



# **Submissions to FLAC Shadow Report on the International Covenant on Economic, Social and Cultural Rights**

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## **1. Introduction and Overview**

Age Action was founded in 1992 and is the largest older person's charity in Ireland. It advocates for people aged 65 and over. Our mission is to achieve fundamental change in the lives of older people by empowering them to live full lives as actively engaged citizens and to promote and protect their rights to comprehensive high quality services according to their changing needs. The human rights of older adults are rarely given specific recognition in Ireland; older adults are often seen as a burden rather than the bearers of rights who have helped build the infrastructure of Irish society, and continue to contribute even when they are no longer in employment. We think that an International Convention on the Rights of Older People would enhance the protection of older people's rights in Ireland. We welcome the opportunity to make this submission to FLAC on the development of a shadow report on the International Covenant on Economic, Social and Cultural Rights.

Older adults may suffer discrimination in a number of areas particularly in relation to employment and pensions, healthcare, and standards of living. Mandatory retirement clauses in some contracts of employment are not unlawful in Ireland, and the proposal to increase the age at which a person is entitled to a state pension from 65 to 68 years old may mean that some older people would be forced to retire, but unable to receive a pension for 3 years.

The recession and its austerity programmes have caused significant economic problems for older adults who are on fixed incomes. This has led to a decline in their standards of living, and a decline in the standards of care offered to those in need. Access to healthcare has suffered significantly because of withdrawal of medical cards from some older people who would formerly have been entitled to them; lengthening hospital waiting lists; and the curtailment or withdrawal of health and social care services in some areas. Ill health increases with age: older people use healthcare services more than younger people, especially in the last year of life.

The 'Fair Deal' legislation has been subject to episodes of suspension of the service and cuts in the funding allocated to nursing homes. Some nursing homes now refuse to admit 'Fair Deal' residents. Staffing levels in nursing homes may be unacceptably low, leading to abuse and neglect of residents.

There are over 535,000 people in Ireland aged 65 years or over. Some 6% of these live in residential care settings and this group, who suffer from physical disabilities and/or dementia, are particularly vulnerable because they are dependent on others for care and may be unable or unwilling to complain about the care they receive for fear of reprisals.

56,087 elderly disabled people live at home, many of them live alone. 33% of disabled people over the age of 65 do not have access to a car, but must rely on friends and family or public transport.

Older people, especially those with chronic illnesses such as Alzheimer's, arthritis, heart disease, respiratory disease and strokes rely on paid and unpaid care from others if they are to remain in their homes. Almost 30,000 women aged over 85 have a disability. 20% of those over 60 have a disability. In 2011 4.1% of the population were providing unpaid care to others; 61% of these carers are women. Some 795,916 hours of unpaid care were provided by the elderly.

## **2. Employment and pensions**

Section 34 (4) of the Employment Equality Acts 1998-2011 allows employees to fix a retirement age for their employees. Some contracts of employment will therefore have a clause giving a mandatory retirement age, while others will not. There are many older people in Ireland who do not have a written contract of employment and who do not know whether their employer operates a mandatory retirement age or not. While some people may welcome the opportunity to retire, others are willing and able to continue to work. The Social Welfare and Pensions Act 2011 proposes to gradually increase the age at which a person is entitled to receive a State pension from 65 years old to 68 years old in 2028. Some people may be forced to retire before they are entitled to receive a state pension. The present age for obtaining a state pension is 66, but many people retire at the age of 65.

There appears to be a lack of connection between age of retirement and pensionable age which will have most impact on workers who will be dependent on state pensions when they retire. Many of them work in lower paid, physically demanding occupations where conditions such as arthritis, failing eyesight and decreasing physical strength may mean that they are unable to work beyond the age of 65.

If no action is taken on the part of government to correct the imbalance between retirement age and pensionable age some retired workers will be forced to register as unemployed and claim jobseekers' allowance until they become eligible for a pension. A jobseekers' allowance or jobseekers' benefit is a maximum of €188 a week and ends at age 66, while the maximum state pension is €230.30. One solution may be to amend the Employment Equality Acts 1998-2011 so that employers cannot set a mandatory retirement age for their employees below the age at which state retirement pensions are available.

At present those who have been dismissed on the grounds of age can seek redress at the Equality Tribunal. Many cases are brought on the grounds of age discrimination in the area of employment and many are unsuccessful because of mandatory retirement clauses in the contract of employment combined with some justification for the action on the part of the employer, for example that the person has become physically incapable of performing their duties safely due to their age. In *Nolan v Quality Hotel, Oranmore*<sup>1</sup> a 68 year old hotel worker was forced to retire when her employer discovered she was 68 years old although no justification was given for her dismissal apart from her age. The Equality Tribunal accepted her claim and awarded compensation. By

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<sup>1</sup> DEC- E2012-110

contrast in *A Worker v A Meat Processing Company*<sup>2</sup> the Equality Tribunal rejected claims of discrimination on the grounds of age because the 67 year old could no longer safely perform his duties at the abattoir where he worked.

### **3. Social Security**

#### *(i) Bereavement grant*

Prior to January 1st 2014 if an insured person or their spouse or child died, they could obtain €850 Bereavement Grant if they had sufficient PRSI contributions. This grant was discontinued in at the end of December 2013. Older persons are most likely to experience the death of a spouse or partner, and the grant helped with funeral expenses.

#### *(ii) Household benefits package*

Those over 70 and living alone or receiving a fulltime carers allowance are entitled to help with gas or electricity of €35 per month for eligible people. The package formerly included an allowance of €9.50 but this was discontinued in January 2014.

#### *(iii) Travel*

People aged 66 and over are entitled to a free travel pass for buses, trains and some ferries. There are fears that this will be removed in the next budget.

### **4. Protection of the Family**

#### *(i) Older people in nursing homes who are married/ have partners*

Many older people are effectively separated from their partners when one or both of them enters a nursing home, despite Ireland's avowed Constitutional protection of the institution of marriage. It is not unusual for spouses to be in different homes, or in different parts of the same home, which may make it difficult for them to enjoy each other's company except when it is convenient for the nursing staff.

#### *(ii) Marriage and the Lunacy Regulations (Ireland)*

At present the Marriage of Lunatics Act prevents those who are wards of court from marrying. This Act will be repealed by the enactment of the Assisted Decision Making (Capacity) Bill 2013 and will allow those who have the capacity to marry to do so.

#### *(iii) Access to home care packages vs admission to nursing homes*

Home care packages are designed to keep those with care needs living in their homes rather than in institutions. Care services include things like home helps, nursing, physiotherapy and occupational therapy. Respite care may also be provided. Access to care packages is not enshrined in law, and the number of packages and the type of care provided varies from place to place in Ireland, with large urban centres being better provided than rural areas. This means that many older people living in rural areas have no choice but to enter residential care. There have been cuts in funding for home helps, with reductions in the amount of hours allocated, often to the detriment of older people trying to live in the community. The lack of uniformity of this service

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<sup>2</sup> DEC-E2013-127

across the country and the erosion of services mean that more and more older people cannot be safely cared for at home and must enter the residential care system, a situation which discriminates against those living in rural areas. Those living in residential care settings may face their own set of problems including separation from spouses/partners and loved ones and deprivation of liberty.

*(iv) Elder abuse services*

Elder abuse services are provided by the HSE, with designated elder abuse social workers in each area of Ireland.<sup>3</sup> They are responsible for investigating and dealing with allegations of elder abuse in both community and residential settings. Elder abuse may consist of physical abuse including domestic violence, psychological abuse, financial abuse, institutional abuse, sexual abuse and neglect. Considerably fewer instances of abuse are reported to the HSE elder abuse service than occur, as a study of older people's actual experience shows about 10,000 older people suffer some form of abuse in the preceding 12 months.<sup>4</sup> Case workers deal with under 1000 cases nationally.<sup>5</sup>

HIQA inspects and regulates nursing homes: as part of their regulation they expect staff to receive training in elder abuse. Staff in nursing homes may be the perpetrators of elder abuse. Elder abuse may be physical, psychological, financial or sexual. Physical abuse in nursing homes may include slapping and hitting the person or restraining them beyond what was necessary. In a recent case at St John's Community Hospital in Sligo a nurse taped a patient's mouth shut.<sup>6</sup> This was reported to HIQA and the Gardai and the nurse was found guilty of assault and given probation.<sup>7</sup> The judge noted that he had an extremely high workload due to poor staffing levels at the home and appeared to consider this a mitigating factor. HIQA had warned the home about its poor staffing on several occasions since 2011 but no action had been taken to correct staffing levels.

*(v) The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Adults) Act 2013*

The Act makes it an offence on the part of prescribed persons and organisations to withhold information on offences against children and vulnerable adults. A vulnerable adult is defined in the Act in section 1(1)(a) as a person suffering from a disorder of the mind, whether mental illness, dementia or intellectual disability who is unable to protect themselves against exploitation or abuse, whether physical or sexual by another person.

Older adults may suffer financial abuse but the Act does not recognise this, nor is any form of financial crime against older adults listed in the schedule of offences in the Act. Offences against vulnerable adults are virtually identical to those against children, although financial abuse is one of the areas of elder abuse which occurs.

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<sup>3</sup> O'Donell D et al. Managing Elder Abuse in Ireland: The Senior Case Worker's Experience. (2012) . NCPOP University College Dublin.

<sup>4</sup> Abuse and Neglect of Older People. Report on the National Study of Elder Abuse. 2010 National centre for the Protection of Older People. University College Dublin. [www.ncpop.ie](http://www.ncpop.ie)

<sup>5</sup> Open Your Eyes. HSE Elder Abuse Services April 2012. at p 36 [www.ncpop.ie](http://www.ncpop.ie)

<sup>6</sup> Irish Independent. 20/2/14. Paddy Clancy. "Nurse 'taped patient's mouth shut to keep him quiet', court hears.

<sup>7</sup> Section 1 of the Probation Act

## 5. Right to an adequate standard of living

Comments on withdrawal of subsidies for telephones and the bereavement grant are at Section 3. The introduction of means testing for the medical card may reduce some people's available income and have a serious impact on their standards of living, as those who are not in good health would have to pay for GP visits that were formerly free. (See Section 6).

### *Fuel poverty*

The inability to adequately heat a home in cold weather has a number of adverse health outcomes, particularly for people with respiratory and cardiovascular conditions.<sup>8</sup> This inability arises from low incomes, poorly insulated houses and high energy costs. There is a considerable amount of excess mortality in winter in Ireland: some older people on fixed incomes may have to decide between eating and heating, and may only be able to afford to heat one room in very cold weather.

## 6. Health

### *(i) Medical cards*

A medical holder was formerly entitled to free visits to a GP; free prescription medicines, and the use of aids like crutches and wheelchairs; free hospital inpatient and outpatient care, dental care, aural services and eye testing. Many older people gave up their private healthcare insurance when they reached the age of 70, believing that they would now be able to get free medical care for the rest of their lives. The Health Act 2008 abolished automatic entitlement to a medical card at 70 years old. It came into force in January 2009 and introduced a means test for eligibility for a medical card. Initially those with an income below €600 a week for a single person and €1200 a week for couples were able to retain their medical cards. The threshold has now been reduced to €500 a week for a single person and €900 a week for couples. In addition there is now a €2.50 charge per item for prescription medicines.

### *(ii) Cost of prescription drugs*

Many older people suffer from conditions such as heart disease, arthritis and lung disease and require several drugs each month on a regular basis as well as needing prescriptions for drugs like antibiotics from time to time. Those with full medical cards pay €2.50 per item for their medicines. Those who lost their medical cards under the new rules may have been able to get a "doctor visit card" allowing them free GP visits, but they are no longer able to get free or subsidised prescription medicines. Medicines in Ireland are the most expensive in Europe and the need to pay for medicines may represent significant expenditure each month. Patients can apply for a subsidy under the drugs payment scheme<sup>9</sup> such that an individual or their family's payments for drugs is capped at €144 a month: still a significant expenditure.

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<sup>8</sup> Fuel poverty and does it contribute to health inequalities. [www.publichealth.ie/healthinequalities/Fuelpovertyandhow](http://www.publichealth.ie/healthinequalities/Fuelpovertyandhow)

<sup>9</sup> Your guide to the drugs payment scheme. HSE. [www.hse.ie/eng/services/list/1/schemes/drugs](http://www.hse.ie/eng/services/list/1/schemes/drugs)

*(iii) Access to services: breast screening, cervical check*

Ireland operates health screening in the form of free cervical smears for registered patients aged 25 to 60<sup>10</sup> and free mammography for patients aged 50-64.

Many women want to continue cervical smear screening after the age of 60 but must pay for a cervical smear after that age. In England, Wales and Northern Ireland cervical cancer screening programs extend to age 64.<sup>11</sup> Cervical cancer is rare in women over 60 who have had negative cervical smears in the past, but it does happen. Almost ¾ of deaths from cervical cancer occur in women aged 50 and over.<sup>12</sup>

Breast screening is offered to women aged 50-64 in the breastcheck service.<sup>13</sup> It is a screening service offering mammograms every 2 years. Those who have had breast cancer should get mammograms every year. This was formerly done at their local hospital, but since centralisation of breast cancer services their breast care centre, located at larger hospitals must arrange mammograms. Some women, for example those who have a family history of breast cancer, may want to have regular mammograms after the age of 64 but must arrange mammography through their GPs after this age. In England breast screening is available until the age of 70 and is being extended to age 73.<sup>14</sup>

*(iv) Access to services: GP services*

General practitioners fees from the GMS system have been cut progressively since 2009 when the Financial Emergency Measures in the Public Interest Act 2009 permitted government to reduce payments to a number of institutions as part of its austerity program. In 2010 there were cuts to the fees paid for medical card holders, to subsidies for practice nurses and secretaries, to payments for maternal and infant care and the heartwatch scheme.<sup>15</sup> Further cuts were imposed in 2013 with more cuts to subsidies for practice staff and rural practices together with a reduction in the fee paid for over people over 70 who had a medical card: When the scheme was introduced a single patient over 70 attracted three times the fee for a medical card holder aged 69 in recognition of the increasing ill health of people over the age of 70. That proportion was cut to double the fee in 2013.<sup>16</sup>

*(v) Access to services: waiting lists*

Older people are more likely to suffer chronic illness and disability than younger people and tend to be high users of healthcare services: Ill health increases with age and 25% of older people over 65 report long term illness, health problems or disability. There are long waiting times for first

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<sup>10</sup> [www.cervicalcheck.ie](http://www.cervicalcheck.ie)

<sup>11</sup> [www.cancerresearchuk.org](http://www.cancerresearchuk.org)

<sup>12</sup> [www.cancerresearchuk.org](http://www.cancerresearchuk.org)

<sup>13</sup> [www.breastcheck.ie](http://www.breastcheck.ie)

<sup>14</sup> Public Health England. [www.cancerscreening.nhs.uk](http://www.cancerscreening.nhs.uk)

<sup>15</sup> Statutory Instrument no: 638 of 2010. Health Professionals (Reduction of Payments to General Practitioners) Regulations 2010

<sup>16</sup> Statutory Instrument no 277 of 2013. Health Professionals (Reduction of Payments to General Practitioners) Regulations 2013

appointments in outpatients in Irish public hospitals. Some progress has been made in decreasing waiting lists, but in January 2014 169 people had been on waiting lists for 4 years or more, 249 people had been waiting for 3-4 years, 852 people were waiting 2-3 years and 8334 were waiting 1-2 years. Of those waiting less than a year 87,806 people waited 6-12 months. These waiting times represent a reduction in waiting times but are still unacceptably long.

*(vii) Access to services: Inpatient admission for procedures and operations*

After being seen in outpatients there is a further wait for operations and procedures.

In January 2014 185 people had been waiting for more than a year; 1708 were waiting 8-12 months and 5660 waiting 6-8 months. The overall national target for waiting times set by the HSE is 8 months, but to an older person with decreasing mobility waiting for a joint replacement, suffering pain, this represents a significant proportion of the rest of their life. 19% of the total number of people waiting for procedures have to wait for more than 8 months. A higher proportion (21%) in the Dublin east area wait more than 8 months.<sup>17</sup>

In contrast, those with private healthcare insurance or the ability to pay for private medical care wait a matter of days or weeks for outpatient consultations and admission for procedures.

*(vi) Access to services: A and E services*

Closure and downgrading of A and E departments, shortage of staff and shortage of inpatient beds lead to growing waiting times in A and E departments. National targets of 95% of patients in Emergency Departments (ED) being seen and discharged or admitted within 6 hours, and 100% of patients being seen and discharged or admitted within 9 hours are not being met. Low performing hospitals such as Tallaght hospital and Connolly hospital in Dublin are only achieving these targets 65-67% of the time. Patients spend long periods of time waiting on trolleys in severely overcrowded EDs.<sup>18</sup> Dr James Grey, consultant in Accident and Emergency medicine at Tallaght Hospital in Dublin warned that “These patients have no privacy, no confidentiality, no dignity and poor infection control protection...” after the death of an elderly patient in a cubicle in his department.<sup>19</sup>

*(vii) Access to services: Nursing homes and the Fair Deal*

People who are in hospital but who do not need acute care may be charged for their care. This disproportionately affects older adults who have been admitted to hospital and must then wait for a place in a nursing home because they cannot be safely returned to their own homes. Staff may refer to them derisively as “bed blockers” although most older people are not in hospital by choice but because beds in nursing homes or other wards or rehabilitation units are unavailable.<sup>20</sup>

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<sup>17</sup>Information from the National Treatment Purchase Fund: National waiting list data at [www.ntpf.ie/home/nwld/html](http://www.ntpf.ie/home/nwld/html)

<sup>18</sup> Special Delivery Unit, National Treatment Purchase Fund: Unscheduled care Jan 2014 at [www.ntpf.ie/home/PDF/SDU\\_Access](http://www.ntpf.ie/home/PDF/SDU_Access)

<sup>19</sup> Eilish O'Regan. Inquiry as patient dies after cardiac arrest in “severely overcrowded” A and E. Irish Independent. February 11<sup>th</sup> 2014

<sup>20</sup> Gallagher P et al. Do relatives of elderly patients block the discharge process? Irish Med J. 2008 Mar;101(3):70-72



Nursing homes in Ireland may be run by the HSE, by the charity or voluntary sector or the private sector. Nursing home fees are negotiated by the National Treatment Purchase Fund. The HSE assesses eligibility for the scheme and determines financial co payment arrangements between nursing homes and residents, and disburses state payments to private nursing homes. Long term care covers bed and board, nursing and appropriate personal care, laundry service, basic aids and appliances such as wheelchairs and crutches and GP services and medicines under the medical card scheme. The care does not cover things like physiotherapy, and chiropody. There is a set level of funding available for nursing home places each year, so unless an older person can afford to fund their care privately they may have to wait until funding becomes available. The scheme for funding nursing home is known as the Fair Deal and is administered under the Nursing Home Support Scheme Act 2009. It was originally presented as a means to ensure that older people were able to gain access to nursing home care without fear of anxiety, but the scheme generates considerable anxiety and many people must wait until a bed is available (when the present incumbent dies) or for funding to become available if they lack the funds to pay for their own nursing home care.

The scheme was suspended in 2011 due to lack of funding. There is growing disillusionment with the Fair Deal among nursing home owners and some will not now accept Fair Deal patients.

*(viii) Liberty and restraint in nursing homes: the proposed Assisted Decision making (Capacity) legislation*

At present in Ireland there about 20,000 older people in nursing homes or other residential care settings. Many of them suffer from dementia, stroke, and other neurological disorders and lack the capacity to consent to admission and some forms of medical treatment. There is no lawful means for another person to consent to admission or medical treatment on behalf of the older person, unless they are a ward of court (around 2000 people in total). The donee of an enduring power of attorney may consent to admission to a nursing home if they are so empowered but cannot consent to medical treatment. The Assisted Decision Making (Capacity) Bill 2013 creates different categories of person who may assist with decision making for those whose capacity is impaired, and allows the courts or court appointed decision making representatives to consent to admission and medical treatment. The Bill does not contain provisions for the admission of older people who lack the capacity to consent and will be deprived of their liberty within the meaning of Article 5 of the European Convention on Human Rights. This means that large numbers of people will be, and currently are, indefinitely detained without review of their conditions or the possibility of review of their detention and with no lawful basis for their detention. The failure to legislate on this matter is particularly disappointing given the vulnerability of those with severe dementia to elder abuse and their dependence on others for all cares. The lack of a system of oversight and review for the protection of the rights of older people deprived of liberty in nursing homes is in marked contrast to the rights afforded to those detained in hospitals under the Mental Health Act 2001.

There will be no review of those currently detained in non approved centres such as nursing homes unless they are wards of court, which is a very small proportion of older people in nursing homes.

