



## **SUBMISSION TO GOVERNMENT CONSULTATION ON UN PERIODIC REVIEW OF IRELAND'S HUMAN RIGHTS RECORD**

**JUNE 3<sup>RD</sup> 2011**

### **INTRODUCTION**

Older & Bolder is an alliance of eight NGOs in the age sector in Ireland. The members of the alliance are: Active Retirement Ireland, Age & Opportunity, Alzheimer Society of Ireland, Carers Association, Irish Hospice Foundation, Irish Senior Citizens Parliament, Older Women's Network and Senior Help Line. Our vision is of an Ireland that affirms ageing and the rights of all older people, enabling everyone to live and die with confidence and dignity and equal, respected and involved members of society.

This submission to the Government Consultation on the UN Periodic Review of Ireland's Human Rights Record sets out key concerns of Older & Bolder regarding the fulfilment of older people's human rights.

### **RIGHT TO CARE**

Ireland has ratified the UN Covenant on Economic, Social and Cultural Rights which recognises the right to health defined in association with availability, access to, acceptability and quality of health facilities, goods and services. The problem is that the right to health and personal social services is not defined in Irish legislation, a point already highlighted by the Irish Human Rights Commission in their submission to the UN Periodic Review. The impact of this lack of definition, clarity and legal entitlement is severe on older people and of great concern to Older & Bolder. The effects are experienced by older people in need of both nursing home care and home and community services. Our view is that there is duty on the State to uphold the right to care of older people at all stages of the continuum of care – which incorporates self-care, community care, long-term residential care and end-of-life care.

Five per cent of older Irish people require long-term nursing home care. This group comprises people of advanced age with high levels of disability, frailty and complex needs. The Fair Deal Nursing Home Support Scheme enacted in 2009 is budget-capped and does not confer an entitlement to financial support for nursing home care.

The view that the Fair Deal legislation supersedes the Health Act 1970 which obliged the State to provide nursing home care has been challenged by the Ombudsman. From human rights, legislative and policy perspectives, the situation is a quagmire and results in a direct denial of appropriate care to a highly vulnerable group of older people.<sup>1</sup>

There is no statutory entitlement to home care and community care services. Access to such services for older people is discretionary and unequal. Influencing factors include: geographic location, ability to pay, category of illness. This results in severe hardship for community-residing older people who are challenged by illness, frailty, disability, social isolation.

Articles 1 and 5 respectively of the Universal Declaration of Human Rights highlight the rights to equality, dignity and freedom from cruel, inhuman or degrading treatment. Legislative quality standards combined with inspection by the Health Information and Quality Authority are a necessary safeguard in terms of the safety and welfare of older people in residential nursing home care. There is no comparable system in place regarding quality, regulation, inspection of providers of home care services to older people; this despite the growth in the provision of commercial home care services. Again, in the absence of safeguards, recipients of home care services – older people living in their own homes – are vulnerable to inhuman treatment and abuse.

#### **CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

Ireland remains unable to ratify the UN Convention on the Rights of Persons with disabilities due to the absence of modern mental capacity legislation, a point previously highlighted by the Alzheimer Society of Ireland, a member organisation of Older & Bolder. A Mental Capacity Bill was published in 2008 but has not yet been enacted. The Alzheimer Society has also highlighted two issues with the Mental Capacity Bill as drafted: the absence of a Guardianship Tribunal as recommended by the Law Reform Commission; and the absence of any provision for advocacy.

#### **SOCIAL PROTECTION**

Everyone, including older people, has under Article 22 of the UN Declaration, the right to social security and the economic rights indispensable for dignity. Concerns about the erosion of Ireland's social protection systems in the context of the economic crisis have most recently been highlighted in the Report of the Independent Expert on the question of human rights and extreme poverty in Ireland (May 2011).

88 per cent of older people rely on State Pension and associated supports to protect them against risk of poverty. The level of the State Pension was protected in Budget 2011 and the

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<sup>1</sup> Tangible evidence of denial of care is provided by the current crisis in the Fair Deal Nursing Home Scheme and the acknowledgement by the Minister for Equality, Disability, Mental Health and Older People on May 31 2011 that 4,500 people are now on a waiting list for admission to nursing home care.

Programme for Government commits to sustaining Social Welfare rates. This is an essential safeguard in terms of older people's right to social security.

The value of the State Pension as a safeguard for a majority of older people is reliant on their access to public services and health and social care services. The introduction of new charges (Universal Social Charge, water charges, property charges) erodes the value of State Pension and hits those on very modest incomes. Reductions in home and community care services threaten economic and social security as does the imposition of new health charges such as the new €20 for Medical Card holders visiting hospital A&E departments.

The decision to increase the qualifying age for State Pension from 66 to 68 years as a stand-alone measure - apparently without legislative or policy actions to support older workers, remove mandatory retirement ages or take steps of any kind to protect the rights of older workers to employment and income security – is of grave concern to Older & Bolder.

The Habitual Residence Condition (HRC), a qualifying condition for social welfare payments including Carers Allowance has discriminated against Family Carers returning to Ireland to provide care for relatives, many of whom are older people. The Carers Association, also a member of Older & Bolder, has highlighted the resulting difficulty and financial hardship experienced by Family Carers. Many of the conditions of the HRC are, the Carers Association has argued, at odds with the realities associated with providing care. For example, factor 4 of the HRC which examines the nature of a person's employment, states that a person who is in stable employment may be presumed to be habitually resident. This gives unfair recognition to those who are able to take up employment and ignores the realities of full-time care providers who must be available 24/7.

## **ROLE OF ADVOCACY**

The most vulnerable, require the assistance of independent advocates in order to secure their human rights on the same basis as the rest of society. In particular we are thinking of people with Dementia, Alzheimer's as well as residents of nursing homes given the power imbalance in these settings. The right to advocacy for vulnerable older people is not enshrined in Irish legislation. As noted above, the Alzheimer's Society has expressed particular concern about this issue with respect to the needs of people with dementia.

Under the Citizens Information Act 2007 the Citizens Information Board has a mandate to provide advocacy targeted at people with disabilities. The same right is not enshrined in legislation for older people.

The HSE has recently awarded a contract to Third Age for the provision of an advocacy service for Nursing Homes.<sup>2</sup> While the Health Information and Quality Authority is currently in the process of making a strong recommendation that older people should receive an advocacy

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<sup>2</sup> Senior Help Line- Third Age is a member of the Older & Bolder alliance.

services, this recommendation, even if passed, will not be underpinned as a right in legislation. Older & Bolder regards this as a lamentable gap.

## **RIGHT TO INFORMATION**

An important aspect of the rights-based approach is the **right to information** (UDHR Article 19).

As the NESF highlighted in their 2005 report *Care for Older People*, this right already exists in Ireland under the Freedom of Information (FOI) legislation, which obliges public bodies to publish: the rules, procedures, practices, guidelines and interpretations used by them and the precedents kept by them for the purposes of decisions, determinations or recommendations in relation to schemes administered by them; and c information about the way such schemes are administered.

However, it is a matter of serious concern to note that neither **the Department of Health and Children nor the HSE have published details of how people qualify for services such as home helps**. They give general information but do not publish information about the criterion or criteria used for establishing service prioritisation. This means that it is not possible to know whether or not an individual was treated correctly and, among other things, reduces the possibility of seeking a remedy.

The absence generally of a **right to assessment of need** and **of independent review of the outcomes of that assessment** is a significant gap in the Irish system. The Disability Act, 2005 provides for the assessment of need for people with disabilities. Some older people will come under the definition of disability but many who need community care services will not (e.g. those with chronic illness may have significant need but whose requirements cannot be met under the Disability Act). The Act includes a provision that it may be implemented at different times for different age groups and this is in fact what has happened. The implementation of assessment provisions of the Disability Act has begun for children aged 0 – 5 years. Older people's right to assessment of need must be met, and with the provision for independent review, if their rights in this area are to be vindicated.

## **PARTICIPATION, TRANSPARENCY AND ACCOUNTABILITY**

In her report (May 2011), the Independent Expert reporting on human rights and extreme poverty in Ireland highlighted the requirement to uphold principles of participation, transparency and accountability in the design, implementation and evaluation of State policies. These principles were, she said, at the core of the human rights framework. She highlighted the role of Civic Society Organisations (CSOs) in enabling consultation with citizens and citizens' involvement in influencing the policy process. The Office for Older People is now preparing the National Positive Ageing Strategy. A commitment to recognition of, respect for and practical support within the National Positive Ageing Strategy of the multiple roles of CSOs in the age sector would support older people's participation in society as recommended by the Independent Expert.

AS CSOs, each of Older & Bolder's member organisations – **Active Retirement Ireland, Age & Opportunity, Alzheimer Society of Ireland, Carers Association, Irish Hospice Foundation, Irish Senior Citizens Parliament, Older Women's Network and Senior Help Line** – has a significant track record in promoting the participation, involvement and influence of older people with and/on issues of legislation, policy and service provision as they relate to the human rights of older people in the broadest sense. Their multiple roles include awareness-raising, advocacy, lobbying, service delivery, support to members/affiliates, research and policy analysis and development and implementation of educational, social, political and cultural programmes with older people.

Queries related to this submission may be directed to Patricia Conboy, Older & Bolder, Jervis House, Jervis St., Dublin 1. Tel.01-8783623, [patricia.conboy@olderandbolder.ie](mailto:patricia.conboy@olderandbolder.ie) .