CHARGING SCANDAL

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 can continue to charge.

1978 The Eastern Health Board provides the department with legal opinions showing

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 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.

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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 Leo Varadkar is replaced as Health Minister by Simon Harris.

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

They chose to drag old people and families through this for decades to save money

IMAGINE you've just come into government. Imagine you're told there's a problem. The problem is that hundreds of people are suing the State because they were illegally charged for nursing home care.

Your own legal advice – from the Attorney General – is that you cannot win.

Now, you have a choice.

You can follow the advice of the Attorney General, which is that cases should be dragged out and then quietly settled at the point of discovery.

Or you can begin considering ways of repaying something to those who lost out – albeit within the constrained financial circumstances of the time.

In this instance, the Government chose the secret containment strategy.

Why? Because a lot of money was at stake.

According to this Government's own analysis, the cost could amount to €12 billion.

This estimate was made up of two separate categories of cases. Firstly, as many as 250,000 patients with medical cards had been improperly charged in public nursing homes since 1976.

According to the memorandum, 'as an absolute worst case scenario, a potential exposure of €5 billion' could exist relating to

There is no satisfactory solution to the issue of redress

the public cases. This figure was calculated on the basis that 'everyone who availed of public care going back to 1976 and who was wrongfully charged might have to be repaid'.

The files show the Government did not believe it could win any of these public cases.

But there was also a second category of claim, involving residents who had no choice but to pay for places in private nursing homes because no public places had been available to them for family members.

According to Government estimates, these claims represented 'a potential exposure of approximately €7 billion in respect of existing and potential private cases'.

The files show the Government tried to find a winnable case in this category so a precedent could be set – but was unable to find one.

So, those few Government leaders privy to the situation in July 2011 chose the secret containment approach advised by the Attorney General.

They did so within months of an alternative being suggested by the then Ombudsman, Emily O'Reilly.

In the conclusion of her 2010

'Who Cares?' investigation into the illegal charges, the Ombudsman stated: 'As a result of these failures, very many older people (and their families) suffered significant adverse affect over several decades. There is no satisfactory solution to the issue of whether there should be financial redress for those who have been adversely affected by the State's failure to provide long-stay care.'

Given the strained economic circumstances the country was facing in 2010, the Ombudsman

accepted that the cost burden might be too much for the State, but still favoured some form of 'limited scheme' for those who suffered most hardship.

'In present circumstances, it appears this is not a cost which the State can meet. Nor is it likely that the State will be in a position to meet this type of charge for many years to come,' the Ombudsman wrote.

'On the other hand, not to recommend financial redress might be seen as condoning maladministration and allowing bad prac-

tice to go unchecked. It would also mean that individual people and their families are being left with nowhere to turn and with a financial burden to bear which, as the Ombudsman understands the law, should have been borne by the State.'

The Ombudsman also suggested the creation of an independent group.

'Thanks to whistleblower Shane Corr, we now know this practice was precisely the strategy that Enda Kenny's government – and subsequent administrations – secretly adopted having previously criticised it in opposition.



MICHAEL O'FARRELL
Investigations Editor

instances where those claimed to be affected belong to a vulnerable group in society'.

The idea is based on the premise that the State should do so 'not simply in legalistic terms, but in terms which have regard both to legal rights (including human rights), to the State's finances and the overall public interest.'

None of these suggestions appears to have resonated with any of the Government leaders and ministers who agreed to the secret 2011 strategy – which was adopted within months of the Ombudsman's report.

It is not as though those agreeing the 2011 strategy were ignorant of the Ombudsman's report.

Upon its publication – and while still in Opposition – James Reilly tabled a Dáil motion on the matter.

He used the motion to lambast the then Government's refusal to provide any information about long-stay legal cases to the Ombudsman.

Enda Kenny too, in opposition, was vociferous about the State's duplicity, accusing the Government of engaging in a 'dishonest defence'.

'They deny the illegality of charges and deny that monies

They deny the illegality, they deny that monies were taken

were taken. They deny the entitlement to restitution,' he told the Dáil in 2006.

During her 2010 investigation into more than 1,200 cases, the Ombudsman had sensed the approach of the health authorities – but had no proof.

'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; that is, rather than have its documentation provided to the plaintiff, the State opts for a settlement,' the 'Who Cares?' report reads.

The report pointed out that if this were the case, it would be a 'repeat of the practice which prevailed within the health boards for many years when medical card patients were being charged illegally for long-stay care'.

'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.'

'Thanks to whistleblower Shane Corr, we now know this practice was precisely the strategy that Enda Kenny's government – and subsequent administrations – secretly adopted having previously criticised it in opposition.

State's €12bn theft shows CervicalCheck row was no one-off



Right royal mess: Prince Andrew is launching a bid to clear his name

DEFENCE IS NOT HOLDING WATER

HAVING discovered he is no longer the most reviled member of the British royal family, that honour apparently having gone to his nephew Harry, Prince Andrew has embarked on a bid to clear his name over the Virginia Giuffrè business (though it's probably too late to retrieve the €13.5million he reportedly paid to settle her case).

One of her claims was that they'd frolicked in a bath at Ghislaine Maxwell's London house, but, last week, Maxwell's brother Ian supposedly produced evidence to show that two people couldn't share that bath – it was a picture of two people, wearing 'Andrew' and 'Virginia' masks, sharing the tub. Not the most persuasive evidence, M'Lud, and it was called 'absurd' by Spencer Kuvin, lawyer for nine of Jeffrey Epstein's victims. Meanwhile, Ghislaine's claim that the famous picture of Andrew and Virginia in her house was a fake has also been debunked – the back of original clearly shows the address of the printing shop where it was developed in March 2001. Back to the drawing board, Andy.



BRENDA POWER

Finally, in 2005, the Supreme Court found that people who had paid unlawful charges were entitled to refunds. But when the scale of the department's legal liability – up to €12 billion – emerged, then-Health Minister James Reilly circulated a secret memo. It acknowledged that the State couldn't win these cases so they were to be approached with 'extreme care, discretion and confidentiality... if details of the cases... were to gain a high public profile, it would spark a large number of claims'.

Once again, legitimate claims, from families hit with illegal charges, which often left them in severe financial difficulties. Successive Health Ministers knew about, and followed, this advice.

Belligerent

So instead of looking after the welfare of its citizens, caring for the needs of the elderly and preserving the dignity and quality of life of their hard-pressed relatives, this State took their money on false pretences, and then employed the most belligerent and cunning legal strategies to prevent them recovering it. And as recently as 2017, then-Health Minister Simon Harris and current Justice Minister Helen McEntee received a confidential update on the scheme reassuring them that 'the current approach is working well'.

That's the approach, let's be clear, of bullying, delaying and denying, of secrecy and obfuscation, and of using every means in the State's power to hold onto money stolen from ordinary families over 30 years, money desperately needed by old people in their final years – pocketed by the same State that was supposed to be protecting them.

FOR up to 30 years, money was systematically stolen from the savings of thousands of elderly people and their relatives all across this country. This misappropriation of ordinary families' often-modest means was done, according to a 2010 investigation, in 'disregard of the law'. But it was a deliberate strategy, and it went on for decades because these ill-gotten gains were 'an important source of funding' for the thieves.

And when the victims of this shameless scam discovered that they had been fleeced, and went to the law to try to retrieve their money, a new strategy was required.

The victims were told to get lost, that they didn't have a leg to stand on. Most of the families, the perpetrators reckoned, wouldn't have the resources to fund a top-notch legal team, and the poor suckers would be scared off by robust and combative defence tactics – their savings would be gone, their farms or family homes might have to be sold, if they lost.

Strategy

Except the perpetrators knew that their victims couldn't lose, and that's where strategy number three kicked in.

For those who weren't frightened off, or who didn't conveniently die off, the instruction to the lawyers was to pay them off, settle their cases at all costs.

Because if any one of those families got inside the door of a court, they were bound to win, and then the game was up. Once one family is successful in court, the whole house of cards comes tumbling down.

If the news of an award were to hit the media, thousands of other victims would come forward with their claims – and they were legitimate claims, for money wrongly taken from the pockets of vulnerable people, there was no question about that.

So here, in a nutshell was the plan: step one, take the money illegally. Step two, fight the victims' efforts to get it back. Step three, buy off those victims who wouldn't back down in case the rest got wind of their rights, and, for God's sake, keep a firm lid on the whole sordid business.

Par for the course, you might think, for any morally dubious outfit, except the main player here wasn't a rogue actor; it was

the Government of Ireland. It was successive Ministers for Health and Justice going back to 1976. It is a State-sponsored fraud of massive proportions, involving up to €12 billion in entitlements withheld from needy people.

And it is a scandal that proves the CervicalCheck cover-up, exposed by Vicky Phelan's courage, was not an Irish government's first rodeo – the strategy of denial, misinformation and secret payoffs was tried and tested long before then.

This State has form when it

comes to putting its own interests above those of its citizens.

The story was broken by our sister paper, The Irish Mail on Sunday, based on documents provided by Department of Health whistleblower Shane Corr. He was, he said, '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'.

The money they'd saved for their funerals, the price of a final family holiday, even the cash that could have provided them

DEATH FOOTAGE HARD TO WATCH

SINCE I prefer my horror scenes to be fictional and computer-generated, I could barely watch the footage of those five rabid police officers beating Thyse Nichols to death as he shouted for his mom – he was just 80 yards from the safety of home – for help. He was clearly the only calm person in the fray, as he tried to comply with all their vulgar, abusive and irrational commands, to the extent you'd have to wonder if the officers were high on some illicit substance. If that same footage showed Russian soldiers beating a helpless Ukrainian civilian, the UN would be investigating a war crime. And if the five thugs had been white, America would now be in the throes of a civil race war.

TO TELL THE TRUTH, YOU'RE BOTH LIARS

AT the weekend, former British PM Boris Johnson, pictured, claimed that when he tried to talk Vladimir Putin down from a war footing before the Ukraine invasion last February, the Russian President threatened to assassinate him. He says Putin told him: 'Boris, I don't want to hurt you, but with a missile it would take only a minute.' The Kremlin angrily denied the claim, calling it a 'lie'. Talk about pot, kettle and black, although, when it comes to Boris and Vladimir and their relationships with the truth, there's definitely a pair of them in it.





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Taoiseach doubles down on nursing home overcharging amid outcry over legal stance

VARADKAR: STRATEGY WAS SOUND

By **Brian Mahon, Michael O'Farrell and Craig Hughes**

TAOISEACH Leo Varadkar yesterday said he 'must have been aware' of a Government plan to curb payments to families who were overcharged for nursing home care.

And he doubled down on his defence amid an outcry yesterday, as he said medical card holders were not entitled to free nursing home care. 'It was never the policy of



Why the nursing home row hits a raw nerve: I sold the family house I inherited to pay for my parents' care

MATT COOPER

SEE PAGE 12

the Government nor the intention of the Oireachtas to create such an entitlement,' he told the Dail. Sinn Féin leader Mary Lou McDonald angrily attacked the Government's handling of the case, saying that successive governments had 'ripped off hundreds and thousands' of elderly

citizens and their families by 'unlawfully charging them' for nursing home care. The State had faced the prospect of a €12billion liability in compensation for thousands of families who were wrongly charged for the care of their loved ones over a 30-year period. Mr Varadkar confirmed

that the Attorney General would compile a report into the overcharging, with officials from the Department of Health set to appear before the Oireachtas Health Committee. Mr Varadkar also said he would have signed off on the

Turn to Page 6



Splash-back: Pamela revives her Baywatch look

SEE PAGE THREE

Leo: I would have signed off policy

Continued from Page One

legal strategy if he had been proactively asked to do so. He said: 'I do not specifically know if I was asked to sign off on continuing it, but as I have said: if I was, I would have because this is a sound policy approach and a legitimate legal strategy by the Government.'

Mr Varadkar told the Dail yesterday the €12 billion figure was out of date and had not materialised.

He said: 'The strategy was to defend the cases relating to private nursing homes on several grounds, in particular that medical card holders did not have an entitlement to free private nursing home care. It was never the policy of the Government nor the intention of the Oireachtas to create such an entitlement.'

Mr Varadkar said that he 'must have been briefed' on the legal strategy.

'What I can say is that the policy and strategy was devised and agreed upon prior to me becoming minister for health. I do not know if I was specifically asked to sign off on it being continued but if I had been asked I would have agreed to do so. This was a sound policy approach and a legitimate legal strategy by the government at the time, by previous governments and by governments since.'

Ms McDonald responded that the charges were illegal and had pushed people into poverty.

'Despite consistent, repeated legal advice that those charges were illegal, the Government continued to force vulnerable people

SUNDAY

The Irish Mail on Sunday reveals that 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.

MONDAY MORNING

Speaking on Newstalk's The Pat Kenny Show, Taoiseach Leo Varadkar says that he did not receive a secret memo outlining the legal strategy and that he had no input into any legally strategy.

'I was never party to devising or agreeing a legal strategy in relation to nursing home charges,' he says. Mr Varadkar also says that the story has been 'misrepresented' and is 'more complex' than has been presented.

MONDAY NIGHT

A Government spokesman confirms that the legal strategy exists and that it was in place before 2011.

YESTERDAY

The Irish Daily Mail reveals that a confidential memo dated May 5, 2016, while Mr Varadkar was Health Minister, shows that the FG leader signed off on secret payouts for families who were overcharged for nursing home care.

YESTERDAY

A spokesman for the Taoiseach last night said: 'It is the clear understanding of this unit that this does not refer to Minister Varadkar, as was, but refers to a previous minister, as this decision in relation to the range of settlements was apparently made well before his time.' He was unable to say who the minister was.

YESTERDAY

In the Dail during Leaders' Questions, the Taoiseach says that if he was asked now, he'd agree to the strategy as it 'was a sound policy approach and a legitimate legal strategy by the government'.

TAOISEACH'S DEFENCE

1) The matter has been 'grossly misrepresented' and the State operated a 'legitimate legal strategy'.

LEO: 'The strategy was to defend the case in relation to private nursing homes on several grounds.

'Pushed many into poverty'

to pay up. That created real financial hardship and pushed many into poverty as they struggled to afford the charges,' she said.

At the weekend, The Irish Mail on Sunday revealed that successive taoisigh and health ministers agreed a secret plan to hide the true scale of the State's liability for illegal nursing home charges, in a bid to prevent massive payouts.

The secret files confirmed that the State faced the prospect of a €12 billion liability in compensation for hundreds of thousands of families who were wrongly charged for the care of their loved ones over 30 years.

In many cases, vulnerable families suffered extreme financial hardship as a result of the illegal charges.

Senior Government leaders from Fianna Fail, Fine Gael, Labour and the Progressive Democrats acted in unison to thwart repayments worth billions.

While Mr Varadkar defended the position of the Government by saying that no cases had ever gone to court, a 2017 memo to the then health minister Simon Harris noted that the State was averse to seeing cases going to court for fear of losing them.

The 2017 memo warned of the importance of managing the historic long-stay litigation. It said that 'extreme care, discretion and confidentiality' should be taken by the State due to the 'very substantial level of liability' to which the State could potentially be exposed to an 'adverse outcome'.

A 2016 briefing note details the department's objective to 'manage long-stay litigation, including discovery, efficiently and effectively'. The 2016 note said: 'Given the increased level of requests for discovery, and the fact that the



Defiant: Leo Varadkar yesterday

Three days on the back foot over shock revelations

In particular, the medical card holders did not have an entitlement to free private nursing home care. It was never the policy of the government, nor the intention of the Oireachtas, to create such an entitlement.'

CONFIDENTIAL MEMOS: The secret records show that the strategy was not to defend the case. In fact, the strategy was to do everything possible to avoid having to defend the case in court.

THE 2011 MEMO STATES: 'The claims arise in a novel and untested area of law. It is therefore important that this litigation be 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.' The

2017 memo underscores the fear of the cases proceeding to trial.

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

2) Taoiseach says he would sign off on the same strategy again.

LEO: 'I would have [signed off on the policy again] because this is a sound policy approach and legitimate legal strategy by government... I would ask what the alternative was to this policy approach and this legal strategy; the alternative would have been to open up the scheme to people who had attended private nursing homes, even though we didn't believe they had legal entitlement to any refunds. That wouldn't have been right.'

'Governments have a duty to protect the taxpayer. Governments also have a duty

to protect the health budget, to make sure that the health budget gets spent on health care, and not on refunds.'

He added during Leaders' Questions: 'And we have a duty also to be fair to people. And be just, and I acknowledge that. But it's very clear that the State had strong defences in regard to this. The people who have medical cards, just as now, are not entitled to refunds for private care.'

The Taoiseach is arguing that the State shouldn't have refunded charges they didn't feel were legitimate.

However, what the policy did, in effect, was prevent the courts from making a judgement on whether the State was liable or not.

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.'

It adds: '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.'

spokesman said government policy had been very clear going back to the time that Mary Harney had been health minister.

The spokesman said it was 'not entirely clear' when the legal strategy was first agreed upon, though he insisted it was before 2011.

Speaking on the RTE Six One News, Sinn Féin health spokesman David Cullinane said that he believed a 'fair process' should be put in place for families that were impacted by the charges to be compensated.

A spokesman for Micheál Martin said the now Tánaiste would 'not have been aware' of the memos in either 2011 or 2017 mentioned in the article.

The policy of several governments over many years has been 'consistent', he said, saying that private care should not be entirely covered by the State.

news@dailyimail.ie



Attack: Mary Lou McDonald

OMBUDSMAN CASE WORKER NOTE (6 JUNE, 1996)

IN 2010, the Office of the Ombudsman Emily O'Reilly published an investigation based on more than 1,000 complaints since 1985 on behalf of older people who were unable to get nursing home care from the HSE and so had to use a private facility.

'COMPLAINANT'S wife, Mary, has been in a nursing home since 16/6/94 following a serious illness. She is 83 years old as is complainant. Initially the fees were €130 pw but were raised to €170 pw from 1 January 1996.

'An application for subvention, made before his wife went into the home, was refused. Complainant appealed this unsuccessfully. When the fees increased in January 1996 he again applied but was refused. An appeal was unsuccessful.

'The health board takes the view that his married daughter, who lives in X, is able to subsidise the costs. Complainant rejects this as his daughter has been gone for 26 years and is independent of her parents.

'In fact, the daughter does contribute by meeting all the extra costs.

'Complainant says that, after paying the nursing home fees, he has only €35 pw to live on - and this is inclusive of the income tax relief for medical expenses. He says he runs a car as it is the only way he can get to visit his wife - whom he visits four times a week.

'Whatever savings they had are being gradually eroded and they will not have sufficient [money] to bury themselves, he feels.'

by Fintan Butler

MICHAEL O'Farrell's revelations in this week's Irish Mail on Sunday are generating significant political and media reaction. The story goes back to the 1970s and, not surprisingly, many people including politicians struggle to get to grips with it. But the key aspect of the story, and the issues it now raises, are fairly straightforward.

Put simply, over about 30 years, from the 1970s, people who were entitled to long-stay nursing care, free of charge, were charged for that care. Of those charged, people who had been in public homes run by the health boards were eventually compensated at a cost of about €450million. But those who ended up in private nursing homes because there were not enough public beds available were not compensated.

The Department of Health took the view that, as these were private patients of private nursing homes, the State has no liability in the case of these people. The truth is that most

'Settling cases for best possible value'

of these people did not choose to be private patients; they ended up in private care only because the health boards had failed to provide them with care in public nursing homes. The Department of Health has held the position publicly that these 'private' patients have no right to compensation.

Since 2005, more than 500 legal actions for compensation have been initiated by or on behalf of people who were in private homes. Contrary to its public position, the department appears to accept that if any of these cases actually got to a hearing in the High Court, it would lose. Losing even one case would open up the appalling vista of a precedent that would apply to several thousand people, and to the State being exposed to a major financial liability - though likely considerably less than the department's own estimate of several billion euro. So this is the background to the department's litigation strategy disclosed in last Sunday's MoS.

The strategy is one

Report: Emily O'Reilly



NOTHING NEW IN STATE'S HOSTILE APPROACH TO LITIGATION

of 'containment'; it is quite simple and has been very successful. Where legal cases have been taken, the strategy is to drag out the processing of the cases through the courts as much as possible - make it difficult for litigants to progress their cases. Real engagement happens only in cases where the litigant has succeeded, or is about to succeed, in getting a court order for discovery of documents and a hearing is imminent.

It is central to the strategy that the High Court will never rule on any case. Of the 500 or so legal cases initiated, none has gone to a High Court hearing. So no case has been lost by the department and no precedent has been created. About 80 of the 500 cases have been settled but always for a fraction of the claim actually made. Because the settlements are made subject to a confidentiality clause, insisted on by the department, the terms have not been made public.

A briefing document from May 2016 identifies the underlying principle of the strategy as 'settling [cases], for the best possible economic value'. Achieving this economic value involves deliberate actions to deter people with reasonable compensation claims from ever making those claims; and in the case of the relatively few who do make claims, to manage the litigation in a way that ensures that no case gets into court and that the legal issues involved are never decided definitively.

The issue today is not really about people being compensated now for nursing home costs incurred long ago. Most of the patients involved have died and, as the Department of Health hopes, the statute of limitations may protect the State against claims at this stage. The real issue now is

whether it is at all acceptable that the State would adopt this kind of litigation strategy in relation to its own citizens.

There is nothing new in State authorities, involved in litigation with citizens, adopting an aggressive and hostile approach. Then-Ombudsman Emily O'Reilly wrote in 2010: 'In the normal course, any State body is entitled to defend itself in court when it has an action taken against it. However, there is something quite unsettling about litigation initiated by or on behalf of vulnerable members of society in a context where the

'Something quite unsettling'

objective is to clarify the rights of the plaintiff and the obligations of the defendant State body.'

The Ombudsman's point was that people from vulnerable groups in society should not have to resort to individual court action to have the law on their entitlements clarified.

Politicians and ministers have generally been critical of the State adopting an aggressive, hostile and intimidatory strategy in litigation of this kind. But as recent MoS reporting has shown, what ministers have said is one thing, and what they have actually done is quite another.

In 2005, then-health minister Mary Harney was heavily critical of the strategy followed by the health boards over three decades in the context of the illegal imposition of charges on medical card holders. The strategy was to reject liability and to fight any legal action for compensation to the point where a court hearing was imminent. At that stage, the strategy was to settle cases but with a confidentiality clause.

This is essentially the same strategy adopted by Ms Harney and successive health ministers in relation to claims from people who had to pay for private nursing home care.

Attention has focused on the 2011 memo from former health minister James Reilly on the litigation strategy which was circulated to the Taoiseach, Tánaiste and ministers for finance, public service and reform. However, it seems clear that such a litigation strategy was already in place since 2005-2006 when the bulk of the High Court actions were initiated.

The 2011 memo formalises and consolidates a strategy that was already in place.

The 2011 memo and other documents disclosed to the MoS make clear the extent to which successive attorneys general - supported by an impressive team of four senior counsel - guided and supported the strategy. And this raises an important issue about the role of the attorney general.

Under the Constitution, the attorney general is the legal adviser to the Government. While the Constitution does not say so explicitly, it is reasonable to assume that the attorney general is not expected to act simply as another partisan legal adviser. It seems safe to assume that, in advising the Government, the attorney general is expected to have regard to the wider public interest and to the interests of justice.

If so, it is hard to reconcile successive attorneys general supporting a legal strategy whose purpose was (and remains) to deter and inhibit vulnerable people from accessing justice through the courts.

Fintan Butler is the retired senior investigator responsible for the Ombudsman's 2010 Who Cares report into more than 1,200 complaints by people charged illegally for nursing home care.



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'

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The IRISH Mail

ON SUNDAY

Pros and cons of settling...

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 advice 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 advice 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 continued.

'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 Séamus 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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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 circulated 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 €350million to €700million.

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 €20million 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 €360million,' 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.



Why nursing home charges row hits a nerve with me

DENY, delay and discount appears to be the Government approach towards providing some of its citizens with what is properly due to them.

We have learned from the work by this newspaper in recent days that the State denied repayment to families of people who had incurred the cost of private nursing home care, when the State should have provided free care to medical card holders.

When some people fought this legally, they were confronted. Only some were prepared to take on the might of the State.

If they did, they eventually were offered settlements, but not for the full amount they would have won had they been able to afford the costs of taking the issue to the courts.

The revelations about the cynicism of successive governments in denying, delaying and discounting compensation for families who paid large sums of money for nursing home care for loved ones, which should have been provided for free, hits a raw nerve for me.

Serious

My parents were medical card holders. They lived off the State pension, a tiny occupational pension my father had and a small amount of savings.

They owned their own modest house in Cork that my father had somehow managed to buy on his small income from being a confectioner at the Marina Bakery in Cork (which closed in 1982, just months before he was due to retire). He bought it because he never had a car and they didn't take holidays because they couldn't afford it. I was their only child. I had a medical card, too, all through school and during my time at University College Cork.

My mother had a serious stroke in 1998, aged just 69. It seriously incapacitated her, impacting her speech and leaving her in need of a wheelchair. My father was aged 82 at the time and his health was failing. He wore himself out going over and back from home to the South Infirmary hospital twice a day for about three months after she had the stroke.

One of his main concerns was how my mother would be looked after once she left hospital. She had time in a step-down facility at St Finbarr's Hospital before returning home. The ward where



Dáil heat: Government's approach to the issue has been criticised



THE MATT COOPER COLUMN

she stayed, as I remember it, was fairly grim, the building Dickensian, with some of those on the ward living with dementia.

Despite the best efforts of the nurses, we were determined to get her home, but that then created its own challenges.

We organised a carer (a wonderful woman) to come in and help them, but my father's own health deteriorated quickly. He was hospitalised in December but we were told that he was to be discharged before Christmas even though it was clear he was nowhere near well enough.

I managed to find a private nursing home that would take him but he was rushed back to hospital on Christmas Day 1998 with me in the ambulance sitting beside him. He died in early January 1999, just days before his first grandchild was born (and it was clear he was trying to hang on to see her).

By this stage, their limited savings were gone and I paid for care to come to their house, more or less on a 24-hour basis. I

didn't want my mother to go into a nursing home - and nor did she. My wife and I, with our first baby, and with me working long hours as a newspaper editor, were limited in the time we could get to go to Cork, something that I continue to regret more than 20 years on - the guilt that I could have done more.

I funded the home care for as long as I could, running up substantial debts in doing so, worrying almost as much about money as my mother.

The State provided a home place for a couple of hours each day. My mother's health declined due to a series of further strokes each time followed by returns to St. Finbarr's as a step-down before home.

Eventually she was offered a place at the Marymount complex in St. Luke's in Cork (subsequently moved to Curraheen Road).

She was not keen on going, but two doctors persuaded me that it was necessary for her to be

cared for properly at home despite her understandable desire to stay there.

They also told me that if we didn't take the place - which was State funded - I would end up chasing private nursing home accommodation within months that would cost a fortune. They were right and she received excellent care in her last years.

Debts

I sold the family home in Cork that I had inherited. It cleared most of the debts I had incurred. At the time, I was grateful to have that asset to sell and that it realised enough money to cover most of what I owed the bank.

I didn't feel my responsibilities to finance the care for the parents who had brought me up should be passed onto the State as I appreciated that I had a good annual income, having moved into radio, even though childcare costs (four of our five children were born before their grandmother died) were

more expensive than having a second mortgage.

In retrospect, I may have been a bit naive. I suspect that I would never have had a case against the State because I paid only occasionally for private nursing home care, spending my money instead on paying a range of people to come to care for or stay with my mother at her home. And I was grateful to get end-of-life care for her, although I was angry that this was not given to my father.

It is clear, however, that many other families have had equally or more difficult circumstances with which to deal... and that it cost them large sums of money that they didn't really have and which the State, by its own laws, could have paid but didn't.

The Fair Deal scheme put in place by Mary Harney in her time as Health Minister was an attempt to put an affordable system (for families and State) in place, but it didn't deal with historic issues where people had been forced to pay for what was properly due to them.

Confronted by a potentially enormous bill should people realise their entitlements, it seems that the 2011 government decided, when presented with a legal assessment, to deny, delay and discount.

This could be seen as partially understandable and pragmatic, if not morally correct or justifiable. At the time the government was in the grips of the Troika, dependent on the charity of the International Monetary Fund, the European Commission and European Central Bank, and it had little or no money, certainly none to fund even a fraction of a €12 billion bill if it were to be presented.

So it extended and pretended, kicked the can down the road as the phrase of the time went, and paid off those who were prepared to fight the apparatus of the State.

It is interesting, though, to contrast that approach with that of the State when it feels it is owed money by its citizens.

The Revenue Commissioners, for example, are rarely understanding or generous and don't deal in deny, delay or discount, imposing high interest rates on late payments and penalties that can be punishing to those who don't have readily available cash. Which is as it should be if the money is properly owed. But that should also cut both ways - meaning that when the State owes money, it pays it.

Privileged hucksters have pitched the State against its people

WHAT is the purpose of government? It is a question we need to ask over and over again, because the answer doesn't always appear to be clear.

In this country, we fought for centuries to govern ourselves and we achieved this, for part of our island anyway.

Our new free state, and later republic, was forged in blood and watered with the tears of mothers and fathers, wives and husbands and children, who saw their loved ones die in pursuit of nationhood.

The fledgling State was underpinned by a document for the ages, the 1916 Proclamation that promised 'religious and civil liberty, equal rights and equal opportunities to all its citizens and declares its resolve to pursue the happiness and prosperity of the whole nation and of all its parts, cherishing all the children of the nation equally and oblivious of the differences carefully fostered by an alien government'.

Those noble ideals later were given the force of law and strengthened over the years, but it often seems as though little more than lip service is paid to them.

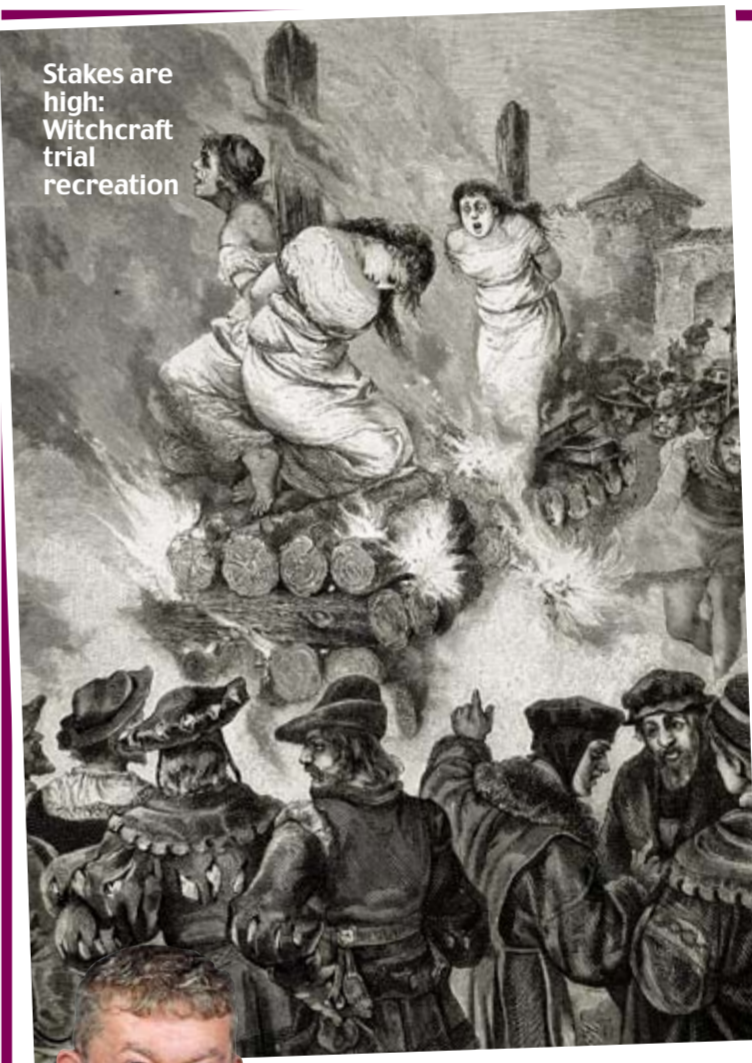
Hounded

On Sunday, our sister paper the Irish Mail On Sunday reported on disclosures by Department of Health whistleblower Shane Corr. Over the course of many years, successive governments frustrated attempts by individuals and families to claw back money taken in illegal charges for nursing home care.

Aware that they could not successfully mount a defence against such cases in court, governments simply delayed the process all the way to the disclosure stage of legal actions, at which point they settled for between 40% and 60% of the claimed sum.

With all this conducted behind closed doors, they could keep the settlements secret, lest they provoke a damburst of further claims that might easily have a cost of €12 billion.

Among those who knew of this strategy were senior civil servants, attorneys gen-



Stakes are high: Witchcraft trial recreation

'BURN 'EM AT STAKE' MENTALITY STILL ALIVE

IN Connecticut, legislators are considering exonerating 11 alleged witches who were executed 375 years ago. It follows such moves elsewhere. Last year, Scotland's first minister, Nicola Sturgeon, issued a formal apology to some 4,000 people accused of witchcraft, of whom 2,500 were killed.

In 2006, former Virginia governor Tim Kaine gave an informal pardon to widowed midwife Grace Sherwood. She was accused by her by neighbours of ruining crops, killing livestock and creating storms. Her hands were bound and she was thrown into a river, though she actually survived and spent seven years in prison.

From a modern perspective, it is easy to laugh at the preposterous fearmongering that led to such accusations. Sadly, this mentality is still with us, and we don't have to look too far, even now, to see the needless demonisation of others by the baying mob.



PHILIP NOLAN

eral Máire Whelan and Séamus Woulfe, and senior politicians Michael Noonan, James Reilly, Enda Kenny, Simon Harris, Helen McEntee and, when he was minister for health, the current Taoiseach Leo Varadkar.

In the Dáil yesterday, Mr Varadkar also admitted that, following legal advice, 'the State does not have a leg to stand on' over the historical decision not to pay the Disabled Persons' Maintenance Allowance to people in residential care.

At the same time, he said this was different to the nursing

homes issue, where the legal advice was that the State never guaranteed to pay for medical card-holders who could find adequate care places only in privately run nursing homes, rather than in public facilities.

'There was never a test case that went to trial,' he said, which frankly is disingenuous when the State itself devised a strategy to lay roadblocks at every available turn precisely to prevent that from ever happening.

It is an old playbook. Time and again, far from working on behalf of its citizens, the State has tried

that such probity goes out the elegantly mullioned window when they're embarking on white-elephant projects such as the PPARS technology system for the HSE, or electronic voting machines.

How nice it would be too if they exercised such diligence when it comes to signing contracts for port tunnels, motorways, children's hospitals and the like, where costs spiral but heads remain resolutely unrolled.

The issue there is that contracts are negotiated by the Dublin operations of global consultancy firms and teams of hot-shot lawyers on both sides of the boardroom table. These are men and women who know the system inside out and very often know each other too.

It would be far from unusual for a lawyer acting on behalf of a State institution on a Thursday to find himself in a four-ball on the golf course on Saturday with a lawyer from the opposite side.

Exasperation

The little man is different though. The little man can be played, toyed with and pushed to a point of such exasperation that he simply walks away.

There was a time when politicians were honourable, comparatively speaking anyway. They were present for the birth of the nation and, in many cases, laid their lives on the line for it. They believed every word of that Proclamation and they sought to make a country that lived up to the values espoused.

Somewhere in the last third of the last century, though, that fragile adherence to principle was undermined by hucksters who, in the university of life, majored in strokes and minored in cute hoorism, placing the defence of State institutions far above the rightful redress due to the citizens who elected them.

Faced with teams of corporate lawyers, many drawn from the same genetic pool, they would cave in - but challenged by a country solicitor on behalf of small individual clients, they took the opposite tack, obfuscating at every turn and, when needed, aiming for - but falling sort of - plausible deniability.

In truth, it is a long time since they treated all the children of the nation equally.

For that reason, it can hardly come as a surprise to them that they will feel the wrath of those who see quite starkly the differences carefully fostered by an alien government.

The only distinction, 100 years after statehood was achieved, is that the alien Government now is our own.

REACTION TO BAMBI NOT SO FAWNING

THERE has been much mockery online of the fact that Molly-Mae Hague, left, has named her daughter Bambi. It shouldn't have come as too much of a surprise, surely, since her partner Tommy Fury, with whom

she won the 2019 series of the tawdry reality TV show Love Island, is a professional boxer, so the family already had a thumper. That said, Bambi Fury sounds like the name of a really dark Disney sequel.



EXCLUSIVE



By MICHAEL O'FARRELL

INVESTIGATIONS EDITOR

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

'What were they afraid of in discovery'

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

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

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.

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.'

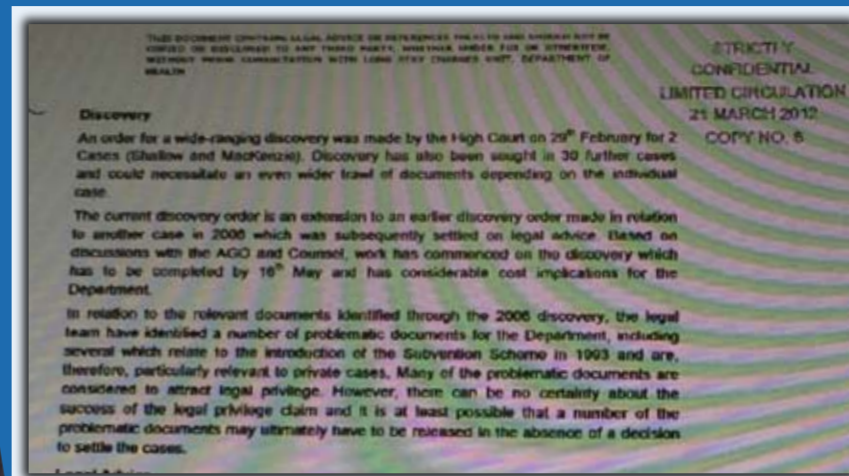
The letter says that the management and resolution of the long-stay litigation, 'is highly sensitive and the details attached are therefore, as before, being provided on a strictly confidential basis and are not for further circulation or publication'.

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.

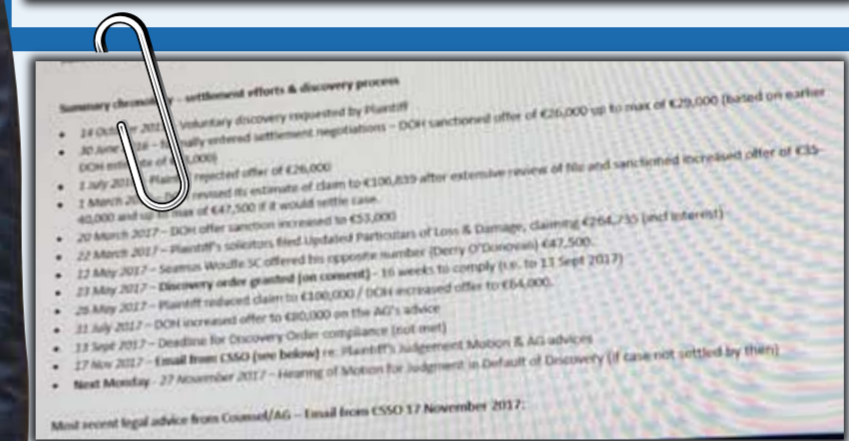


STRATEGY LEO AGREES WITH WAS A 'NO DISCOVERY AT ALL COSTS' PLAN

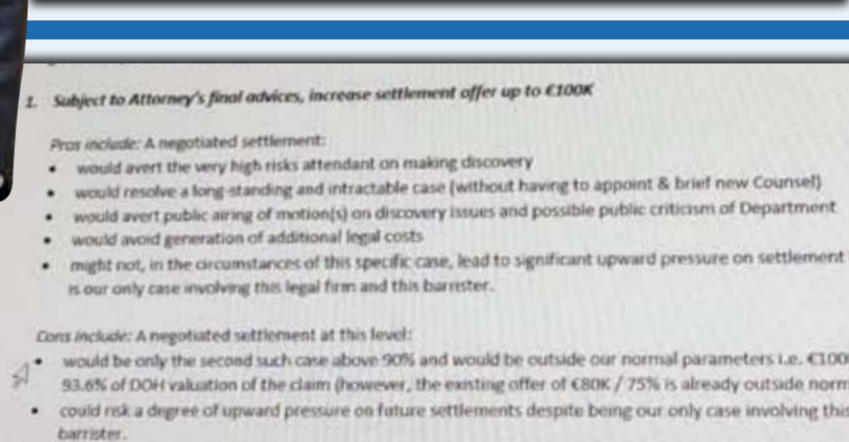
'SOUND POLICY': Taoiseach Leo Varadkar still backs the strategy



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 advice 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 advice 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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Ger Colleran



These politicians simply don't deserve our trust or to govern

IF SOMEONE attacks my child on the street I leave it to the gardai and the criminal justice system to sort things out. This prevents me from having to return to my cave, grab my club, hunt down the bad guy and beat seven colours out of him – or worse.

And, if it comes to pass that my local friendly, second-hand car salesman fools me into buying a dud, I head down to the State's courts in the clear understanding that if I tell the truth, I may recover my losses. That too avoids the kind of aforementioned unpleasantness.

Now, in fairness, all that loss of independent action and restriction on my individual sovereignty to adopt all and any means to best defend my family and my pocket has a flip side. And it's not unattractive.

I get to send the kids to fairly well-resourced State schools; I'm in a position to drive my chariot along paved roads and highways; and, if I'm thrown down with an illness that I'm simply unable to shake, I can call the ambulance and get myself over to the emergency department of the nearest hospital and have myself returned to rude good health with all that expert medical attention I receive there. (I know there's that little thing about waiting lists and trolleys – but I'm just trying to make a point here).

ALL this is what the egg-heads call the social contract. Theoretically, at least as far as that great philosopher Jean-Jacques Rousseau reckoned, it's through banding together into a State of the willing that we all manage to maximise our freedoms, even if that means a counter-balancing raft of obligations.

We form a community of people and call it a State. Then we surrender to that State control and responsibilities for issues such as justice and healthcare, education and housing infrastructure, and social and economic development.

And much more besides. The payback is security, rule of law and the retention of as much individual freedoms as are consistent with each of us not interfering with the freedom of others.

The events of this week, however, prove without a shadow of doubt that the social contract in Ireland is a bum deal, a fraud and con job, an exercise without substance – a massive deceit.

Last weekend the Irish Mail on Sunday published a profoundly shocking and utterly dispiriting article which revealed how successive governments and health ministers, including current Taoiseach Leo Varadkar and Tánaiste Micheál

INDEPENDENT INQUIRY: Aftermath of the tragic Omagh bombing in 1998



IT'S no credit at all to the British Government that, finally, after almost 25 years, they're holding an independent statutory inquiry into whether their security services could have prevented the Omagh bombing.

This unspeakable atrocity, perpetrated by merciless Real IRA cutthroats and murderers – a breakaway group of former Provos opposed to the Good Friday Agreement – killed 31 people, including unborn twins. Those two little babies were being carried by their mother Avril Monaghan, aged 30, who died in the blast together with her little 20-month-old daughter Maura and her mother Mary Grimes.

Shortly after the Omagh outrage reports began to circulate that the police had intelligence of the attack and could have prevented it. In a High Court ruling in 2021 Judge Horner said that on the basis of evidence before him it was plausible the bombing could have been stopped.

It's now over 21 years since the then-Northern Police Ombudsman Nuala O'Loan published a

Omagh inquiry will, no doubt, be met with a lack of cooperation

damning report of the RUC's investigation of the Omagh bombing. The report stated that the Northern police ignored warnings that a bombing was going to take place and failed to act on significant intelligence. She also accused RUC officers of being uncooperative and defensive during her inquiry which, sadly, is hardly surprising knowing what we know about how police forces operate when it comes to security of the state and deep-cover intelligence matters.

And this lack of cooperation and candour is likely to arise again in relation to this new independent inquiry. Don't be surprised to hear that files have gone missing, crucial evidence is no longer there and the memories of relevant

police officers are not as sharp as they used to be.

Then we'll have to see what level of cooperation this inquiry receives from the Irish Government and, more particularly, the gardai. It's almost certain such cooperation will be calibrated to ensure no skeletons fall out of the Southern cupboard. Foreign Minister and Tánaiste Micheál Marti's assurance that the Republic 'will not be found wanting' would have more credibility if the Republic were to join or mirror the British inquiry.

This independent inquiry is precisely the kind of thing all governments abhor. That's why this one has come about a quarter of a century after Omagh. At such a remove, it can be relied upon to do the least possible damage.

Martin, had a secret plan to deny perhaps hundreds of thousands of families compensation for money extracted from relatives by way of wrongly levied (bogus) nursing home charges.

Down in the CCJ (Courts of Criminal Justice) they've a word for that kind of thing – THEFT.

This thievery, on such a grand scale, went on for decades and is precisely what the Criminal Justice (Theft and Fraud Offences) Act, 2001 is designed to prevent.

A person is guilty, Section 4 of the Act says, if he or she dishonestly appropriates property (also meaning money) without the consent of its owner and with the intention of depriving its owner of it.

Isn't that precisely what happened in this case, considering that the people against whom charges

were made were entitled to nursing home care via their medical cards?

And that's what makes the secret plan by successive government all the more egregious.

The dogs in the street knew the money was owing to all those people; the government should have known that if cases came to court, that the game was up and everybody wrongly charged for nursing home care would be looking for their money back; and it was clear they were hitting the most financially vulnerable. And still they refused to do the right thing.

The State, with the connivance and support of our hero politicians, bullied and harassed those who took them on by instituting legal proceedings. And then they cut a deal, but only at a time when it

would become obvious that their defence was a busted flush.

THE politicians who have been running the show for decades chose a policy whose aim it was to keep, without lawful excuse, vast sums of money that belonged to regular people who hadn't the financial, physical or emotional resilience to fight for their money back.

The entire State apparatus, as the Irish Mail on Sunday article revealed, has been on notice for decades that questionable charges had been levied on many thousands of people who had medical cards.

And still, with shameless cynicism and outrageous amorality, politicians refused to bend, allowing

themselves instead to be 'captured' by an unaccountable permanent government that shapes and drives the dark State.

These are the same politicians who bent the knee to banks, bondholders, the IMF and, in particular, the ECB. The State had little enough problem 13 years ago landing us all into a gigantic ocean of debt – nearly €68bn, on top of what we already owed – but, when it came to paying back to regular people what should never have been taken from them in the first place, they simply denied, delayed and wore people down.

These people have torn up the social contract and thrown it in our faces. They don't deserve our trust any more. Politicians like that don't deserve to govern.

Now, where's my club?

TAOISEACH Leo Varadkar accused this newspaper this week of misrepresenting the truth when, last Sunday, we exposed a secret State strategy to deter people seeking refunds in the courts for what they believe were illegal nursing home charges they had to pay. Within a day, a Government spokesman confirmed this strategy was still in place and that the successive ministers we named were indeed aware of it.

The only misrepresentation in play here is the misrepresentation of what the ordinary citizen can expect from his or her government.

Surely, we all believe that our Republic was built to defend the most vulnerable, and to protect the sick and the dying, and not take advantage of the power differential between a State and those very citizens.

This week, Mr Varadkar told us – despite not remembering when or how – that he indeed had been briefed, and that he agreed with the policy. It was sound, he said. He argued the people who had made claims may have been eligible for a bed in a public nursing home, but that they were not entitled to one. His conviction in this regard is such that successive governments, of which he was part, refused to put their superior legal insight to the test in court. Instead, they chose a 'deny, delay, settle at discovery' strategy, which has all the hallmarks of the worst corporate

negligence cases in history. It is as if Ireland Inc. decided to take its legal advice directly from Big Tobacco.

This week, we reveal that Mr Varadkar was prepared to consider – for the greater good, no less – secretly taking hard-won entitlements from dependants of the 1,600 people infected by the State with a life-altering disease, hepatitis C.

In response to this revelation, your Taoiseach has said that it was his duty – in May 2015 – to consider all options due to the December 2010 bailout that followed the banking crash. That bailout ended in December 2013. Irish annual GDP growth in 2015 was 24.4%. His party ran an election campaign in February 2016, just nine months later, asking the electorate to 'keep the recovery going'. He also told this newspaper – excuse us for labouring the point but we don't want to misrepresent anyone –

that health budgets were being cut in 2014 and 2015. In October 2014, the health budget allocation was increased for the first time in seven years. The then health minister is quoted by the Irish Times as saying that while he wasn't 'awash with cash' the extra money made the funding situation of the health service 'more manageable'.

The health budget increased again in 2015.

Put this all in the context of Mr Varadkar's only stated position on this issue: he said at the time he had no plans to change the terms of the hepatitis C tribunal. Yet in secret – there's that word again – ways that the State could pull the rug out from under families it had accepted it had grievously harmed, people whose quality of life the State had already agreed was irreparably damaged, were being drawn up.

He says now that if they had agreed to implement the callous

Taoiseach can side with bureaucrats, or stand with the people

while in residential care. Mr Varadkar says the long-stay nursing home strategy was sound. We would have some sympathy for this view if we truly accepted that the State believed its own position.

Odd then that, despite being so sure it was the right thing to do, everyone was told to keep quiet about it. Righteousness is usually telegraphed, not muffled by settling a case when you get to the discovery stage.

The State argued that it could defend these cases, but it never once did. Instead, as the documents we continue to reveal prove, any time it came to discovery, the State contorted itself to ensure it never occurred, directed to do so most recently by Ministers Simon Harris and Helen McEntee.

The documents revealed by whistleblower Shane Corr clearly illustrate a real fear that a document, or documents, in possession of the State would materially affect its likely ability to defend any case.

The material we reveal today tells us that the worrying information is dated from around the time of the introduction of the 1993 subvention.

Instead of trying to gain say what this newspaper and Mr Corr have revealed, the men and women charged with representing the electorate should ask themselves this question: What is so terrible in the documents that the State did not, and does not, want made public?

We need legal change so that public interest always prevails



By **IVANA BACIK TD**
LEADER OF THE LABOUR PARTY

reconsidered it. That was the nature of the deal that was done and it shows that the regulations were collapsing and the position was untenable.

The minister's lawyers had negotiated a settlement which required the minister to exercise powers under regulations which the same lawyers had advised the minister were invalid.

Mr Martin said he asked himself: 'Would I, as minister, continue to force people into the High and

Supreme Courts knowing in my heart and soul that the regulations were invalid and ultra vires?'

'Having received opinions from our senior counsel and the attorney general, it would have been immoral for me to continue with the regulations.'

That is what we want to hear from government ministers. It is what we are entitled to hear. Basic morality – an ethical approach, rather than reliance on legal stratagems. Yet 20 years later, we're still see-

Rather than ensuring the vindication of citizens' rights – as government should do – it is so-called 'cost-containment' which takes priority for government.

I have seen this in operation in my previous life as a barrister. I acted for children from disadvantaged communities who were at severe risk of harm. The only way to get those children the supports they needed was to show a readiness to go to trial. The children who did not litigate did not receive the supports they were entitled to receive from the State – and many fell through the cracks as a result.

This must be a watershed moment. It is time to re-orient the approach of government to the entitlements of our citizens. And that includes re-evaluating the role of the Attorney General.

WE MUST have a proper balance when there is a conflict between the public interest and the government's financial interests.

When the State is a defendant in court, the State's lawyers must remember that the first job of the State is to promote the common good and the public interest – to vindicate the rights of the people. That task takes precedence over all others. If there is a conflict between the public interest and the interests of government, then, clearly, the public interest must prevail.

With the support of my colleagues in the Labour Party, I will be publishing a Bill to impose precisely this requirement on the Attorney General – the obligation to recognise the public interest.

I believe it's time for fundamental and radical change. Nothing less will do.

■ *Ivana Bacik is leader of the Labour Party and TD for Dublin Bay South*

State dragged out case in the hope that grandfather would give up his battle to recoup €100k of illegal nursing home charges



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

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



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

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

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

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 include '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

'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.'

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

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.

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

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.'

michaelofarrell@protonmail.com



CASE: Supreme Court judge Séamus Woulfe

THE issue of immigration and Ireland's response to the increase in International Protection applicants is coming to the fore – just as predicted in these pages.

The State's response to more than 70,000 Ukrainians fleeing Vladimir Putin's war has been poor to say the least.

Instead of a concerted and focused approach to meeting their needs, an ad-hoc and patchy response has been deployed that has proven woefully inadequate to providing refugees with services, particularly housing.

The current unrest in certain quarters is directly related to the Government's failure to grasp that nettle.

To be clear, this newspaper is full square behind the State meeting its international obligations and we acknowledge that ultimately the blame for this fiasco rests with Putin for invading a sovereign nation and unleashing havoc in the world.

However, a year on from the crisis is not too soon for citizens to expect the Government to have fine-tuned its response to

Ad hoc response to refugees is no longer tenable, it's dangerous

the challenge and copperfastened a policy that wins public support while fulfilling our responsibility to house and support a displaced people.

The Government's failure to proactively engage with communities has led to flashpoints and a volatile public mood that is being exploited for political gain by the extreme edges of the ideological spectrum which up to now Irish society has resisted.

The dogwhistle politics of the far right has been spread through disinformation on social media filling the vacuum created by the Government's

failure to engage with local activists and community leaders.

The current strategy of filling derelict and unused buildings with large groups of refugees has largely affected disadvantaged urban and rural areas.

When this newspaper raised the prospect of harnessing for the benefit of refugees, a tranche of empty and derelict properties in D4, including Jury's Hotel (admittedly held in private hands) a Government spokesperson dismissed the suggestion outright.

This failure to engage in pre-

emptive solutions before larger problems emerge means there can be little sympathy for the Government's predicament.

Now we have the right-wing Freedom Party planning to field candidates in every constituency at the next election, although how they plan to finance their ambitions is unclear.

The Irish people are a welcoming race with a strong belief in family, community and *meitheal*.

We will not be found wanting when dealing with a geopolitical crisis of this scale. However, we

need leadership from Government to galvanise our response and ensure optimum delivery of our resources.

Perhaps a specific minister for refugees could help defuse tensions in communities by communicating effectively with locals and rolling out accommodation centres in an even-handed fashion, while ensuring that areas with poor GP access, overcrowded classrooms or anti-social activity do not see problems deteriorate under the weight of newcomer demands.

It's imperative that sinister right-wing elements don't gain a foothold in communities who already feel shortchanged by society. To that end it's crucial their frustrations are heard and engaged with rather than discounted as the delusions of right-wing conspiracy theorists.

With appropriate resources and a listening ear, there is every chance that community response can be steered in a positive direction where mutual support and understanding rather than the reverse is fostered between locals and refugees.

Perhaps it's time to heed Fine Gael and split the Attorney General's role

MOST people in Ireland have only a hazy notion of what it is the Attorney General is supposed to do. People will probably know that the attorney is a senior lawyer who works closely with the Government of the day. Some people may believe that the attorney is there to ensure that the Government behaves not just legally but also in a way which promotes 'the common good' or 'the public interest'.

The Attorney General, rather unusually, has in the past week or so become the focus of considerable media and political attention. This arises from the role of the present AG, and indeed his predecessors, in devising and executing a legal strategy to deal with litigation concerning compensation claims for nursing home costs. These claims are by or on behalf of people who, in the period up to 2005, were entitled to free public nursing home care but were unable to access public care. They had no choice but to pay for private care themselves. While the present Attorney General has robustly defended the State's litigation strategy in these cases, that strategy has been heavily criticised.

Under the Constitution, the role of the Attorney General is to 'be the adviser of the Government in matters of law and legal opinion'. The AG is appointed by the President on the nomination of the Taoiseach. So the appointment is effectively a political appointment and the appointee must work closely with the Taoiseach and Government.

What is not very well known is that the Attorney General has a second role sometimes referred to as the 'guardian of the public interest'. This is provided for in legislation from 1924. In the past the Attorney General's Mission Statement used to include the statement that the Attorney may 'exercise a role as representative of the public for assertion or defence of public rights...'

It is surprising that this role as 'guardian of the public interest' is

The AG, by law, is meant to be 'the guardian of the public interest'



By **FINTAN BUTLER**

FORMER SENIOR INVESTIGATOR
OFFICE OF THE OMBUDSMAN

so little known. In 1994 the then-Chief Justice, Liam Hamilton, in welcoming the appointment of a new Attorney General, commented that the 'guardian of the public interest' role is of far greater importance than the Constitutional role as legal adviser to the government. According to Hamilton, as 'guardian of the public interest' the Attorney is required to 'protect the Constitution and the rights of the citizen as outlined in the Constitution'.

A former Ombudsman, the late Kevin Murphy, envisaged that there is scope for the Attorney General to

act where the State itself is acting illegally. He commented that the public has a fundamental right to be protected against the State acting illegally 'and that it is the Attorney General's responsibility to ensure that protection'. But Kevin Murphy also noted that '30 years of illegality' in the charging of medication card holders for long-stay care had gone unchecked by successive Attorneys even though they would have known of the illegality.

It is difficult to reconcile the Attorney General's role in protecting the public interest with his robust support for the State's litigation

strategy in the nursing home cases. The main criticism of that strategy is that the State, in defending its position, disregards the fact that the litigants are from a vulnerable group in society and adopts the type of hostile and aggressive behaviour which is often a feature of litigation generally. And perhaps most importantly, the strategy is designed to ensure that the key legal issue about entitlement is never decided by the courts.

Insofar as the Attorney General is concerned, the criticism is that he defends the State's adversarial strategy as if it were just another legal contest between equals.

The argument seems to be: the State is entitled to use all the weapons in its legal armoury to defend its position and avoid defeat. In any case, the Attorney argues that the State's strategy actually

serves 'the public interest' in protecting the taxpayer.

It is difficult to accept the Attorney's argument. As academic lawyer Mairéad Enright put it, the Attorney mistakenly 'conflates the public interest with the State's interest in managing the public purse'. The Irish Times columnist Justine McCarthy observes that the position of the Attorney, in defending the strategy, is simply what you would expect from a lawyer. 'Had the Cabinet sought counsel from an ethics adviser, the answer would have been quite different,' says McCarthy.

Clearly, what is missing in the State's strategy is any real moral or ethical dimension.

THE question to be asked is whether it is realistic to expect the Attorney General to behave other than as an experienced but partisan lawyer? Is the Attorney's role as adviser to the Government compatible with the 'guardian of the public interest' role? The answer has to be that often they will not be compatible.

For example, the State's litigation strategy regarding the nursing home costs issue is designed to ensure that the key legal issue about entitlement is never decided by the courts. As Mairéad Enright has commented: 'There is a public interest in meaningful access to justice. What does the Attorney General have to say about that?'

The two roles need to be separated. Various suggestions have been made as to where the 'guardian of the public interest' role should be located. Intriguingly, one of the suggestions comes from the Fine Gael party. In its New Politics document (2010) Fine Gael proposed that the 'guardian of the public interest' role should be conferred on the Ombudsman. The Fine Gael document comments that there 'is a potential conflict of interest between this ["public interest guardian"] function of the Attorney General and his other function as adviser to the Government'.

Now, 13 years on, maybe the time has come to act on this suggestion.

Ger Colleran



Fanning's tone-deaf report is a triumph of legalese over politics

ATTORNEY General Rossa Fanning is clearly an excellent barrister but, Jay-sus, he'd make a rubbish politician.

His report into how the State handled the enormous scandal of illegal nursing home charges imposed on the most vulnerable amongst us, and also on the non-payment of disability allowances to people in residential care, reads more like political excuse-making and exculpation for his boss Leo Varadkar, and the State apparatus generally, rather than a strict explanation of the State's legal posture when people sued.

In fairness to Rossa Fanning, that's hardly surprising seeing as how the Attorney General is a political appointee, pure and simple.

According to Article 30 of the Constitution, it makes it perfectly clear that Fanning is there because Leo Varadkar ordered it to be so and he stays as long as Leo has a mind to keep him. Unless, of course, he walks of his own volition.

Now normally it's my policy to leave well enough alone as far as legal eagles are concerned and, on balance, I think I've profited from doing just that.

However, Mr Fanning's report is an intrusion by him into the public square and, therefore, allows us all to throw shapes.

And, on account of what he says in this report, one would be justified in throwing to Olympic gymnast gold medal standard.

Fanning's report is an unshamed polemic, a no-holds-barred, carefully constructed, argumentative piece of wordcraft which intentionally or otherwise attempts to throw a protective cloak over the behaviour of the State apparatus and, by implication those politicians we appoint to run the show. It's no wonder at all that Mr Fanning was once named Irish Times debating champion.

THE Attorney General thunders on about how much the Government spends on health and social protection, about how hard decisions have to be made on the distribution of scarce resources and, with lawyerly bluster, knocks lumps out of what he describes as the 'generic stereotypes' of the State being cruel and unfair.

All this in a manner which suggests that the rest of us, the great unwashed outside Government Buildings, have goldfish memories. That we're too thick to recall the cruelty of the Kerry Babies affair, the inhumanity with which the State treated Mrs Brigid McCole over her poisoning (and subsequent death) as a result of being given infected blood by our healthcare system, the harassment of the victims of the CervicalCheck disaster, the unconscionable barbarity of the treatment of victims of abuse in State-run institutions and more, and more and more.

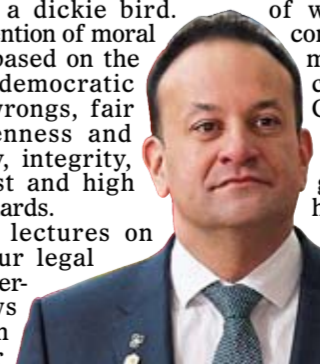
Rossa, are you having a laugh? Are you really suggesting that it's a mischaracterisation to describe the State apparatus as 'cruel and unfair' to its citizens? Really? Knowing all we know?

Paragraph 16 of Fanning's report is a classic in obfuscation. First he presents the most irrefutable truth, that the 'public interest' is the only interest for which the State can have regard. Who could possibly disagree with that?

He adds: 'But the "public inter-



REPORT:
Attorney
General
Rossa
Fanning



DEFENCE:
Taoiseach Leo
Varadkar

est' must of course always extend to considering the position of the taxpayer... Couldn't agree more, Rossa.

At that point you'd expect that the AG would chip in other elements also embraced by the 'public interest' principle. But no, there's silence. Not a dickie bird. There's no mention of moral governance based on the doctrine of democratic rights and wrongs, fair dealing, openness and transparency, integrity, honesty, trust and high political standards.

Instead he lectures on about how our legal system is adversarial, throws in a mention about our

rising national debt (much of which was caused by bailing out fat-cat bankers and fatter bond holders on instructions from the ECB), the intergenerational fairness issue of taxes on younger people where redress is made by the State apparatus for historic wrongs. All of which are political policy considerations of the kind not mentioned at all in his job spec contained in Article 30 of the Constitution.

Further, paragraph 27 is like something out of a government politician's handbook. Deploying the most profoundly insulting finger-waving language it

reads: 'Portraying the State as callous or insensitive when electing to defend, rather than concede litigation [by the way, who did any such thing?] has no regard for the true context in which difficult decisions must be made.'

Now that's putting all us dunderheads back in our boxes, for sure.

Fanning, in paragraph 33 of his report, again reminds critics of their ignorance when he says: 'Any suggestion that a "secret litigation strategy", without more, is in some way improper betrays significant unfamiliarity with the civil litigation process.'

His 'fundamental lack of understanding' insult for critics is repeated in paragraph 35.

Then Rossa Fanning attempts to convince us that the State apparatus is far less adversarial as compared

to private litigants. This, he says, includes 'significant restraint', including waiving costs 'having regard to the circumstances of the opposing litigant'. I think he expects us to be grateful.

What the AG doesn't mention is the complete absence of equality of arms when a citizen engages the State apparatus in legal conflict. Politicians, State officials and their lawyers have no skin in the game, don't stand to lose a red cent and couldn't give a fiddler's while the schmuck citizens risk all in a battle where the scales of justice are heavily weighed against them.

After all that unfairness, are we still supposed to be grateful when the State apparatus decides, by forgoing costs, not to take the roof from over the head of an unsuccessful litigant and dump her onto the street with her bits and pieces scattered around on the pathway?

The AG burst his own bubble in paragraph 129 by admitting that a small number of claims involving care in private nursing homes were settled to avoid the risk of 'an adverse outcome in a test case which could have provoked many more historic cases, all for the account of the taxpayer'.

SO THERE we have it. The political and State apparatus settled cases, which obviously had merit, for fear of losing a test case, in order to avoid other claims with at least similar merit from emerging.

Rossa, that might be a smart legal manoeuvre, but – to borrow your own words – it betrays a 'fundamental lack of understanding' of government based on the over-riding principle of doing the right thing.

Rossa Fanning, Attorney General, should have stuck to his knitting when sitting down to write this report.

It wasn't his function to address policy issues. Instead, he should have simply reviewed, as he was asked to do, files in his office on nursing home charges and non-payment of Disability Allowances and provide an account of the litigation management strategy adopted by the State. That's it.

His 'nothing to see here' report won't dilute public concern.

If anything, his tone-deaf approach, his report which mirrors the political sensitivities of a rhino in heat, will magnify such concern about the treatment of citizens by leading politicians.

All we wanted were the facts about the State's legal strategy.

All we got was a political clanger.

'The AG mistakenly "conflates the public interest with the State's interest in managing the public purse"'

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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 general's warning

THE HSE FILES

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

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.

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.

A 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 Oireachtas 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.

B 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.

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.

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.

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.

A 41. It is also agreed that Article 9 of the Health Service (Amendment) Regulations 1971 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 include and in setting age limits. This issue will have to be considered further depending upon what policy the Department intends to adopt.

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".

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.

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 as soon as possible, and 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.

'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. michaelofarrell@protonmail.com

EXCLUSIVE

By Valerie Hanley

A DEVASTATED couple who were forced to fight a marathon eight-year legal battle to get justice for their dead baby said the State's controversial litigation strategy has 'destroyed' their lives.

Baby Laoise Kavanagh Ní Scoláí died after her heart was accidentally pierced during a chest drain procedure at the Coombe Hospital in Dublin.

Laoise, a twin, was just two days old when she died after her heart was penetrated with plastic tubing.

The Coombe Women and Infants University Hospital, Dublin admitted liability in the case, which was finally settled earlier this week.

However, this was only after Laoise's grief-stricken parents, Irene Kavanagh and her husband Cólín Ó Scoláí, had to endure a tortuous legal battle with the hospital and health authorities.

In an interview with the Irish Mail on Sunday, the couple told how layer upon layer of deceit and mistruths convinced them they would only discover why their daughter died if they sued the State.

And despite finally emerging from an epic legal battle, they still do not know if the procedure that claimed their daughter's life is being done any differently at the hospital where she was born.

The couple issued a heartfelt appeal to Health Minister Stephen Donnelly to meet them, so no other family has to go through the same 'inhuman' and 'cruel' adversarial legal battle they say has left them heartbroken, and very different people. Irene told the MoS: 'They destroyed me.'

'There are nights when my little boys cry about why they don't have a sister'

I was a very competent, very independent person who ran her own business, and now I couldn't make a decision to save myself. I feel hollow. We don't know who we are any more. We are different people to the people we were before this.

'There's always going to be a hole in my heart. When you lose a child there's a piece of you missing.'

'We feel like we have been pulled through the wringer and this has had a ripple effect on our entire family.'

'There are nights when I put my little boys to bed and they cry about why they don't have their sister.'

Irena and Cólín are just the latest victims of high-profile medical negligence cases who have had to spend years battling the State to get justice in the courts.

Last December, the MoS revealed how the State has paid out more than €3.3bn in negligence settlements and costs since the State Claims Agency (SCA) was set up in 2010.

While the SCA insists it acts fairly and ethically in dealing with claimants, it is also mandated to manage claims so that the liability of the State is contained at the lowest possible level.

This approach reflects the State's controversial litigation strategy – as revealed in this newspaper last month – of not resolving legal cases until the last minute.

Cólín said he is angry with the SCA and the hospital for taking away the last eight years of their life, in the process not allowing them to grieve properly for their baby daughter.

He told the MoS: 'This is all about how they treat people. I would like to meet with Stephen Donnelly to talk to him about the treatment we received at the hands of the Coombe and the HSE and to find out what it is he is going to do to ensure that this doesn't happen again.'

Speaking just two days after new legislation ensuring the mandatory open disclosure of adverse incidents during the care of patients

Couple who suffered the death of a twin baby and fought a legal battle for eight years say the State's litigation strategy has destroyed their lives

'The truth is not expendable'



AGONY: Irene Kavanagh and Cólín Ó Scoláí, fought for eight years to get justice for their baby Laoise, left, who died at two days old

Their parents and older brother and sister were overjoyed at their safe arrival. Irene recalled: 'Our eldest daughter Caoimhe was 16 and she is now 24.'

'Our son Marcas was 13 months old, and he is nine now. There weren't twins in our families. I am one of two and Cólín is one of eight, and we always wanted a lot of kids.'

'Cuán and Laoise were very longed for, and it was a long road to get there. It took us a long time to meet them. It took us a long time to get them.'

'Laoise was the livelier one. She was always the most active in the womb. Laoise and Cuán were premature... they were 28 weeks and six days when they were born.'

'She was 1.25 kilos when she was born, and Cuán was 1.2... they were like two tiny birds.'

'They were side by side in their

cots in the ICU and when we'd go to see them, we'd stand between the two of them and we'd say a quick hello to Laoise and we'd turn to Cuán to will him on. And that breaks our hearts.'

'We never got to hold her when she was alive... I was very nervous around the incubator, so I just put my little finger in and she grabbed my finger and that's all I have of her,' Irene said.

Despite their tiny size, there were no immediate concerns among medical staff at the hospital about the twins' survival.

But – suddenly – things changed. They were told Cuán needed a procedure to drain fluid from his chest. Soon afterwards, medics told the worried couple it was likely Laoise would require the same procedure.

But just minutes after doctors set about inserting a tube into her tiny

chest, the baby girl's parents were called to her bedside.

They were told that, during the procedure, 'something had been nicked' and that a team was on standby at the Children's Hospital in Crumlin.

'I looked at the doctor's face and thought: "Please don't say it"'

Irene and Cólín were not able to accompany their daughter on what would be her one and only journey because there was not enough room for them in the ambulance.

Instead, they followed in their car. Irene, who was still wheelchair bound after having a Caesarean

HEARTACHE: Laoise's twin brother Cuán is 8 and misses his sister



section, recalls the harrowing moment when their worst fears were confirmed.

'They brought us to a deserted part of the hospital because it was a Saturday and they put us in a little kitchen. I don't think we were even there five minutes or ten minutes, and they wheeled us out. There was a doctor at the door, and I remember looking at the doctor's face and thinking: "Please don't say it; please don't say it."'

'It was like something out of a movie. The doctor just shook their head,' she said.

Laoise lived for just 42 hours and

State must stop legal 'brutality' against victims

The State must end the 'brutality' of its aggressive legal approach to victims of medical negligence, Labour health spokesman Duncan Smith said this weekend.

Mr Smith said the harrowing testimony given by the parents of baby Laoise Kavanagh Ní Scoláí – who had to fight an eight-year battle with the State after the newborn died when her heart was accidentally pierced during a procedure – 'shone a light on the default position of how the State fights claims from citizens'.

He told the Irish Mail on Sunday: 'There is no other word for it than brutality.'

It is the tragic experiences of families like the Ó Scoláí family which shine a light on these legal strategies and put a human face to them.'

The Dublin Fingal TD said the family's harrowing experience starkly illustrates the 'human cost' of the State's litigation strategy after the MoS last month revealed how successive governments – including current Cabinet members – hid the true scale of the liability for illegal nursing home payments to limit payouts to families.

'We debated in the Dáil about legal strategies in relation to nursing home charges and disability allowances two weeks ago. We spoke in broad terms about schemes, entitlements, and eligibilities. But when you see what [Laoise's father] Cólín Ó Scoláí said on those court

By John Drennan

steps, you realise that is the human cost of all these high-level legal strategies,' he said.

Details of the baby Laoise case emerged this week as Health Minister Stephen Donnelly unveiled landmark legislation aimed at providing a new culture of open disclosure in the health and social services.

The Patient Safety Bill follows years of campaigning by the 221+ advocacy group, set up in July 2018 by the late Vicky Phelan, Stephen Teap and Lorraine Walsh in the wake of the CervicalCheck scandal.

Mr Donnelly insisted the legislation would 'pass the Vicky Phelan test' and make Ireland 'a world leader' in transparency.

A record €357.4m was paid out in medical negligence claims last year and Mr Donnelly admitted this is likely to soar even higher to €530m this year.

Mr Donnelly told the Irish Mail on Sunday: 'A key intention of the Patient Safety Bill is to ensure that patients and their families have access to comprehensive and timely information.'

'This is achieved by the open disclosure mechanism in the Bill and contributes to embedding a culture whereby clinicians, and the health service as a whole, engage openly, transparently and compassionately with patients and their families when things go wrong.'

€2bn medical pay outs in five years

SPIRAL: How we reported the medical negligence awards last December

27 minutes. According to her heartbroken parents, staff at the Coombe – who just days earlier had hailed the little baby as the stronger of the twins – were now frequently

describing her as a seriously ill child. To Irene and Cólín, it seemed as if Laoise was being blamed for her own death.

Then came variations about what exactly had happened during the procedure to drain fluid from her chest. It transpired the 'something that had been nicked' was Laoise's heart.

One medic claimed a tube had been pushed in too far. Another disputed this, but then relented, claiming they 'had to push in too far' because Laoise was so ill. Then another explanation was provided; the baby's heart had swung towards the needle.

Irene and Cólín were told the team who worked on Laoise also performed the procedure on her twin brother. However, the couple found it difficult to establish exactly how many people were involved in the fatal procedure.

Questions arose about whether the hospital's own protocol for such a procedure was followed.

Irene and Cólín say the protocol was only published a month after their daughter's death. However, the hospital told them the guidance was well known at the time of their daughter's death. 'This weekend, the hospital refused to state if it has changed how it carries out the procedure that cost Laoise her life. 'The Coombe cannot comment on individual cases,' a spokesperson told the MoS. The State agency responsible for legal actions taken against government agencies, including the country's hospitals, also declined to comment. 'The SCA, as a matter of respect for plaintiffs and their families, does not comment on individual cases or groups of cases,' a spokesperson said. Irene and Cólín insist they would never have sued if the hospital gave them a proper explanation of why and how Laoise died, with a sincere apology and assurances that safeguards would be introduced to prevent it happening to another child. Cólín added: 'This system dehumanises everyone, and how much time and money has gone into defending the indefensible?' In response to queries from the MoS, a spokesperson for Minister Donnelly said they were 'not aware of a request for a meeting' but indicated he may be willing to do so, adding: 'The minister has often met with patients and patient advocates in the past.'

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Who knew, and why did they think this could be justified?

THIS week, we reveal fresh details about how the State is secretly acting against the best interests of its citizens.

It has resisted ten-year-old advice from the then Attorney General that the 1971 Health Act limiting free drug treatments for mental health conditions to under-16s via the Long Term Illness scheme (LTI), was unjustified.

Government policy in the matter is ultra vires.

That is not our verdict, it is Máire Whelan's. In layman's terms, the Government is acting beyond its jurisdiction.

In recent weeks, revelations from Department of Health whistleblower Shane Corr have exposed a secret legal strategy to deny, delay and desperately settle cases with people seeking refunds of private nursing home charges when they could not access public beds for their loved ones.

We have separately shown that Taoiseach Leo Varadkar – who supports that controversial legal strategy – brought a memo to Cabinet during his term as Health Minister to secretly limit entitlements already granted by the State to families of people infected by Hepatitis C, demonstrating a particularly chilling attitude towards previously granted rights to seriously wronged citizens.

However, you will excuse our shock at what we reveal this week, in that the situation as described in black and white in a memo from the AG's office seems to trump all of these issues. Mr

Varadkar defended his position on the secret strategy to limit refunds for nursing home charges, calling it 'sound'. He requested his Attorney General, Rossa Fanning, to issue a report that unsurprisingly cleared this strategy from a legal perspective. Interestingly, such a route is unlikely to find much purchase in this week's Long Term Illness issue, given that the AG's office itself declared that charging for mental health drugs for people over the age of 16 was – as it is clearly stated – 'ultra vires'.

The fact that this wrong is still being perpetrated by the State, even as you read these words, is disturbing. The fact the State and its officials knew about this ten years ago is disgusting.

It is hard to fathom which action by the government ten years ago is more morally reprehensible: a secret retrofitting of another defect in the law for the LTI scheme without any public

debate or reference, or the dereliction of basic public service duty in allowing an illegal restriction to stay on the statute books.

A conspiracy of cowardice. In recent weeks, when Mr Varadkar addressed the issue of disability allowances being withheld from people who were in State care, he described the State's position as 'not having a legal leg to stand on'.

One now wonders, on a scale of 'sound' to 'not having a legal leg to stand on', where the Taoiseach's acutely insightful legal mind will settle on this latest issue to arise.

It is instructive to consider just how heavy the callous and unfeeling yoke of Government policy truly is on the backs of unwitting, and mainly trusting, citizens.

The action against Hep C families did not occur. The wronging of thousands of people who have paid, and pay, money for mental health drugs they were, and are,

entitled to, has. This newspaper is not arguing that everybody in the State who is on drugs for mental health should have that burden met by taxpayers.

But it is our duty to argue that if the law says the State should pay, then the State should not exceed its jurisdiction in restricting this without a democratic debate, and a vote in the Oireachtas – to which the Taoiseach and this Government are ultimately accountable.

It is not as if citizens have been quiet on this matter. Questions have been asked repeatedly why, unlike every other condition covered by the LTI scheme, support for mental health patients ends at 16. When the legislation was framed by Erskine Childers in 1971, many 16-year-olds were considered men and women, and usually working, apprenticed to trades, or helping run the family farm, however flimsy that justification was. In 2023, there is

zero logic to the restriction, given that many 16-year-olds are only in transition year in secondary school.

Today, we also tell the story of a mother whose son tragically took his own life at 17, saying this revelation adds to her suffering. She is not saying that it would have saved him, but it would have meant the family did not suffer financial hardship when they had to buy the relevant drugs themselves.

The Government is left now to argue that people over 16 do not deserve their drugs for free. Of course, this would be politically problematic; most likely this is the reason they left the situation unchanged. But the Government must now come up with a objective justification for the denial of drugs payments to over-16s, or it must change the law. These are the only two options available.

The State was not unaware of this issue. Nor were previous governments. The reality is an act of parliament cannot be passed in this country without ministerial involvement and, likely, Cabinet decision.

What we now want to know is who knew about this illegal restriction, when were they told about it and why did they believe it could ever be justified to do nothing?

This Government would do well to start answering those questions, as the questions that follow are about how many other secret loopholes the public service is keeping from citizens.

Taxpayers should not pay people not to work

CHRISTMAS bonus, spring bonus. What next, a Brucie bonus?

Sinn Féin's Pearse Doherty wants a double payment for those relying on a working-age social welfare payment – pensioners, people with disabilities, carers, and lone parents – some 1.3 million people.

Now, I have no problem with the most vulnerable and needy being given every assistance to help them through these troubling times. And a radical approach to combat the cost-of-living crisis is necessary of course.

But – and I cannot be alone in this thinking – taxpayers should not be expected to prop up the 'can work, won't work' welfare recipients.

At a time when the resounding message from Leinster House is that the economy is buoyant – we have near full-employment – surely what is most pertinent is that there is a severe labour shortage in many industries.

We can't create a welfare trap. Pensioners, people with disabilities, and carers should get as much financial support as possible to ease their burden. But those who are 'relying on a working-age social welfare payment' (as per Deputy Doherty) need to learn to rely on themselves and not the taxpayer.

Some politicians propose a blank-cheque culture with cash being dished out without any of the necessary practical policy balance.

Or else, what about a 'Back to Work' bonus to incentivise the able-bodied to get a job, instead of the current situation, where

Niamh Walsh's Manifesto

unemployment is a far more appealing prospect?

Job Seekers' Allowance need not be an oxymoron; the clue is in the title. In this economy, seek a job, and you shall find.

Tiger prank not on par with LIV greed

TIGER Woods's 'prank' of placing a tampon in the hand of fellow pro Justin Thomas after out-driving him on the course was juvenile – the implication was that Thomas plays like a woman.

But the pile-on that has ensued has been borderline hysterical.

Tiger Woods should rightly be scolded for his silly schoolboy prank, but he hasn't committed any cardinal sin.

The winner of 15 majors is after all, along with our own Rory McIlroy, taking on fellow players who have taken 'boatloads of cash' (as Rory said) from the Saudi regime to join the breakaway LIV Tournament.

Given the Saudis' reputation on women's rights, it is safe to say that there won't be a breakaway

women's tournament, unlike the PGA where women golfers are on course to be put on a par with the best of the men.

No culprit found for mass grave of dogs

POST mortems on the skeletal remains of several dogs that were found dumped in a Co. Kildare bog last summer have concluded that the animals likely suffered 'traumatic injuries'.

Many will remember that last August a member of the public made the gruesome discovery of dog remains – including individual skulls and bones as well as full skeletons – of what were suspected to be greyhounds.

It has now emerged that the remains were examined by the Department of Agriculture's veterinary laboratory in Celbridge, Co. Kildare, and were sent forward for further testing to see if the dogs and their owners could be identified.

Agriculture Minister Charlie McConalogue's answer to a parliamentary question from Paul Murphy on January 31 said: 'It was not possible to determine when these animals had died but traumatic injury, evident in six of the dogs, was the most probable cause of death.'

And as if further proof were needed that the Department of Agriculture has scant regard for animal welfare, it passed the bones (and the buck) to Greyhound Racing Ireland (GRI) which carried out DNA testing. And GRI could not trace the owners.

Mr McConalogue confirmed that the case was handed over to Greyhound Racing Ireland, which arranged for several tissue samples from these dogs to be analysed by a specialised laboratory.

'DNA was retrieved from one of

the greyhounds and submitted for analysis,' its spokesman told The Journal.ie. It comes as no surprise that 'to date, no match has been found and the GRI investigation into the matter is ongoing.'

The Department of Agriculture's efforts are akin to putting Dracula in charge of conserving supplies in a blood bank.

Space cadets are in a panic about aliens

HYSTERIA about the presence of UFOs over the skies of America has not subsided with the shooting down of mysterious objects.

Pentagon sources officially said that the objects were not a threat but conspiracy theories have blown up the internet – with the more ardent ufologists predicting an imminent invasion of alien life forms.

Now, call me cynical, but history has shown that UFOs have a habit of appearing when war is on the horizon and some new weapons are being tested.

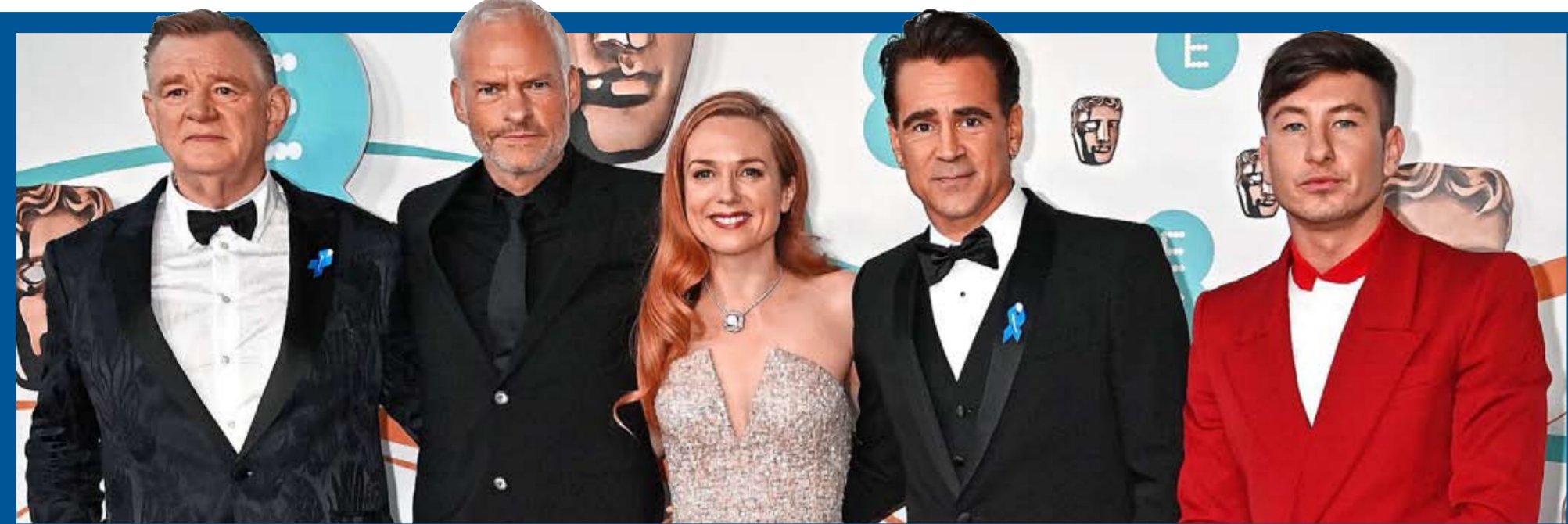
In the 1930s, the reports of 'mystery aircraft' coincided with the coming of the Second World War, when strange objects were dubbed 'foo fighters'. After the war, reports of odd things in the sky soon became perceived as a truly global phenomenon, with the arrival of flying saucers in June 1947.

The Roswell crash in New Mexico came a few years after the US had dropped the first atomic bomb.

They were also on the cusp of the Cold War and the Soviets were also developing their own new bombs.

The Roswell aliens could be better explained in this context. Given the current state of the planet, any alien beings arriving from another planet would be likely to assume it's the humans who are the space cadets, and take their flying saucer home.





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

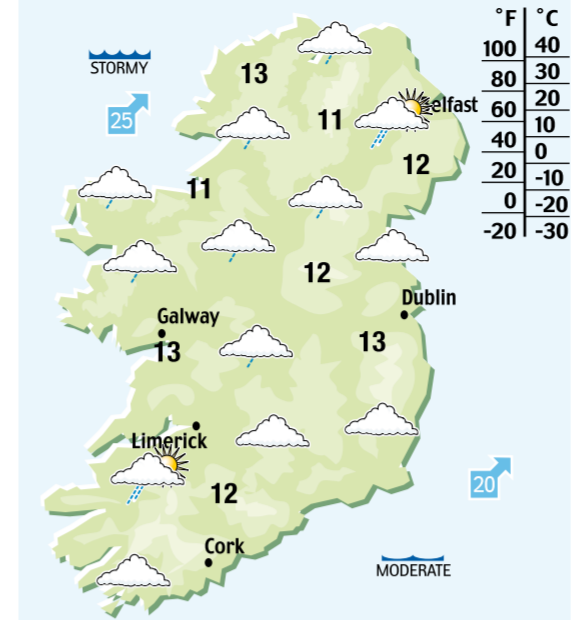
THE illegality of the Government policy of excluding mental illness sufferers over the age of 16 from the Long-Term Illness (LTI) scheme was hidden from the Dáil for

By Michael O'Farrell
Investigations Editor
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

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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 table with columns for 9am, 12noon, 3pm, 6pm, and 9pm for various locations.

5 day forecast table with columns for Tue, Wed, Thu, Fri, and Sat for various locations.

Around the world yesterday table showing weather conditions for various international cities.

Ireland yesterday table showing 24-hour weather details for various Irish locations.

WEATHER ALERTS Call 1550 507 157 for todays forecast (updated 3 times daily)

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.



EXCLUSIVE: Yesterday's front page story

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 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 at the Department of Health was also aggressively implementing its

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

'Compensate those who lost out'

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 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, spinous bifida and 'mental illness'. But uniquely among the listed illnesses, the

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. michaelofarrell@protonmail.ie

'Department is likely to lose'

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



After MoS reveals the age limit on free mental health drugs scheme is illegal:

MISLED TDs RAGE AT SILENT DONNELLY

HEALTH Minister Stephen Donnelly was accused of 'political cowardice' last night after he refused to respond to widespread calls from Government and opposition TDs to amend defective legislation that illegally prevents anyone over 16 with a mental illness from accessing free medication.

By **John Drennan**

Mr Donnelly is also coming under intense pressure to correct the Dáil record after 14 TDs were misled by his department over the issue since it became known.

The minister refused to respond to calls from several of these TDs - in-

cluding two former ministers - to correct the Dáil record and amend the flawed legislation.

Commenting on Mr Donnelly's silence, the main opposition party's health spokesman, David Cullinane, told the Irish Mail on Sunday: 'The minister needs to face up

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SAOIRSE'S £2.5M LONDON LOVE NEST

SEE PAGE 8

'We must have truth and openness'

From Page One

to his responsibilities and stop hiding behind excuses. This is not a matter that can be dealt with by political cowardice.

'We can't have a situation where advice comes to Government that services that are not acting properly is being ignored.

'Government and ministers have a political responsibility to ensure schemes operate within the law. We have had far too many schemes operate outside the law.'

The Sinn Féin TD added: 'I would ask the minister as a matter of urgency to bring forward a scheme to regularise a critical service for vulnerable people.'

The cross-party fallout over the issue comes after the MoS last week revealed how the Government was made aware by the office of the Attorney General as far back as 2012 that legislation underpinning the Long Term Illness (LTI) scheme - under which only those under 16 with a mental illness are entitled to free medication - is discriminatory and legally unsound.

However, successive health ministers - including Leo Varadkar - have failed to amend the defective law, which remains in place today.

When pressed on the matter this week, the Taoiseach said 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]

'We are dealing with vulnerable people here'

if found ultra vires [invalid]', and that patients could lose access to drugs 'if it were found their entitlement was not, and had not, been legally sound'.

Mr Varadkar also said he did not believe there was 'any public interest' in putting this information in the public domain.

Asked on Wednesday if he planned to correct the record and/or fix the underlying legislation, the Health Minister simply failed to respond, despite repeated attempts through the department press office - and directly.

Attempts to contact Mr Donnelly through his press adviser, former Newstalk reporter Páircé Gallagher - who is paid €89,072 a year by taxpayers to answer questions for the minister - also failed.

However, Mr Donnelly's junior minister Mary Butler appeared to contradict the Taoiseach's stance yesterday when she told the MoS: 'We are currently examining the issues raised in the Mail on Sunday story last week and will take the necessary advice.'

Furious Government and opposition TDs who were misled on the issue this weekend called on Mr Donnelly to correct the Dáil record.

Since 2012, 14 TDs made representations on behalf of constituents whose children were denied medication as soon as they reached the age of 16.

When the matter was raised in the Dáil, successive ministers stood



SILENCE: Stephen Donnelly failed to respond to queries on the scheme

over the policy, even though the State had been made aware that the legislation underpinning the age limit restriction was legally unsound.

As recently as October of last year, Mr Donnelly answered three separate parliamentary questions about why those over-16s were excluded from receiving free medication under the LTI scheme.

In his response to each of these queries, Mr Donnelly 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 under the LTI scheme for those with a diagnosis of mental illness.'

Ministers dating back 12 years to Labour's Alex White and Kathleen Lynch, who served in Enda Kenny's first austerity government, also misled the Dáil as a result of having the wrong information.

Now a cross-section of Government and opposition TDs who were misled on the matter have demanded clarification from the minister.

Those who were misled include two former senior Fine Gael ministers, Richard Bruton and Michael Ring, and two junior ministers from the same party, Fergus O'Dowd and Paul Kehoe.

Mr O'Dowd, a long-term campaigner on health issues told the MoS: 'I will be looking for answers from the minister and the Government - correct answers this time.'

The Louth TD added: 'This is yet another example of a culture within the HSE and the Department [of Health] of not providing correct answers, even when you ask the right question.'

'It is important to note we are dealing with vulnerable people here and just because you are vulnerable doesn't mean you don't have rights.'

Mr Bruton, now chairman of the Fine Gael Parliamentary Party, also said there is a need to correct the legislation.



DISMISSIVE: Taoiseach Leo Varadkar stands over secret stance on nursing home charges, secret suggestion to cut Hep C blood scandal payments and secret strategy over age limit for mental health medication

He told the MoS: 'It seems that the reply may have been accurate, but it didn't recognise that there is now a need to change the provision in view of the Equality Act of 2000.'

His party colleague and fellow former minister Michael Ring added: 'The minister must correct the record and explain how incorrect information was released.'

In a scathing critique, Sinn Féin TD Pat Buckley, who was also misled on the issue, said it is 'the latest example of a culture of disinforma-

'Department has culture of misinformation'

tion that is rife within the department'.

The Cork East TD added: 'Once again, vulnerable people have been betrayed by institutions of the State that is becoming increasingly hostile to those it is supposed to serve.'

'It is part of a systemic pattern of disinformation that stretches across all aspects of the service, including the wholesale closure of facilities without due cause.'

Mr Buckley also said ministers 'need to show a bit of backbone', adding they are 'allowing them-

selves to be turned into pawns of a system where the absence of information is systemic'.

His Sinn Féin colleague Mark Ward, who is his party's spokesperson for mental health, added: 'The

minister must come into the Dáil immediately and rectify this error.'

'The Dáil is where we expect to get correct answers to serious questions: especially when it comes to the rights of vulnerable people.'

UNFAIR: Nicola Byrne, CEO of Shine, calls for over-16s to be supported



THE head of a leading mental illness charity has hit out at Taoiseach Leo Varadkar's response to revelations that legislation stopping over-16s from accessing free medication is defective.

The flawed legislation - revealed in last week's Irish Mail on Sunday - has denied thousands of patients with mental illnesses free drugs since it was brought in under the Long-Term Illness (LTI) scheme back in 1971.

In 2012, the defective legislation was found by the office of the attorney general to be invalid, and her office called for the law to be removed or updated to include those

SCOOP 1:

JANUARY 29



MoS Story:

Department of Health documents reveal successive taoisigh and health ministers - including current Cabinet members - agreed with a secret plan to contest the State's liability for illegal nursing home charges in order to prevent massive payouts.

Taoiseach's response:

In a media interview, he says he was not party to the secret strategy which involved settling cases at the point of discovery - and that the situation is being misrepresented. Within 24 hours a Government spokesman confirms all of the details in the story. At Leader's Questions in the Dáil, Mr Varadkar does a volte face, defending the State's secret plan as a 'legitimate legal strategy by the Government'. He confirms he does not recall being briefed or authorising the strategy, which was and continues to be strongly criticised by the Opposition and political commentators. He tasks the Attorney General (AG) with issuing a report to Cabinet, which he publishes. The Government lawyer backs the Government's legal strategy.

SCOOP 2:

FEBRUARY 5



MoS Story:

Leaked documents show that during his time as Minister for Health, Leo

SCOOP 1

SECRET PLAN TO BLOCK REFUNDS FOR OLD AND SICK

PUBLIC INTEREST: Investigations Editor Michael O'Farrell's revelations, based on the issues raised by Health Department whistleblower Shane Corr as reported by the Irish Mail on Sunday

How MoS revealed secret policies

Varadkar brought a memo to Cabinet proposing to secretly remove redress entitlements of family members affected by the Hepatitis C scandal.

Taoiseach's response:

A spokesman for Mr Varadkar told the MoS the proposal was 'considered in 2014 and 2015 when health budgets were cut due to the deep recession the country was enduring at the time'. He also stated Ireland, at the time, 'was in a bailout, the IMF was monitoring public finances and very difficult decisions were being taken monthly'. However, Ireland exited the three-year IMF bailout programme on December 15, 2013 and the Department of Health's budget was not cut in 2014 or in 2015.

SCOOP 3:

FEBRUARY 19



MoS Story:

We reveal AG Office advice that teenagers over 16, and adults, are being wrongly denied free medication, and the State refused to correct the defective legislation. The documents confirm the Government has known that legislation underpinning restrictions on the age limit under the Long Term Illness (LTI) scheme is discriminatory and legally unsound, since 2012. We also reveal the then-government secretly corrected the legislation, to resolve another defect, by adding an amendment to an unrelated act.

SCOOP 2

VARADKAR'S PLAN TO CUT HEP C PAYMENTS

Taoiseach's response:

Asked directly on Tuesday about mental health drugs by our sister paper, the Irish Daily Mail, the Taoiseach bats away concerns. Despite accepting the legislation is 'legally unsound', he says he does not believe the law needs to be amended. The Taoiseach said the Government's 'biggest fear' in addressing the legality of the age limit was that 'the courts would strike the scheme down', and people availing of it for other illnesses, such as diabetes, would no longer receive free medication. He then also says he does not believe there was any public interest in 'putting this information in the public domain'.

SCOOP 3

AGE LIMIT ON MENTAL HEALTH MEDICINES IS ILLEGAL

Crucially, he doesn't say anything about people denied free mental health drugs. Mr Varadkar also claimed he had 'addressed' the issue in the Dáil when he was Minister for Health. This appears to be a reference to a 2018 response to a Dáil question (when Mr Varadkar was Taoiseach) which shows him referring to differences between the medical card scheme and the Long Term Illness (LTI) scheme and not mentioning the age limit restriction that prevents anyone over 16 from accessing free medication. 'It is not possible to add new illness to it [LTI scheme], which would reopen the whole question of whether any of the illnesses on it should stay on it,' he told now former Deputy Kevin O'Keefe.

Fianna Fáil Senator Fiona O'Loughlin, who asked a series of Dáil questions on the issue when she was a TD, also called for the record to be corrected.

She told the MoS: 'When a TD submits a PQ [parliamentary question], it is in the expectation of getting an honest and accurate answer, if not a hopeful one.'

'But to be misled is another matter altogether. There needs to be some form of accountability and

the Minister for Health should ensure that the record is corrected, and an apology given.'

Ms O'Loughlin added: 'It should be remembered that we are dealing with vulnerable people, who myself and others have been asking questions on behalf of. We must have truth and openness to be able to deal appropriately with the inherent challenges they face.'

Disagreeing with the Taoiseach's view, she also warned: 'This obvi-

ously is an issue that must now be legislated for.' Social Democrats TD Cian O'Callaghan, another pub-

'Systemic pattern of disinformation'

lic representative who was misled in responses to Dáil queries on the matter, hit out at the Government's

'utter absence of accountability on this issue.'

The Dublin Bay North TD said: 'The minister must come in and account for himself and his department. Democracy is not working if ministers are either incapable of or simply choose not to give correct answers without consequence.'

Other TDs who received wrong information about the age limit for free mental health medication include high-profile Sinn Féin TDs

Pearse Doherty and Clare Kerrane.

'They - as well as Fine Gael TD Paul Kehoe - have all been contacted for comment but have not responded.'

Former TDs who were also misinformed on the issue include current MEP Mick Wallace, former Fine Gael deputies Noel Rock and Tony McLoughlin and the Independent Tom Fleming.

news@mailonsunday.ie

Mental health charity wants legislation updated

By Colm McGuirk

over 16. However, the legislation was not changed and remains in place today.

When pressed on the matter this week, the Taoiseach claimed the Government's 'biggest fear' in addressing the legality of the age limit was that 'the courts would strike the scheme down', and that people availing of it for other illnesses such as diabetes would no longer receive free medication.

Mr Varadkar also said he did not believe there was any public interest in 'putting this information in the public domain'.

However, the Taoiseach's position was strongly criticised by Nicola Byrne, CEO of Shine, a national

charity that campaigns for the rights of all people affected by mental ill health.

Ms Byrne said: 'It's disappointing that the Taoiseach is still talking about the delivery of schemes based on precedent and legacy issues. He appears to be saying that to expand the scheme would put the whole scheme at risk.'

The charity boss pointed to the fact that mental illness is the only one of the 16 reasons for inclusion on the LTI scheme that has an age limit, which she said 'makes no sense on many levels'.

'The late teens and early 20s is a time when many mental health challenges emerge. We know that early intervention is beneficial on so many levels including quality of life and costs to the exchequer.'

Ms Byrne added she 'would call on the Taoiseach to address this anomaly and remove the outdated age barrier'.

Dáil records confirm the discriminatory and legally unsound policy has been the subject of frequent parliamentary questions since the Department of Health was advised the legislation was flawed in 2012.

But each time the matter was raised in the Dáil, successive ministers stood over the policy, even though they knew the legislation was unsound.

One of these parliamentary questions was made by a southeast-based TD on behalf of a woman who was struggling to pay for her son's medication when he turned 16.

Speaking to the MoS this weekend, this woman - who did not wish to be identified - described the continuing age limit to free medication, which has been found to be discriminatory, as 'wrong' and 'disgraceful'.

She said: 'We're a working family and we could do without the bill, but we'll find the money. But I was always kind of concerned that if you're a family that didn't have a medical card or was struggling a little harder, what would happen?'

The mother described her family as being part of the 'squeezed middle', who are not entitled to a medical card and for whom having to pay €80 extra a month under the Drugs Payment Scheme piles an additional financial

burden on the household finances. 'We're a normal working family paying the mortgage and the bills and we just could do without having to pay the €80 every month,' she added.

She said all children and teenagers who suffer from mental illness should be covered until they are at least 18 years old. The mother added the age limit restriction is 'a very small anomaly that really wouldn't cost an awful lot [to rectify], and a small change wouldn't really make a difference.'

'Yeah, you're still going to fall off a cliff at 18 but when CAMHS [Child and Adolescent Mental Health Services] covers you to 18, then meds surely should be covered till 18.'

ON SUNDAY

Reporting the facts is our duty, Taoiseach. You need to do yours

LAST week, we revealed that the law limiting the free supply of mental health drugs to those aged under 16 was defective, a fact that has been known by the State since 2012.

In the days after our front page story, our sister newspaper, the Irish Daily Mail, directly asked Taoiseach Leo Varadkar, himself a former health minister, whether the Government would stop breaking the law. His response was, on any generous interpretation, a struggle with basic reason. He ignored the question, and then had the remarkable arrogance to suggest, while confirming that the scheme had no statutory basis, that our revelations were not in the public interest.

Consider that for a second. The Taoiseach of the country apparently believes that a newspaper should not have revealed that the State is knowingly in breach of equality law.

Only former US president Donald Trump would fail to blush at such idiocy.

He dug the hole even deeper by adding that the disclosures were not that new, as he had himself mentioned the issue during his time in the Department. Unfortunately, this turned

out to be a tall tale.

Two weeks ago, Mr Varadkar shielded himself from criticism over the secret strategy to block reimbursement to families for private nursing home care, when public beds could not be accessed, by appointing his Attorney General Rossa Fanning to review the strategy, who ultimately concluded that the Government was not acting illegally. Imagine our surprise, therefore, at this week's intervention, which was designed to assure citizens that the State was not acting in a 'nefarious' way – his word – when it decided to ignore direct and unambiguous advice from a previous attorney general to act. For clarity – for our readers in Government buildings – the advice

from the AG's office clearly says that the policy of restricting mental health drugs based on age had to be abandoned, or else the law had to be changed, to underpin it. We did not invent this advice. It was revealed by documents given to us by Department of Health whistleblower Shane Corr.

During his time as Tánaiste, the Taoiseach appeared to have learned some humility from his party's 2020 election drubbing.

However, the trappings of the highest office have seemingly (and quickly) gone to Mr Varadkar's head as he deigns to lecture this newspaper on what should and should not be reported in the public interest.

Regular readers of this paper well know, in recent weeks and

this free mental health drugs issue over the past 10 years are very much aware that this is not just of public interest, but it is of significant concern to their constituents.

Mr Varadkar has been joined on this peculiar policy hill by Health Minister Stephen Donnelly, who has this week failed to respond to basic queries on the issue and stands accused by the opposition of political cowardice.

Junior Health Minister Mary Butler at least had the courtesy to respond to this paper's questions. She insists the department will consider our revelations. Which begs the question. If they are to be considered by the Department, could this mean they are of some little public interest? We won't hold our breath expecting any Pauline conversions.

Mr Corr has entrusted this newspaper with the mission of revealing a variety of unsettling truths regarding how the State reacts to protect itself at the cost of the blood, sweat and fears of the ordinary citizen.

We will continue to do that duty. We suggest Mr Varadkar, and his minister for health, go and do theirs.

Cut-price G&Ts won't buy you any votes, Leo

COULD Taoiseach Leo Varadkar BE any more insulting?

In rejecting claims that there was nothing in the cost-of-living package for childless, middle-income earners, Leo pointed to fuel subsidies and a continuation of the 9% hospitality rate that will continue to benefit childless workers on nights out (until the end of summer).

In essence, the squeezed middle will save a smidgen filling the tanks of their cars so they can slog away in office jobs to pay their mounting bills and prop up the economy.

But it's not all doom and gloom from Leinster House as, thanks to Leo's largesse, singletons can drown their sorrows for a bit less.

Is Mr Varadkar really that blind that he believes childless professionals simply want to spend their free time propping up bars and trawling for partners?

As one of that demographic, I find it grossly insulting that Leo expects a cheer from the childless that for the next few months we can socialise at a reduced rate. As a mortgage holder I would much prefer help to cushion the increase in interest rates, which have seen my home loan repayments rise month after month.

The Government is very seriously misguided if it expects an abundance of gratitude come election time for such meagre gestures as cut-price G&Ts. Unless it realises this, I predict it's in for a political hangover from hell.

Rookie TD gaffe is a sign of the times

The Dáil chamber descended into farce this week courtesy of Kieran O'Donnell. As Minister of State with responsibility for Local Government and Planning, Mr

Niamh Walsh's Manifesto

O'Donnell had ONE job last week – to oppose the eviction bill. But it was one job too far for the hapless TD, who missed his moment and forgot to utter a two-word pronouncement against the bill.

Mr O'Donnell described his mishap as a rookie mistake, prompting fits of laughter and despair from the opposition benches.

Of course, the fact that rookies are running the country isn't lost on this column. It was maybe even slightly refreshing to hear a politician in a rare moment of honesty.

But despite being able to admire a man who admits to being out of his depth, instead of compounding his naivety by trying to weasel his way out of the noose he's made for his own neck, I can't help but wish he had competent people in charge.

The parliamentary gaffe is not the biggest issue in the world, or even in the country this week, but it is very much emblematic of a government that is becoming increasingly out of touch.

But if the FF, FG and Green grand coalition, cannot realise that that voters expect a basic modicum of ability from those who are appointed to offices of State, then they are indeed in for a rude awakening.

The problem for us voters is, are those who want to replace them any better at all?



Slava Ukraini! They need our support

IT'S hard to believe it's been an entire year since Russia invaded Ukraine. Like many I knew only a little about Ukraine, or more importantly its people, before that date.

It is an understatement to say that



LEADER: Volodymyr Zelensky

the terror and suffering unleashed by Vladimir Putin has been horrific.

Women and children lying blown apart in streets. Piles of tortured bodies in bunkers. Cities and villages laid to waste by a despot.

But we have also borne witness to the heroic courage, pride and defiance of a righteous nation, ever more certain they are fighting for a just cause, and a slice of freedom that their neighbouring dictator just cannot abide them enjoying.

We have seen a tiny girl singing Frozen in a bunker, countless soldiers fighting against all odds, and a nation united and refusing to cede to the brutal invader.

This time last year 'Kyiv has fallen' was expected to be the first – and last – story of a short-lived 'special military operation'. But as the Russians circled their capital, the Ukrainians, led by President Volodymyr Zelensky, stood firm. They have defied all expectations.

Despite calls from China to surrender their land, and calls from snivelling TDs safely ensconced in

our own Dáil that they open negotiations with a madman who has ignored their sovereignty, and threatens their very existence, Ukraine more than ever needs our support and utmost respect. They are a country and a people to admire. Slava Ukraini!

Oscar can't take Kildare out of Paul

PAUL MESCAL'S appearance on the Late Late Show proves you can take the boy out of Maynooth (or is that Ballyhaunis!) but you can't take Maynooth out of the boy.

Oscar-nominated Mescal told Ryan Tubridy that he was looking forward to Oscar night but more importantly he was excited about the after party where he could go and get drunk with his parents.

I'm sure the good folks in Brady's or The Roost will be celebrating alongside their most famous son if he manages to bring home a statuette. And the fact that Hollywood hasn't changed Mescal is certainly worth raising a glass to.

Money fails to Brook a bit of wedding class

THE revelations in the lawsuit taken by the father of actress Nicola Peltz, who married Brooklyn Beckham, is a confirmation that money can't buy class.

Nicola's father, moneybags billionaire Nelson Peltz, filed a lawsuit against two of the couple's wedding planners, who were hired and fired with just six weeks to go.

Nelson claimed he didn't get his \$159,000 deposit back, and despite being the living embodiment of Daddy Warbucks, he was making sure he left nothing behind.

The lawsuit reads like a litany of entitlement, with revelations that the bride was spending \$100,000 on her hair and makeup.

Now, I've never been accused of being behind the door in spending money on making sure my appearance is acceptable, but I struggle to fathom how anyone could spend that much, unless they'd bought somebody else's head of hair, lock, stock and barrel.