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# The **IRISH** Mail

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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

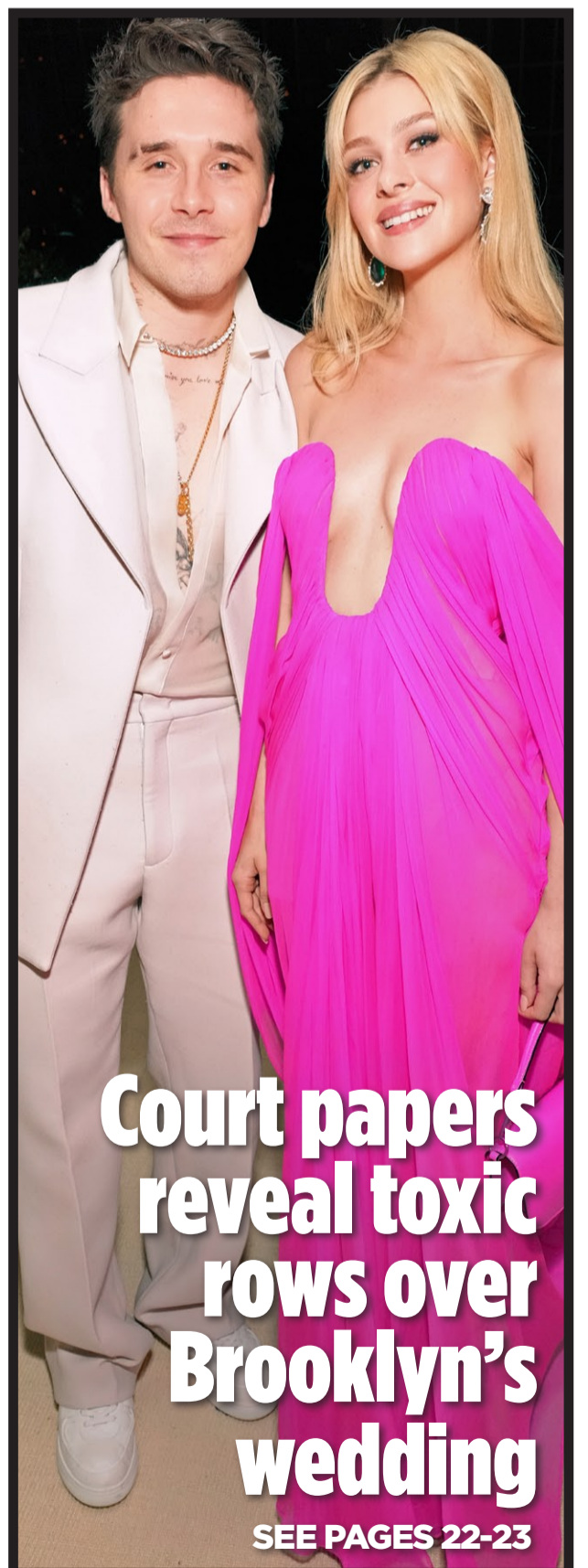
**EXCLUSIVE**

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

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Court papers  
reveal toxic  
rows over  
Brooklyn's  
wedding

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# State resisted attorney

## THE HSE FILES

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

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

### 'LTI card patients could lose access'

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

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

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

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

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

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

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

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

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

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

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

## TIMELINE...

### FEBRUARY 24, 1970

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

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

### SEPTEMBER 27, 1971

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

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

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

### APRIL 26, 2000

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

### JUNE 6, 2012

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

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

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

### MAY 28, 2013

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

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

## 'Revelation is salt in the wound of my loss'



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

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

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

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

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

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

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

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

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

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

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

## EXCLUSIVE

By MICHAEL O'FARRELL

INVESTIGATIONS EDITOR



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

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

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

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

been excluded from the scheme.

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

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

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

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

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

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

### Scheme operated for more than 40 years

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

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



# Attorney general's warning

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

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

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

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

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

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

### 2. LIMITING FREE MEDICINE ENTITLEMENTS

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

**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 policy intention had always been to limit the drugs and appliances supplied to those capable of treating the particular long term illness the wording could have been changed at any time in the last 42 years. Even if there was a doubt about its meaning, and I do not think there is, that doubt would more than likely be resolved against the Department than for it because it will be taken to have always been in control of what was to be said in the legislation.

**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.

30.—Section 59 of the Act of 1970 is amended —

(a) in subsection (1) —

(i) by substituting "Subject to sections 20 and 23 of the Health (Pricing and Supply of Medical Goods) Act 2013, a" for "A", and

(ii) by inserting ", for the time being on the Reimbursement List within the meaning of section 2(1) of that Act," after "surgical appliances",

(b) in subsection (2), by inserting ", for the time being on the Reimbursement List within the meaning of section 2(1) of that Act," after "surgical appliances",

Amendment of section 59 of Act of 1970.

### 4. NO LIABILITY FOR REFUNDS UNTIL CAUGHT

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

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

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

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

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

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

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

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

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

over 16 were excluded in the first place. Ultimately, the Department of Health did neither, even after the attorney general's office warned that a failure to act risked a misfeasance finding, a civil wrongdoing by public officials or State entities who fail to discharge their public obligations.

The attorney general's 2012 legal advice states: 'It should be noted that once the Department has received legal advice to the effect that there is a question mark over Section 59(3) and that there is a risk of finding that it may be *ultra vires*, it is incumbent upon the Department to take steps to either terminate the practice... or amend the legislation as soon as possible.'

Government did not amend this part of the legislation, which remains in place.

And since 2012, whenever successive health ministers have received parliamentary questions from TDs representing constituents who queried the age restriction, they issued the same stock answer.

In their responses, the ministers referred back to the 1970 Health Act and the flawed 1971 regulations, which the Department knows have been deemed '*ultra vires*', or invalid, by the attorney general's office and say the Health Service Executive (HSE) has no choice but to comply with the law.

The failure to act for a full decade after the 2012 legal warning has cost millions in refunds to those

who were excluded from the LTI scheme on age grounds.

In contrast with its failure to act on the illegal age restrictions, the Department of Health moved to deal with the attorney general's

### 'Terminate practice, or amend legislation'

concerns that those on the LTI scheme may have been entitled to all medicines for free, rather than just those relating to their condition.

The attorney general warned that, in the event of a court challenge,

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

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

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

Since the statute of limitations – the six-year period within which a case can be taken – has now passed, this cannot now be challenged in

the courts. This week, the MoS asked the Department of Health what action it will now take to address its failures. We also asked how many people have had their entitlements denied and to what cost?

In response, a spokesperson said its Sláintecare reform programme was reviewing how 'current eligibility and entitlement policies ... align with population needs.'

The department also said the medical cards scheme and the Drugs Payment Scheme meant no citizen had to pay more than €80 a month for medicine.

However, the department said it could not speak about the latest revelations for legal reasons.

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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

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

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.

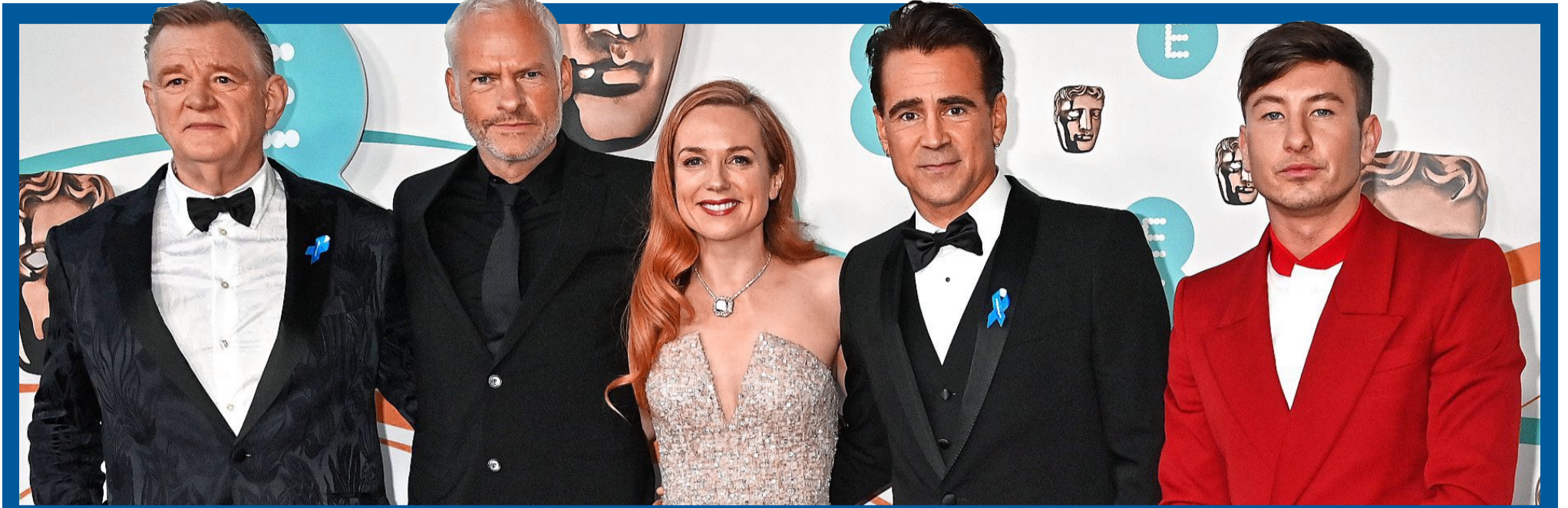
The Roswell crash in New Mexico came a few years after the US had dropped the first atomic bomb.

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

years, the Irish Daily Mail can reveal.

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

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

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

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

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

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

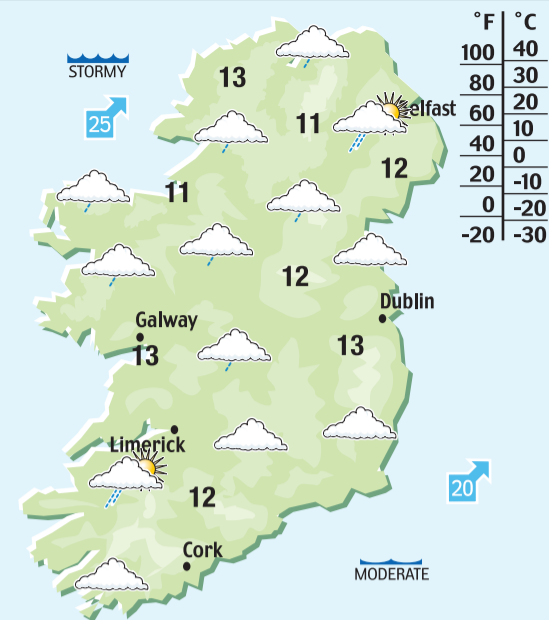
In response to each, he cited the relevant legislation and Statutory Instrument – which the Department knows to be invalid – before saying: "Therefore, the HSE must regard 16 years as the upper age limit in terms of eligibility

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



# Weather forecast



## Summary: Light showers

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

### Today's weather

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

### 5 day forecast

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

### Around the world yesterday

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

### Ireland yesterday

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

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

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

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# Legal advice in 2012 warned age limit on mental health drugs is illegal

Continued from Page One  
under the LTI scheme for those with a diagnosis of mental illness.  
Each time the issue has been raised in PQs in recent years, successive ministers and junior ministers – including Simon Harris, Alex White and Kathleen Lynch – gave similar answers, as though the legislation they cited was valid.  
An Irish Daily Mail examination of Dáil records shows at least 14 occasions in which PQs have referred to the LTI legislation as if it were legitimate since 2013.

Yet, as revealed in the Irish Mail on Sunday yesterday, the Department of Health was first informed more than a decade ago that there was no valid legal justification for excluding those aged over 16.  
According to confidential 2012 legal advice, provided to the Department by the Attorney General's (AG) office, the exclusion policy was 'ultra vires' – meaning it had no legislative backing and was therefore invalid.  
The AG's advice and related files were provided to the MoS by Department of Health whistleblower, Shane Corr, who expressed shock at the behaviour of the State. He

## 'Compensate those who lost out'

said: 'This was central Government going outside the laws of the State and human decency to dispossess the most vulnerable people in the State of their rights – and it succeeded.'  
The State kept the issue under the carpet for a decade, denying entitlements to untold thousands.  
'It needs to deal with this ongoing issue by correcting failures and compensating those who lost out.'  
This week's revelations will heap further pressure on the Coalition, which has been criticised recently after the MoS revealed details of its secret litigation strategy to limit illegal nursing home fee refunds.  
An added difficulty for the Government is the fact that the flawed policy remains in place today, meaning thousands of citizens suffering from mental illness who have been denied free access to drugs they are legally entitled to are likely to seek redress.  
The latest disclosures involve Government decisions that were made as the Department of Health was also aggressively implementing its



## EXCLUSIVE: Yesterday's front page story

secret strategy to limit payouts to families that were illegally overcharged nursing home fees.  
In June 2012, the AG's office provided a detailed briefing to the Secretary General of the Department of Health which outlined serious concerns about the operation of the Long-Term Illness scheme.  
The briefing expressed concern over anomalies in the LTI, which came into effect in 1971. The legal basis for the LTI scheme is underlined in Section 59(3) of the 1970 Health Act.  
This authorised the then Minister for Health, Erskine Childers, to identify illnesses that would qualify for free medicine under the scheme.  
Mr Childers signed off on regulations listing 16 illnesses, including diabetes, epilepsy, spina bifida and 'mental illness'. But uniquely among the listed illnesses, the

regulations did not include those suffering from 'mental illness' who are 16 and over.  
The scheme operated for more than 40 years until 2012, when Health Department officials sought legal advice from the AG.  
This appears to have been prompted by an Ombudsman investigation at the time into a successful complaint from a member of the public with ADHD who had been excluded from the scheme.  
After examining the legislation, the AG's office found two parts of scheme had been operating without a proper legal basis.  
Firstly, the AG advised that limiting the 'mental illness' benefit to under 16s was

## 'Department is likely to lose'

discriminatory and had no legal basis following the passing of the Equal Status Act in 2000.  
The other anomaly was an inference in the 1970 Act that anyone who qualified for free medication was entitled to drugs for any conditions.  
Addressing the age limitation of the mental illness benefit, the AG told the Department: 'Either the limitation in the regulation should be deleted or primary legislation amended.'  
At the time the Government was faced with two options; remove the 'mental illness' category from the LTI scheme, which would have resulted in those under 16 losing their entitlement, or to include older teenagers and adults.

Ultimately, the Department of Health did neither, even after the Attorney General's office warned that a failure to act risked a misfeasance finding; a civil wrongdoing by public officials or State entities who fail to discharge their public obligations.  
The consequences of the failure to act for a decade after the legal warning could mean millions in refunds to those who were excluded from the LTI scheme on age grounds.  
In contrast with its failure to act on the illegal age restrictions, the Department of Health did move to deal with the AG's concerns that those on the LTI scheme may have been entitled to all medicines for free, rather than just those relating to their condition.  
The AG warned that, in the event of a court challenge, the legislation was unlikely to stand up to scrutiny.  
'If the matter were to be litigated, the Department would be more likely to lose the case than to win it.'  
To resolve this, the Government quietly added a provision into a largely unrelated Bill that was scheduled to pass through the Oireachtas.  
This provision amended the 1970 Health Act to stipulate that only medicines related to the LTI scheme's listed illnesses would be covered.  
The real intent of this measure was not announced by the Government, and the significance of the change went unnoticed as the legislation was debated and eventually became law in 2013.  
Since the statute of limitations has passed, this cannot now be challenged in court.  
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### Clarifications & corrections

If you feel any report in the Irish Daily Mail has been incomplete or inaccurate you can email Corrections and Clarifications at [corrections@dailymail.ie](mailto:corrections@dailymail.ie)

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