Summary of the investigative report following the allegations by Victor Castanet

(Topics 1 and 4)

27 June 2022

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Introduction: Context, scope of investigation and approach

1. Following publication of the book by Victor Castanet "Les Fossoyeurs" ("the **Book**") in January 2022, which made a number of allegations damaging to the Orpéa Group (the "**Orpéa Group**" or "**Orpéa**" or the "**Group**"), the Group's Board of Directors, through an ad hoc committee formed for this purpose (the "**Committee**"), mandated the firms Alvarez and Marsal ("**A&M**") and Grant Thornton ("**GT**"), jointly ("**GTAM**" or "**we**"), to carry out an independent investigation.

2. The independence of this engagement is guaranteed through the Committee's direct and exclusive oversight of the investigation, with no interference by Orpéa's General Management. The Committee has supported all requests linked to the conduct of our investigations and has facilitated access to the people and data necessary to carry out our works.

3. Thus, on 1 February 2022, we were appointed to conduct an investigation focused on the period from 2019 to today. The mandate also notes however that for specific allegations relating to earlier periods, our investigations may go back further.

4. This independent investigation aims to help establish the facts regarding the allegations on the management of Nursing Homes made in the Book. The allegations covered by our investigation were identified in consultation with the Committee and combined into four investigative topics:

   - Topic 1: Conditions of care for residents of the Group's Residential Nursing Homes for the Elderly ("**Nursing Homes**");
   - Topic 2: Use of public funds allocated to Orpéa to fulfil its missions through the funding of staff positions and payment for medical devices;
   - Topic 3: The existence of situations of conflicts of interest, or even corruption, in the existing business relations between Orpéa and some public officials;
   - Topic 4: Various breaches of employment law.

5. We note that the scope of our investigation concerns exclusively the allegations of the Book as set out in our engagement letter.

6. In an email dated 29 April 2022, and in view of the constraints of the Orpéa Group, the ad hoc committee asked the GTAM team to deliver its report in two phases: the conclusions on Topics 2 and 3 before the end of May 2022, and the conclusions on Topics 1 and 4 before the end of June 2022.

7. The purpose of this report is therefore to present the conclusions of our investigations on Topics 1 and 4. It does not deal with Topics 2 and 3, for which the report has already been published.

8. It is acknowledged that this report was drawn up exclusively for the members of the Committee and the Board of Directors. Any communication of this document in full or in part to a third party requires the formal prior agreement of GTAM[1].

Investigative approach

9. Our work programme comprises various types of tasks and inspections:

- Implementation of evidence preservation measures;
- Interviews at Head Office;
- Visits to the operating sites (Nursing Homes);
- Analysis of the documents provided by the Orpéa Group and the Nursing Homes visited;
- Examination of emails and other electronic communications;
- Transaction analysis;
- Analysis of structured data, including accounts and management information;
- Economic intelligence;
- Implementation of an independent whistleblowing hotline.

10. Generally, in order to guarantee the independence of our work and the objectivity of our findings, we started from the principle of analysing the raw data recovered directly by our teams from the Group's various information systems, rather than relying on the analyses already undertaken by Orpéa or presented in the audit reports or assessment tasks undertaken by third parties.

Implementation of evidence preservation measures

11. From the start of our work, we took care to organise the protection of the various data we were likely to need within the scope of our works.

12. Therefore, in the presence of a bailiff, we made a legal copy of 39 computers and 36 smartphones and tablets belonging to the Group's senior management, with a volume of around 6,540 GB (gigabytes). We also secured the email data from the Zoom platform, representing a volume of approximately 3 GB.

13. In addition to the data stored on physical devices, we retrieved the data stored on the Orpéa email servers. In the absence of a log file system, our approach was to retrieve the email inboxes of 52 selected employees and the backups of these inboxes, in order to gain access to potentially deleted content. The backups of 32 selected employees were restored.

14. Given the particularly large volumes of documents collected, we were not able to review and analyse every document. We made selections on the basis of keywords determined according to

[1] *In this event, the Committee will be responsible for ensuring that the dissemination complies with the requirements of the General Data Protection Regulation regarding the right to information.*

the Book's allegations and the progress of our investigations. We cannot exclude the fact that other documents may contain information relevant to the Book's allegations that could have an impact on our conclusions.

Interviews at Head Office

15. We have conducted interviews with some members of Management and employees of Head Office and management functions across France. We conducted 102 interviews with 68 different people. Each interview was the subject of a report and was followed up with requests for additional material and supporting documentation.

16. We were unable to meet a number of people who had left or were absent from the Orpéa Group at the time of our investigations.

17. Some discussions, which were very occasional and followed the communication of documents or an analysis on our part, were not considered to be interviews in their own right and did not result in the formalisation of a report.

Site visits

18. We have included in our work programme unannounced visits to a representative number of Nursing Homes covering all Orpéa regions in France (the "**visits**"). Our aim is to understand the activity of the Nursing Homes and how Orpéa Group procedures are implemented in the field, to obtain staff testimonies, and to conduct a number of reviews within the Nursing Homes, in particular looking at procurement, employment contracts and the management of adverse events. Each site was visited for a minimum of two consecutive days.

19. Given the total number of Nursing Homes (in excess of 220) and our objective to cover a representative sample, we determined a sampling methodology according to set criteria: occupancy rate, NOP[2], GMP[3], staff turnover, surplus of care funding, frequency of adverse events, number of inspections by the Regional Health Authority, ratio of temporary/permanent staff[4], sites mentioned in the Book, sites with red flags.

20. The compilation of these different criteria enabled us to draw up a list of sites triggering one or more warning criteria. In order to obtain a representative sample of Orpéa sites, we also studied the geographical distribution of these sites in order to make a representative geographical selection.

21. The change in timetable made at the request of the ad hoc committee did not allow us to carry out all the planned visits and we had to limit ourselves to 32 Nursing Homes. This sample represents approximately 15% of the total number of sites, which, in our opinion, is sufficiently representative of the Group's activities to be able to draw conclusions.

22. We have visited a total of 32 Nursing Homes in which we have conducted interviews with an average of ten individuals (Nursing Home Director ("**NHD**"), Deputy, Management Assistant, Coordinating Physician, Coordinating Nurse, Head Chef, Head Housekeeper, Assistant Nurses

[2] *NOP: Net Operating Profit.*
[3] *Degree of loss of autonomy (average, weighted).*
[4] *Fixed-term contract/permanent contract.*

("**AN**"), Nursing Assistant ("**NA**"), Health Professionals, etc.). Over these visits, we have met more than 320 people. These interviews were generally held individually.

23. During the visits we were also able to meet the Regional Directors ("**RDs**").

24. In addition, we have met individually with four Regional Directors, using the same format of individual interviews and following a number of desk studies, business analyses and interviews with other parties.

Document analysis

25. During our work thus far, we issued several document requests to Orpéa. Orpéa has complied with these requests by sending the items requested, in parallel to our ongoing interviews and our work.

26. To date, we have thus collected more than 50,000 documents.

27. These documents take various forms:

- Accounting and financial documents;
- Performance indicators and other reporting documents;
- Internal instructions and procedures;
- Legal documents (contracts, delegations of powers, articles of association, minutes, etc.);
- Audit reports and internal and external inspection reports (Regional Health Authority, IGF/IGAS, Statutory Auditor, Internal Auditor, Quality Controls, etc.);
- Regulatory reporting for the supervisory authorities (statements of actual income and expenditure ("**ERRD**"), provisional statement of income and expenditure ("**EPRD**") and others).
- Employment contracts;
- Meeting materials and associated minutes.

28. All documents sent by Orpéa within the framework of the joint review by the IGAS and the IGF have also been sent to us.

29. These documents have been analysed as required according to the needs of the investigation.

Examination of emails and electronic communications

30. Initial enquiries led to the collection and preservation of a very large volume of data derived from computers, tablets and mobile phones of some thirty employees and directors of the Group and from the Orpéa Group's IT servers.

31. We have collected a total volume of 11.4 terabytes of data corresponding to the emails and their attachments of 59 employees, as well as instant messaging data.

32. This corresponds to a total of over 40 million documents.

33. All the extracted data was loaded onto the RelativityOne digital forensics tool. This data was analysed using a keyword approach that allowed us to target more than 2,923,495 documents, in order to identify relevant information related to the allegations.

34. We were also able to make more than 11,000 documents available that were password protected.

Transaction analyses and analyses of structured data

35. In relation to transaction analyses and analyses of structured data deriving from the Orpéa Group's management information systems, we collected the general ledger and accounting entry files for the Group's companies covering the years targeted by our investigation (the period 2019 to 2021), and, for some allegations when required, those of earlier years (covering 2001 to 2018).

36. We have also collected management information from the human resources information systems ("**HRIS**"), payroll, management control, management dialogue with the supervisory authorities, procurement, management of accommodation in the Nursing Homes, and also care management (with strict respect for the confidentiality of the personal health data).

37. The data collected is hosted on a platform by a certified operator that complies with Health Data Hosting ("**HDH**") requirements.

Economic intelligence

38. We have conducted 57 in-depth procedures according to the requirements of our work. These relate to both the directors of Orpéa and the suppliers, business partners, and intermediaries. The primary aim of these procedures was to establish the business network of the person involved and any reputational risks arising from these networks. For each individual, we therefore conducted a series of searches over their mandates and shareholdings using various information sources including: the database of Orpéa Group mandates (Dilitrust), the legal sources of shareholding information (trade registers, audited annual report), and a set of private and public databases (Data Inpi, Orbis, Pappers, Offshore leaks, etc.).

39. We also conducted searches in private databases (Dowjones, Nexis diligence, Offshore leaks) for the existence of any sanctions or other compliance-related red flags.

40. We also carried out a reputational risk analysis using open-source resources on a series of keywords that we selected in connection with the allegations.

41. Lastly, we conducted a search for any litigation or dispute through a specialised database.

Implementation of an independent whistleblowing hotline.

42. In addition to the tasks described above, it was decided, in agreement with the Committee, to set up a digital platform to enable any employee to report any fact relating to the allegations made in the Book. This secure platform is provided by a company specialised in the management of internal whistleblowing facilities and is administered independently by our teams. The reports made via this platform that fall within the scope of our works have systematically been taken into account in our investigations. The whistleblowing platform was officially operational between 25 February and 29 April 2022.

43. We received a total of 40 reports from 36 different people. These reports pertained to a variety of subjects, the majority of which were outside the scope of our investigation. These reports were systematically answered.

Other approaches

44. Within the framework of our works, we have incorporated reports received from third parties wishing to share information, which were sent directly to one of our two firms after we were mandated in this investigation.

45. We have also contacted Mr Victor Castanet three times to ask him to share with us information he may deem useful to our works, while guaranteeing the confidentiality of his sources. We have not yet received a response.

Resources mobilised

46. To undertake these works, GTAM mobilised a multidisciplinary team comprising 38 people in total.

47. This team is composed of:

- Specialists in digital forensics;
- Specialists in investigations;
- Experts in economic intelligence;
- Data analysts;
- Operational auditors;
- Accounting and financial auditors;
- Experts in reviews of economic and operational models;
- Experts in review and analysis of operational and management processes.

Limitations

Nature of the intervention

48. Given the large number of subjects, transactions and data to be processed for this assignment within the given timeframe, we had to make choices and prioritise our analyses, while respecting the commitments we had made in our engagement letter.

49. As mentioned above, we have focused our analysis on the allegations made in the book "Les Fossoyeurs", which are relatively old in nature. On this basis we sought to identify the current practices of Orpéa S.A. for the 2019, 2020 and 2021 financial years.

50. With respect to the work carried out for 2019, 2020 and 2021, it is important to note that our work only concerned Orpéa S.A. and its activities in France, with a few exceptions as detailed in this report.

51. This work does not constitute an audit conducted in compliance with audit standards or a review according to the applicable standards of professional practice, and its objective is not to audit the financial statements or express any audit opinion on the financial statements on any date whatsoever.

52. Although we are experienced forensic experts, we are not lawyers. We are not qualified to provide legal services and we will not be held liable for any legal qualification that may be inferred from information highlighted by our investigation works. In this way, this document must not be interpreted as constituting a legal opinion.

Database

53. Oracle databases of seven applications (expenses, accounts, care management, schedule management, pay, reinvoicing, HRIS) covering processes falling within the scope of our engagement, saved between November 2019 and February 2022, have not been kept by the Orpéa Group.

54. Indeed, the backup policy of the centralised Commvault tool backing up data on an electronic file, in production from 7 June 2019, has not been correctly applied for the Oracle databases. These were saved, but not kept by the Orpéa Group in compliance with the defined rotation strategy: two years for monthly backups, and ten years for annual backups.

55. There is an Exadata online backup of the Oracle databases, but the duration of storage is limited to a maximum of sixty days. The last backup is dated 24 January 2022.

56. Consequently, we are not able to check completeness of data between November 2019 and December 2021 within applications using the Oracle databases. We cannot guarantee that data has not been deleted, whether deliberately or accidentally, from these databases. At the time of our works, it is therefore possible that operations or transactions deleted from the information system had not been brought to our attention.

57. For periods prior to November 2019, the magnetic tape backup recovery system has not yet been re-established, preventing us from accessing older versions. Safeguard measures have been taken to preserve these tapes.

58. We note that the completeness and accuracy of our findings and conclusions are directly dependent on the accuracy and completeness of the information shared with us. For some parts of our work,

we had no feasible means of ascertaining this with reasonable effort. In these cases we had to rely on the integrity of the data and systems.

Analyses of the electronic communications

59. Furthermore, we draw your attention to the fact that we have not reviewed all the documents that were identified in Relativity following our keyword searches. Even though the volume of documents reviewed is significant, we cannot rule out that there may be unprocessed documents that could have led to a modification of our findings.

60. Given the volume of documents considered relevant, it was furthermore not physically possible to transcribe all of these in this report. We have mentioned some of these and provided summaries on some subjects, but we cannot rule out that there are relevant documents that we did not have the time to include within this report.

61. In general, we have described in detail, in each section/sub-section, the analyses that we have carried out and those that we were unable to carry out, so that the reader can understand our findings in relation to the work undertaken or not undertaken.

62. In summary, the findings can/should only be understood in light of the procedures carried out and the documents processed at the date on which this report and the documents were issued.

63. Our investigation draws on a review and analysis of electronic communications of the main stakeholders in the allegations as identified in the Book or later during our various analyses. The current backup system of the Exchange email server covers the period 2019 to 2022, which made it possible to recover email inboxes, sometimes at the cost of a complex process.

64. However, for earlier periods, the magnetic tape backup recovery system was not operational at the time we started our work and has not yet been re-established, preventing us from accessing older versions. Given the abnormally low volumes of some email inboxes, we therefore could not be sure that some data has not been destroyed, either deliberately or accidentally.

Interviews

65. Our works draw on interviews held at Head Office, France management, regional managements, and in the Nursing Homes. We have not interviewed all employees and members of the management.

66. We note that although we have reconciled where possible, we had to assume that the information provided in the interviews was true and complete where we could not verify it.

Progress of the works

67. We conducted our investigations from 1 February to 24 June 2022 in accordance with the terms of our engagement letter. Our report is limited to setting out the work and findings in relation to the allegations of the Book and as defined in our respective engagement letters.

68. We also cannot rule out the possibility that, had we received other information or performed other work, the findings and conclusions presented in this report might have been different.

69. We note that on several occasions our work was complicated and delayed by the absence of certain employees (due to sick leave or lay-off) or by their failure to respond to our requests for explanations or documentation.

70. For some of our analyses, we had to make extrapolations based on the findings from the sample of sites visited and the results of the resulting controls. Even though we consider the randomly selected facilities to be representative, we cannot rule out that a wider survey, carried out on all sites, may have led us to a different conclusion. The results of these extrapolations include a margin of error and are provided as an indication and for illustrative purposes only.

71. In the summary we have chosen to quote only those people already mentioned in the Book by Victor Castanet. All other individuals have been anonymised.

This report has been prepared solely for you in the context of the objective defined in our respective engagement letters. The Report may not be used for any other purpose, nor reproduced in whole or in part, nor transmitted to third parties, including by filing with a court, without our prior written consent. GTAM accepts no liability to third parties for the contents of this report.

Topic 1 summary: The conditions of care for patients and residents of the Nursing Homes

1.1 Allegation regarding lack of material resources for the proper care of residents

72. This section of the report pertains to Topic 1 regarding the conditions of care for residents of the Nursing Homes operated by Orpéa in France. Allegation 1.1 refers specifically to rationing and shortages in the Group's Nursing Homes.

73. According to this allegation 1.1, the Orpéa Group's policy leads to systematic and repeated shortages at its Nursing Homes of incontinence products and, more broadly, products needed for daily care, as well as food rationing, a slowness in acquiring new supplies, an impossibility to acquire supplies other than through sole suppliers, and restrictions on prescriptions for medicines and care products on economic grounds.

74. We have separated allegation 1.1 into four sub-allegations, which will be reflected in the report's structure:

- Existence of shortages and systematic and repeated rationing of incontinence products.
- Rationing of food served to residents.
- Slowness in acquiring new supplies (due to approval system), inability to acquire supplies other than through sole suppliers, and a rationalised, computerised system for orders and equipment use.
- Restrictions on orders for medical products.

1.1.1 Allegation of systematic and repeated shortages of incontinence products

Details of the allegations

75. The Book describes situations where incontinence products are rationed in various Nursing Homes, with the Nursing Homes being limited to one order per month[5], resulting in end-of-month shortages. According to the Book: "*We were rationed: it was a maximum of three incontinence pads per day. Not a single extra.*"[6].

Work performed

76. We discussed the issue of incontinence products and their potential rationing as well as the workings of the Hartmann app with the state-registered nurse coordinators ("**SRNC**"), nurses and ANs at each of the 32 sites visited. In all, we conducted more than 100 interviews.

77. To assess whether the consumption of incontinence products matched the figures reported in the Book, we calculated the average number of products purchased per resident, per day between 2019 and 2021 (the "**Review Period**"). To this end, our work was as follows:

- Our analyses were based on four Excel files extracted from the eProc and Bible Achats systems provided by the Information Systems Department ("**ISD**"). Three of the files

[5] *Les Fossoyeurs (2022), p. 22.*
[6] *Les Fossoyeurs (2022), p. 21.*

pertained to Bible Achats (one per year, received on 1 April 2022 for 2019 and 2020, and on 18 March 2022 for 2021 procurement) and one to eProc.

- Bible Achats was the Orpéa Group's procurement management tool from 2007 to December 2020 before it was replaced by eProc from June 2020 onwards.
- The files listed all orders and deliveries of incontinence products and other medical products for the Group's Nursing Homes in France.
- As eProc was introduced in mid-2020 and Bible Achats was still being used by most of the Nursing Homes up until January 2021, the two ordering tools existed side by side for seven months. We therefore had to merge the databases to perform our analyses.
- In order to calculate the number of incontinence products per site, per day, per resident, we cross-referenced the orders for incontinence products with the average number of residents per month at each site.
- Because such data is not quantified, we had to disregard the impact of monthly variations in incontinence product inventory for each Nursing Home. This amounts to assuming that the volume consumed per month was equal to the volume ordered, which only marginally impacts the significance of our analysis given that the inventory level varies very little from month to month and that the ratios that we were calculating related to the full year.

Findings

78. As part of our document review, we observed that the budgetary management documents made available to the NHDs and known as "Management Control – NOP" show on line 41 the monthly budget allocated to the purchase of incontinence products and the actual amount spent. We were unable to establish whether this budget line for "incontinence products" was subject to the same strict management and oversight as the occupancy rate ("OR"), Hospital Medical Coordination ("HMC") or payroll within the NOP. We calculated the linear average of procurement of incontinence products per Nursing Home.

On the basis of the interviews conducted with care staff, we note that residents' needs for incontinence products depend on many factors, including the degree and nature of their incontinence. As an example, some residents do not require incontinence products, others only at night, others still only temporarily. Thus, a ratio of incontinence products per day, per resident is not the only relevant factor in qualifying a sufficient or insufficient availability of incontinence products for the proper care of residents in a given Nursing Home.

79. We noted that many Nursing Homes appeared to buy large quantities at the beginning of the year, and particularly in January and February in the case of 2019 and 2020.

80. During our Nursing Home visits, we understood from our interviews with care staff that they had sufficient incontinence products to meet residents' needs and had not faced any recurrent shortages or rationing of these products in the last three years.

81. We were also advised during our visits that the software provided by Hartmann allowed assistant nurses to set up individual care plans for each resident, allowing assistant nurses to provide a

personalised guide for the care staff of each resident and to estimate more accurately their monthly needs for each type of incontinence product. The software serves as an aid and is not intended to control or reduce the consumption of incontinence products, nor restrict orders.

Results

82. The daily number of incontinence products per resident purchased by Orpéa's French Nursing Homes was 2.1 in 2019 and 2.2 in 2020 and 2021, a number that is consistent with what was mentioned in the Book.

83. However, whatever the ratio, it is irrelevant to establishing whether or not there is rationing of incontinence products. Indeed, based on the hundred or so interviews we conducted with assistant nurses during our visits, it is our understanding that residents' needs for incontinence products depend on a range of factors, such as the degree and nature of their incontinence or virulence of certain epidemic outbreaks, and that such factors cause actual needs to vary widely.

84. No rationing of incontinence products was reported in the Nursing Homes visited. However, it was brought to our attention that in five Nursing Homes (of the 32 visited), the budget was insufficient, potentially putting an indirect strain on available inventory.

85. We noted that, in general, the budget building process could lead to rationing situations if the budget for incontinence products was insufficient, and that the Nursing Home Directors ("**NHDs**") did not encourage ordering outside the budget.

1.1.2 Allegation regarding food rationing

Details of the allegations

86. According to the Book, rationing also extended to food.[7]

87. We note that Mr Castanet gave more precise details on his allegations of food rationing at a hearing before the National Assembly's Social Affairs Committee on 9 February 2022, and we can use this to guide our quantitative analysis of the allegations: "*With a DCP of €4 in 80% of the nursing homes [...] there is no additional budget for staff [...] with the €4 [...] they also have to feed the staff which reduces it even further", "in the evening it's 50g of minced beef [...] in the evening it's 40g of roast beef", "they started using a high-protein powder, Protipulse, [...] which is reimbursed by social security [...] to make up for staff shortages and rationing"*, and "*they would ask people who wanted sparkling water for a medical prescription [...] the same for orange juice*".

Work performed

88. We spoke to each chef (or their sous-chef if the chef was not available) of the 32 Nursing Homes visited.

89. We analysed the calculation files for the food Daily Cost Price ("**DCP**").

90. We reviewed internal documents and emails related to the DCP and food purchases.

91. We searched documents and emails using key words related to "food rationing", and more specifically to the quantities of meat, melba toasts and madeleine sponge cakes served. We also

[7] *Les Fossoyeurs (2022), p. 23.*

searched for references to fruit juice and bottled water. In addition, we analysed melba toast and madeleine sponge cake purchases over a three year-period at two of the Nursing Homes visited.

92. We extracted Protipulse[8] orders from the databases of the Bible Achats and eProc computerised order systems for all Nursing Homes and reconciled them with occupancy rates ("**OR**") to get an idea of consumption per resident. We also reviewed the procedures and communications relating to the use of Protipulse.

Findings

93. Our document review confirmed the existence of a DCP that the Group monitored monthly and controlled prescriptively. The actual DCP comes within a euro cent of the budgeted DCP, and Orpéa's catering department contacts the NHDs whenever the DCPs of their Nursing Homes exceed the amounts budgeted.

94. The DCP is obtained by dividing the food purchase amount over a given period by the number of food days in that period, itself obtained from the total number of meals served. All meals served to non-residents are therefore counted and included in the DCP calculation produced by the chef at the end of the month. If the number of meals served is recorded correctly, the feeding of non-residents (especially employees) does not, therefore, reduce the budget allocated to residents.

95. We noted that the Group's two procurement centres, C.O.P. Comprasorg S.A. and Kauforg Group S.A. ("**ComprasOrg**" and "**KaufOrg**"), are paid by their food suppliers. What happens is that the suppliers send an initial invoice to the Nursing Homes based on a rate marked up by 20% (referred to contractually as "**Redressed Prices**") in agreement with the procurement centres. This has the effect of increasing the unit purchase price for the Nursing Homes.

96. The procurement centres then invoice the suppliers for the amount of this overbilling (the "Mark Up") plus the year-end discounts (the "YEDs"). In the case of purchases made by the Nursing Homes and clinics in France from ComprasOrg, the procurement centre's budgeted income for 2022 was €10,391,951 for the Mark Up and €810,514 for YEDs. It was not possible to separate out the amounts related specifically to Nursing Homes. As ComprasOrg was not included in the scope of our investigations, we were unable to reconcile the Mark Up invoices with the company's accounting data. We were also unable to confirm the existence of services or to quantify the materiality of such services provided by ComprasOrg (listed in the contracts) relating to the overbilling and equating to the Mark Up.

97. As the DCP is calculated on Redressed Prices and not on net prices, the actual resident DCP is around 17% below the DCP calculated by the Nursing Homes. The actual DCP is therefore €3.99 (instead of €4.79) for all the Nursing Homes, and €3.73 (instead of €4.47) for the 185 category-1 residences.

98. We can confirm from our internal document review that the portions of meat served in the evening are 40 grams for roast beef and 50 grams for minced beef. We nevertheless noted that the nutritional intake of the meals served in one day is around 2,100 kcal with a protein intake of around 90 grams. We noted that protein is mainly served at lunch and that the protein intake at dinner is around 30 grams.

99. We were unable to analyse the actual nutritional intake of the food served to residents since it varies widely depending on the quality of the ingredients, and simply performing a reconciliation

[8] *Food supplement – based on whey protein.*

by analysing the quantities ordered would not help. To be able to reach a conclusion, we would have had to collect a random sample of dishes served to residents and have them analysed in a laboratory for nutritional intake based on the quantity and quality of the food served, and this was not within the scope of our work nor our expertise.

100. Based on annual purchases, we calculated that the daily average of melba toasts and madeleine sponge cakes served at a sampling of two Nursing Homes was approximately 1.4 melba toasts and 0.5 madeleine sponge cakes per day, per resident. However, this ratio is not sufficient to conclude that these products are rationed because there are many alternatives on offer. Given the variety of alternative products offered, we did not consider it appropriate to extend the analysis of melba toasts and madeleine sponge cakes to more than two Nursing Homes. Our document review did not identify any Group policy or instruction aimed at limiting the number of melba toasts or madeleine sponge cakes served to residents.

101. Our document and email review did not identify any Group policy or instruction allowing fruit juice or sparkling water to be served only to residents with a medical prescription.

102. However, we did identify two situations in which the head office catering department had asked the Nursing Homes to eliminate fruit juices and bottled water (which were to be replaced with cordial and tap water) for economic reasons. In other words, a situation where the actual DCP was higher than the budgeted DCP.

103. Our analysis of Protipulse orders showed that, over the entire 2019-2021 period, there would only have been enough Protipulse to serve, at most, half of the residents, which is inconsistent with the allegation that it was served to all residents. We noted that the use of Protipulse increased by 61% in 2020 and that in five of the 32 Nursing Homes visited, Protipulse could be given to all residents. Of those five sites, three are continuing the practice. Based on interviews with the SRNCs of these Nursing Homes, it is our understanding that this choice prevents undernutrition in residents, and in no way is intended to make up for staff shortages or food rationing.

Results

104. Our analysis of allegation 1.1.2 on food rationing confirmed that there is a DCP which the Group monitors prescriptively for each Nursing Home. This kind of cost management practice is common to the accommodation and catering industry. Furthermore, the DCP in euros, whatever the amount, does not allow for an assessment of rationing or insufficient coverage of residents' nutritional requirements.

105. An initial invoice based on a rate marked up by 20% is sent to the Nursing Homes by Orpéa's food suppliers via the ComprasOrg procurement centre (located in Portugal). The purpose is to finance Mark Ups and any YEDs that are charged back to said suppliers by ComprasOrg. This Mark Up and the YEDs are not credited back to the Nursing Homes, resulting in a higher purchase price (the "redressed" prices based on the terms of the contracts signed with suppliers) for the Nursing Homes' food supplies. The DCP of the food served to residents is reduced by the same proportions. By correcting the prices of this initial overbilling, the effective DCP is €3.99 for all Nursing Homes and €3.73 for the 185 category-1 Nursing Homes. However, the euro amount of the DCP, whatever the amount, does not allow for an assessment of rationing or insufficient coverage of residents' nutritional requirements.

106. Serving meals to staff does not reduce the DCP of residents' meals.

107. We can confirm that the quantities of meat served in the evening are those mentioned in the Book. However, we were informed that the daily menus drawn up by Orpéa contain a standard calorie and protein intake consistent with official guidelines. The scope of our work did not allow us to measure the actual nutritional intake of the meals served which is related to the quality and quantity of the food physically served to residents.

108. We can neither confirm nor deny the allegation about the rationing of melba toasts and madeleine sponge cakes. However, we did not identify any instructions from the Group aimed at limiting the distribution of these products, nor was the practice reported to us during our site visits.

109. We can confirm that restrictions on bottled water and fruit juice may be implemented on economic grounds. We did not identify any Group policy that would only allow these on medical prescription, but we did note that this situation existed in one of the Nursing Homes visited. We also noted that the NHDs ask head office for arguments and responses to give residents and their families to justify the introduction of any new restrictions (on fruit juice and bottled water) imposed by head office for budgetary reasons.

110. Our analyses and visits to the Nursing Homes did not allow us to corroborate the allegation that Protipulse was used systematically during the pandemic to compensate for any staff shortages. Based on our interviews, it is our understanding that Protipulse is only served to residents who are undernourished or at risk of being so, and is not used as a replacement for protein in meals or to compensate for staff shortages. We nevertheless noted that five of the 32 Nursing Homes visited had prescribed Protipulse to all residents as a preventative measure during the pandemic and that three were still doing so in April 2022.

1.1.3 Allegation regarding slowness in acquiring new supplies (due to approval system), inability to acquire supplies other than through sole suppliers, and rationalised, computerised system for orders and equipment use

Details of the allegations

111. According to the Book, procurement requests for non-food products are often denied, particularly for care products and/or equipment. Of these care products, the Book refers mainly to incontinence products: *"Of course I was fighting for my assistant nurses and the residents. The battle was lost in advance," he said sadly. "I was only allowed one order per month. And most of the time it was approved by the facility manager, then revised downwards by the coordinating manager who was obviously obeying orders from the director of the Ile-de-France division. Nothing happened without his approval. We had no inventory and could only place orders on the 25th of the month. So almost every month, by the last week or the first week of the following month, we found ourselves short of incontinence products. All the assistant nurses would come into my office to complain. I tried to calm them down as best I could. But at the same time, I understood their anger. What could I say to them?"* [9]

112. The Book alleged it was impossible to acquire supplies other than through sole suppliers, and only through a rationalised, computerised ordering and order approval system: *"Each facility manager runs their Nursing Home using three main software programs: "GMASS", "Management Control – NOP" and the "Bible Achats" (Procurement Bible). […]. The same goes for the "Bible Achats", which is used to place orders for incontinence products and all medical products according to your OR and margin. It is a fully-locked application that only provides access to products authorised by the Group, the vast majority of which are reimbursed by social security, and to legacy suppliers. Unlike other large private groups, at Orpéa it is absolutely impossible for a manager to seek a quote from another supplier or procure any product not listed in this bible. We will see why, later."* [10]

Work performed

113. We reviewed internal procedures and interviewed the NHDs during our site visits to see if it was possible to place an order with a supplier not listed in the eProc system.

114. To review the allegation that purchase requests for incontinence products are denied, we went through an eProc database analysing all the purchase requests for incontinence products between June 2020 and February 2022[11]. We then manually reviewed each denied purchase request and the reasons it was denied.

115. To assess the allegation that orders for incontinence products were limited to one order per month, we analysed the number of purchase requests for incontinence products with the status "ordered".

116. With regard to the allegation that purchase requests took a long time to be approved, we went through the same eProc data extraction. By looking at the difference between the "statement of need" date and the "order sent to supplier" stage, we were able to calculate how long it took from the time the user sent their request for approval to the time the request was forwarded to the supplier in the form of an order.

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[9] *Les Fossoyeurs (2022), p. 22.*
[10] *Les Fossoyeurs (2022), p. 128.*
[11] *File provided by Orpéa: "*Extract – Demandes d'Achats 25-02-2022*" (Extract – Purchase Requests 25-02-2022).*

Findings

117. We can confirm that the vast majority of orders are centralised and placed with suppliers listed by the Group. However, the practice of a large group controlling its suppliers is commonly observed and practised. Centralisation makes it possible to approve suppliers and products that correspond to the Group's quality standards, to negotiate more advantageous prices, and to ensure consistency in services delivered.

118. With regard to purchase request denials, we identified a total of 5,680 purchase requests for incontinence products during the Review Period. Of these, we counted 228 denied requests, i.e. 4% of the total. When we filtered purchase requests marked as "denied" for budgetary reasons, we found a total of 38 (17% of denials and 0.7% of total purchase requests).

119. In 2021, the Group's 227 Nursing Homes placed an average of 17.2 orders for incontinence products over the full year, which is almost one and a half orders per Nursing Home per month. Of these 227 Nursing Homes, just 33 (15%) placed a maximum of one order per month or less. Therefore, the allegation that the Group's Nursing Homes were limited to one order of incontinence products per month does not appear to be corroborated.

120. With regard to the time taken to approve orders, we found that for the 4,952 purchase requests created during the Review Period and marked "Ordered", a request was passed to the supplier in the form of an order on average 1.48 days after the statement of need. We also note that there are regional disparities in the average time taken for a purchase to be approved. For example, in the Alpes Maritimes region, the average approval time was 2.31 days, while in the Ouest region, it was 0.8 days.

Results

121. It is our observation that the majority of orders are in fact centralised and placed with suppliers on the Group's list. However, the practice of a large group controlling its suppliers is commonly observed and practised. This centralisation makes it possible to approve suppliers and products that correspond to the Group's quality standards, to negotiate more advantageous prices, and to ensure consistency in services delivered.

122. With regard to purchase requests, we note that 4% of purchase requests entered in eProc and containing incontinence products were denied. The denial percentage dropped to 0.7% when we limited our analysis to denials for budgetary reasons.

123. According to our analysis, an order is approved on average 1.48 days after the statement of need.

124. Lastly, we found that 33 of the 227 Nursing Homes placed only one order or less for incontinence products per month. However, we were also frequently informed during our Nursing Home visits that it was possible to place a second order during the month if an unexpected need arose, such as an outbreak of gastroenteritis or the arrival of new residents needing a type of incontinence product not already stocked at the site. This also appears to be confirmed by the data, since the number of average monthly orders for incontinence products across all Nursing Homes was 1.4. We also note that the 2021 figure was much higher for some Nursing Homes, suggesting that several orders per month was the norm for those sites.

125. During our Nursing Home visits, in our interviews with the people in charge of ordering, the vast majority said they were not aware of any monthly budget allocated to them for their orders, and that all orders submitted were in general approved by the NHD or occasionally by the RD. In

response to our specific question, "*Have any orders for incontinence products been denied?*", everyone we have interviewed to date has told us that they had not encountered such a situation.

1.1.4 Allegation regarding restrictions on prescription medications on economic grounds

Details of the allegations

126. According to the Book, when the Group's Nursing Homes in France presented figures that fell short of expectations, they were asked to reduce the cost of healthcare products.

127. The Book's allegations on this topic seem to focus mainly on the "clinical" division:

- "*And every time, no matter what explanation we gave, he imposed the same drastic remedy: cut spending.*"

- *"It did not matter how. It did not matter what the rules were. We had to reduce the amount or cost of healthcare products. "Brdenk […] then turned to me and said: "[…] Have you seen the medications? Go and see your colleagues and tell them to stop prescribing anything and everything." So I nodded like an idiot and the following day I flew to Marseille, Bordeaux and*

Quimper and told the doctors: "I've been told off by Brdenk! Now you've got to stop prescribing medications not listed in the bible." [12]

Work performed

128. This allegation was shown to concern the Clinéa clinics, an entity that is not within the scope of our work for this report.

129. As a result, we did not investigate this topic.

Findings

130. We are not able to provide any finding on this allegation.

Results

131. No investigation was made into allegation 1.1.4 regarding restrictions on prescription medications on economic grounds.

[12] *Les Fossoyeurs (2022), p. 123.*

1.2 Allegation regarding human resources management

132. Reminder of the contents of the allegation regarding human resources management as set out in the engagement letter:

- It is alleged that there is a shortage of human resources compared to the number of residents: in particular it is alleged that there is organised chronic understaffing (absentees not replaced, recruitment subject to approval by the regional directors, etc.), payroll conditioning (computerised management of resources based on occupancy rates and the margin of the Nursing Home in question), regular exceeding of the maximum number of occupants, and encouragement to admit residents not suited to Nursing Home accommodation.

1.2.1 Allegation regarding organised chronic understaffing

Details of the allegations

133. The Book describes a number of situations related to the general allegation of chronic understaffing:

- It alleges there are regular staff shortages, especially nursing assistants and more generally assistant nurses, with sometimes insufficient numbers of night staff compared to the planned rosters;

- It alleges there are instructions not to replace staff, refusals by the Group to recruit staff, and systematic instructions to optimise payroll (with regard to budgets and Nursing Homes' occupancy rates).

Work performed

134. The aim of our investigations in light of these allegations was to analyse the way in which the Orpéa Group manages the level of resources within its Nursing Homes against the number of residents and their level of dependence.

135. To that end, our work focused both on analysing the workforce within the Nursing Homes in our sample over the 2019-2021 period and on the Orpéa Group's practices regarding recruitment, particularly the replacement of staff during planned or unforeseen absences, and remuneration. Our work was supplemented by interviews at head office and with NHDs and staff (administrative staff and care staff) during our visits to the 32 sites in our sample.

136. Our investigations focused in particular on the following issues:

- An analysis of the workforce (actual overall staffing level), including all Nursing Home functions (care staff, administrative staff, kitchen staff, events and entertainment staff, etc.), based on several data sources:

    - External data (a study by the French Directorate for Research, Studies, Evaluation and Statistics (DREES), a body attached to the French Ministry of Health and Solidarity which provided an assessment of the average staffing level in nursing homes in France in 2015; Draft Bill No. 2714 of February 2020 on the setting of minimum staffing levels in nursing homes; and the report by Professors Claude Jeandel and Olivier Guérin, who were tasked by the French Minister for Solidarity and Health to review nursing home care (June 2021));

  - Internal data: appendices A6 of the Provisional Statements of Income and Expenditure ("EPRD") for the years 2019 to 2021, internal budgets prepared by the Nursing Homes (December NOP), payroll records from the Pandore application;

- An analysis of the night staffing levels, specifically assistant nurses and nursing assistants, based on OCTIME schedules;

- An analysis of the methods and tools used by the Group to meet the recruitment needs of its Nursing Homes;

- An analysis of the wage policy and remuneration levels offered to employees at the Nursing Homes;

- A review of data, especially emails, in the Relativity database;

- And lastly, an overview of our findings in light of the job market situation in the nursing home sector.

Findings

Analysis of overall staffing levels

137. When we compared our sample for the period 2019 to 2021 to the various data sources, it was clear that:

- The number of full-time equivalents ("**FTE**") provided for in the EPRDs and the budgets tended to be higher than the statistical reference data of the DREES (note, however, that the reference values of the study date from 2015 and the study specified that the number of FTEs has been steadily increasing every year since the study began, namely 2011);

- An analysis of payroll data showed that operationally, for one-third of the Nursing Homes, the number of FTEs was lower than DREES statistical data and that the number of FTEs was systematically lower than the budgets and forecasts approved by the authorities. In our sample, we estimated that the number of FTEs "missing" from budgeted payroll per Nursing Home (over the three years) was five. A projection for all 32 sites in our sample estimated the number of missing FTEs over one year at 160, or 1,135 FTEs after extrapolating this average across all 227 group sites (bearing in mind the limits entailed by this extrapolation).

138. Our analyses also revealed that the overall staffing level in our sample over the three years was:

- 0.8 assistant nurses per 8 residents and 0.8 nurses per 25 residents, which is 0.2 FTE fewer for each job type than recommended in Draft Bill No. 2714;

- 5 nurses, 20 assistant nurses and 18 hospital assistant nurses for 80 beds, which is 2 nurses and 8 assistant nurses fewer, respectively, than the recommendation of the Jeandel-Guérin ministerial report.

139. All of our investigations led to the conclusion that almost all sites were understaffed compared to the budget provided for in the NOPs and EPRDs as well as the recommendations of Draft Bill No. 2714 and the assignment report by Professors Claude Jeandel and Olivier Guérin. On the other hand, one-third of sites had a workforce over the 2019-2021 period that was higher than that indicated for the market in the DREES study (based on comparative values from 2015).

140. It is our understanding from our interviews with nursing home directors, administrative staff and care staff during our visits to the 32 Nursing Homes in our sample that the Nursing Homes are indeed facing chronic staff shortages.

Analysis of night staffing levels

141. Our work, which was limited due to the unreliability of the OCTIME schedules (which forced us to have numerous discussions with the Nursing Homes in order to establish our findings), led us to conclude that for the period under investigation, there were situations of understaffing at night, with an average of 6% of nights being understaffed (or 21 days per year) compared to the Nursing Homes' planned rosters, and an insufficient staffing ratio of assistant nurses to residents in one-third of the Nursing Homes versus the thresholds mentioned in the February 2020 draft bill on the introduction of responsible staffing levels in nursing homes.

142. Furthermore, our work revealed that on rare occasions some sites faced a situation during the period where the number of staff working at night was below two FTEs. In response to our queries, France General Management and the Nursing Home management confirmed that the target number of FTEs was indeed three FTEs per night and that the NHDs had ad hoc rules for emergency replacements. No alerts have been received in the last 18 months regarding situations where there were fewer than two FTEs, but there is no formal monitoring of these data on night-time staffing levels to corroborate this point.

Analysis of recruitment practices

143. The interviews we conducted and our analyses of the data showed that:

- Recruitment for staff shortages in the Nursing Homes follows a process implemented at local level at the Nursing Homes, but all recruitment (on permanent and temporary contracts) is subject to line-management approval by the Regional Directors. In this regard, the data analysed over the three-year period showed that the refusal rates recorded in the Group's tools were immaterial (0.02% for permanent contracts and 1.24% for temporary contracts);

- The Nursing Homes received very little support from the Group in their recruitment efforts or to improve efficiency of the process. It was not until 2019 that a human resources department was set up in France and support tools (Hublo and Talentsoft) deployed to help the Nursing Homes.

- Staff are recruited either from a pool of replacements or through internal or external platforms. An analysis of data from the Hublo and Talentsoft tools revealed that although the Nursing Homes advertise vacancies, this practice is not consistent and does not always correlate with the number of vacant positions;

- The use of temporary staff was possible but still limited over the three years covered by our investigation (for example, expenditure on temporary staff during the investigation period was just 0.45% of costs paid for staff working in the Nursing Homes in 2021);

- It was clear from our interviews with the Nursing Home Directors at the 32 Nursing Homes in our sample that the Nursing Homes do indeed face recruitment challenges.

Wage policy at the Orpéa Group's Nursing Homes

144. We ascertained from our discussions with the Human Resources Department that there was no wage policy as such within the Orpéa Group, and especially not for Nursing Home employees.

145. All the analyses performed on the remuneration levels of employees at the Nursing Homes showed that despite the existence of a traditional pay scale, remuneration varied quite widely (between regions and even between Nursing Homes within a single region) and that in the absence of an established wage policy, these disparities were not managed at the Group level. This lack of management meant we were unable to examine in more detail the differences in remuneration from one region to another or gain insight into remuneration levels in various employment areas, which could, for example, be attributed to different levels of seniority or qualifications.

146. The lack of a wage policy or managed remuneration levels led us to conclude that the Group is not working on this aspect as a lever to retain and attract employees.

147. Lastly, it should be noted that with regard to overtime, the Group's policy is not to pay overtime but to encourage people to take time off in lieu. We found that out of total wages and salaries paid over the audited period, overtime amounted to €4,940,000, or 0.49% of payroll. By nature, this policy therefore tends to accentuate the understaffing trend already noted in our previous analyses.

Analysis of correspondence in the Relativity database

148. We identified a number of documents that corroborated some of the allegations made in the Book.

149. Firstly, we identified three emails or documents dating from 2010, 2013 and 2015 which showed that the Group's general management or the division managers could expressly instruct the RDs (and thus the Nursing Homes) not to go ahead with certain hires or to postpone them.

150. Secondly, we identified several dozen emails (from RDs or division managers) on the subject of refusals to hire permanent staff, primarily between 2011 and 2015, and sporadically between 2016 and 2022. These refusals were sometimes motivated and justified for operational reasons (such as the contract being non-compliant), while others were motivated and justified on budgetary grounds ("exceeding the care budget, exceeding the FTE budget", and so on). These refusals may be issued without any justification.

151. On the other hand, we also found two more recent emails (2017 and 2019) in which the regional directors recommended recruiting staff on permanent contracts (and not on temporary ones).

152. Lastly, we also identified letters or reports from supervisory authorities, residents' families or employees that had been sent to the Group's senior management confirming understaffing situations detrimental to the Orpéa Group's quality of service. While these letters were too few to be representative, they are a concrete example of the understaffing encountered or reported in a number of Nursing Homes.

Putting our findings into perspective in the light of the job market for nursing homes

153. An analysis of the job market in the nursing home sector, based on studies published by Uni Santé and DREES in particular, coupled with a review of reports and articles, shows that:

- There is an inadequate supply of nursing homes in the face of an ageing population, with a bed ratio trending downwards. This trend is expected to accelerate with the arrival of the "baby boomers".

- The recruitment challenges are huge: in September 2021, the nursing home industry held its annual meetings on the themes of inadequate human resources and the need for recruitment. It is estimated that 350,000 jobs need to be filled to cope with the ageing of the population and guarantee sufficient support for residents. Yet the sector struggles to recruit

staff: in 2018, the DREES had already reported that one in two private facilities was facing recruitment problems.

- The situation is aggravated by the steady decline in the number of qualified assistant nurses. According to a study by Défis Metier published in October 2020, in recent years "there has been a worrying decline in the number of staff being trained for the state assistant nurse diploma (and number of graduates) at a time of high employment needs".

- Factors identified by sector stakeholders as aggravating this situation include:

  - Deteriorating working conditions;

  - The overall poor image of nursing homes among assistant nurses, which amplifies its lack of attractiveness;

  - Inadequate remuneration levels.

Results

154. To summarise our work on the allegations concerning the existence of chronic understaffing at the Orpéa Group's Nursing Homes, it appears that:

- Even though one-third of the sites in our sample show a staffing level between 2019-2021 higher than that indicated for the market (with regard to the 2015 reference values from a DREES study published in 2020), almost all sites were understaffed compared to the budget provided for in the NOPs and EPRDs. The level of understaffing when payroll was compared to budget was estimated at around 9%, which is a projection of more than 1,100 FTEs over one year at all Nursing Homes (estimated figure based on extrapolations from the analysis results derived from our sample, bearing in mind the limits of such an exercise).

- Our sample revealed situations of understaffing at night, with an average of 6% of nights (i.e. 21 days per year) understaffed in relation to the rosters planned by the Nursing Homes.

155. The quantitative data from our sample also showed that the number of actual FTEs was below what was recommended in the report from the Jeandel-Guérin 2021 ministerial assignment and in Draft Bill No. 2714 on staffing levels in nursing homes.

156. We understand from our interviews with the NHDs, administrative staff and care staff during our 32 site visits that the Nursing Homes did indeed face chronic understaffing on the one hand, and recruitment difficulties on the other.

157. These understaffing situations should be seen in the light of the job market in the nursing home sector, which is experiencing major challenges (as noted by a number of industry studies), linked in particular to the sector's lack of attractiveness and a decline in the number of people being trained in care professions.

158. Nevertheless, our investigations found that the Orpéa Group's practices are not conducive to overcoming these challenges:

- Although recruitment is steered and managed within the Nursing Homes, it still requires line-management approval from the regional directors. Analyses of data over three years showed that the refusal rates documented in the Group's tools are immaterial (0.02% for permanent contracts and 1.24% for temporary contracts). However, an analysis of the emails drawn from

the Relativity database showed that more than half of the recruitment refusals identified were motivated by budget.

- In this regard, our investigations uncovered communications from general management or division management (in 2010, 2013 and 2015) showing that the RDs (and thus the Nursing Homes) could be asked explicitly not to go ahead with certain hires or to postpone them in order to meet budgetary targets.

- Recruitment support tools made available by the Group (particularly Hublo and Talentsoft) have only recently been deployed (2019-2020). Data analyses produced from these tools showed that their use by the Nursing Homes was localised and did not always seem to correlate with the number of vacancies.

- There was limited use of temporary staff (for example, expenditure on temporary staff during the investigation period was just 0.45% of costs paid for staff working in the Nursing Homes in 2021).

- The Orpéa Group has not introduced a wage policy to manage remuneration levels within its Nursing Homes: remuneration for the various job categories (care staff and non-care staff) varies between regions and between Nursing Homes within the same region and is not managed. This lack of management, coupled with the absence of a wage policy, leads to the conclusion that the Group is not working on this aspect as a lever to retain and attract staff.

- The Group's overtime policy is based on time off in lieu, rather than paid overtime. This policy is only likely to exacerbate the understaffing observed.

1.2.2 Allegation regarding payroll conditioning

Details of the allegations

159. We endeavoured to review the following allegations: payroll is conditioned: absentees voluntarily are not replaced, [13] computerised management of resources is based on the occupancy rates and margin of the Nursing Home in question. It is alleged that all this is guided permanently by two key indicators: the occupancy rate (OR) and the Nursing Home's margin, indicated by the acronym NOP (net operating profit). [14] The Book's author also alleges that "*permanent positions* [are managed] *by means of short-term contracts to have an even greater grip on payroll, bearing in mind that some of these positions are financed by public money*".[15]

Work performed

160. Passages in the Book that allege payroll is conditioned on occupancy rates and profitability targets essentially refer to four topics on which our work has focused, some of which have already been discussed in other sections of our reports:

[13] *Les Fossoyeurs (2022), p. 102.*
[14] *Les Fossoyeurs (2022), p. 128.*
[15] *Les Fossoyeurs (2022), p. 102.*

- The Nursing Homes' financial performance management model, profitability targets per Nursing Home and underlying levers;
- Control of costs and particularly payroll when preparing budgets and throughout the year;
- Lack of autonomy of the NHDs when it comes to decisions related to budgets and human resources;
- More specifically, practices for replacing Nursing Home staff, particularly care staff.

161. Consequently, we have:

- documented the Nursing Homes' financial performance management system following our interviews with the NHDs and RDs and our review of management statements and emails;
- looked at examples of the "Delegation of authority and tasks" signed by each NHD for his or her Nursing Home;
- reviewed email exchanges between RDs and NHDs or between France GM and RDs on the matter.

Findings

Financial performance management and targets per Nursing Home

162. The financial performance of the Group's Nursing Homes in France is planned and monitored at the level of Net Operating Profit ("**NOP**"), a management balance similar to earnings before interest, taxes, depreciation, amortisation and rent costs ("**EBITDAR**"). The Group uses this key profitability indicator to aggregate revenue and operating costs related to accommodation, long-term care and healthcare, despite different financing sources and obligations to supervisory authorities.

163. The main indicators that produce the NOP of a Nursing Home are as follows:

- OR and the Average Accommodation Price ("**AAP**") in the case of revenue (government grants being a set amount)
- The number of full-time equivalent employees ("**FTE**s") and revaluations in the case of payroll
- The level of non-staff expenditure: supplies and accommodation and healthcare services

164. Of the above indicators, it is the OR and FTEs that most affect NOP (excluding increases in government grants).

165. The targets for each Nursing Home are set when the budget is being prepared. The NOP budget is broken down into NHD and RD bonus targets based on the following indicators: NOP, Revenue ("**Revenue**"), OR and payroll. See section on allegation 1.4.

Budget preparation and cost control

166. From our interviews with NHDs and RDs, it is our understanding that the Nursing Homes' financial performance management is underpinned by the process of preparing the annual budget. Once this process is completed, the NOP target and underlying OR and FTE assumptions are set for each category.

167. Through these same interviews and by reviewing emails between head office management control and the RDs, or between the RDs and NHDs, we gained insight into the principles and procedures used to produce the final budget. In particular, we learnt that:

- An initial version of the budget is prepared by the NHD and reviewed by the RD before being forwarded to Management Control, France General Management and Group General Management. During the finalisation stage at head office, budgetary targets are frequently adjusted to make them more ambitious, particularly with regard to OR and payroll control. These revised targets are assigned to the RDs and NHDs.

- The NOP and underlying parameters of the budget for year N prepared by the NHD are deliberately different from year N-1 in order to improve profitability from year to year.

168. The fact that revenue and the cost base are put together and adjusted with reference to the budget from the previous financial year has the result of skewing payroll, including positions financed by government grants:

- The profitability ratios considered in the budget analyses, such as the ratio of FTEs to number of residents or total payroll to revenue, mean that the ratio of some staff to occupancy rates is adjusted when preparing the budget.

- Additional positions financed by increases in care funding are not automatically reflected in the Nursing Homes' budgets. See 2.3.3.

- If a position has remained vacant for part of the previous year, its addition to the budget for the current year, over the full year, automatically runs counter to improving profitability from year to year. (This also applies for positions financed by funding.)

- In the case of a Nursing Home whose OR is consistently high (95% or above) and whose cost base is already optimised, the pursuit of additional short-term profitability turns the reduction of the number of FTEs into a particularly effective lever.

169. During our interviews with the NHDs and RDs, we were given a training document[16] on how to prepare budgets and monitor NOP. It states explicitly that "*budget [is] based on previous year actuals*" and that specifically with regard to payroll, without distinguishing between accommodation and care, "*Headcount is defined based on approved targets (targeted AN/NA/staff ratio which may vary depending on the specific nature and type of facility) and ... the budgeted OR!*". Actual NOP is monitored monthly by the NHDs, RDs, France GM and head office management control via "Management Control – NOP" statements. Negative budget variances are explained by the NHD. We found that they were regularly the subject of corrective action plans, on OR or costs, most notably staffing, either through delayed recruitment, fewer replacements for annual leave or employing people on temporary contracts when a permanent contract was budgeted. A number of emails illustrated this type of monitoring.

[16] *File provided by Orpéa: "Présentation formation chiffres TH fev 2019.pptx" (TH training figures presentation Feb 2019.pptx).*

170. We identified examples of explicit, prescriptive communication on the topic mainly dating from the 2010 to 2016 period.

171. For the 2019-2021 period, we learnt from our interviews at the Nursing Homes (with management and staff) that:

- a growing number of vacant positions was due to recruitment difficulties, particularly in care;
- replacements for annual leave in non-managerial positions were planned and sought;
- the main point of tension in terms of staffing remained the difficulty in replacing unforeseen absences.

Autonomy of NHDs

172. We looked at examples of the "Delegation of authority and duties" documents signed by each NHD for his or her Nursing Home.

173. The document is signed by the NHD when taking up their position and clearly states the limits of their authority:

- In budgetary matters: "*Nursing Home budgets are prepared by General Management after consultation with the Nursing Home Director via Regional Management. Since Nursing Home Directors are granted no autonomy or authority by Orpéa in financial matters, instead working under the direction of General Management and in conjunction with Regional Management, they are required to: implement the defined budgets, monitor management and budget control indicators, carry out purchases strictly within the defined budget and from listed suppliers, approve invoices and forward them to central administration for payment and preparation of accounting documents.*"
- With regard to human resources management: "*Since Nursing Home Directors are granted no autonomy or authority by Orpéa in human resources management, instead working under the direction of Regional Management and the Human Resources Department, they are responsible for: carrying out recruitments decided in agreement with General Management and Regional Management, signing employment contracts for non-managerial staff following approval by General Management and Regional Management, etc.*"

174. This means that budget decisions regarding payroll and, by extension, staffing are therefore effectively the responsibility of head office.

175. Recruitment decisions are subject to approval by the RD or even France GM.

Replacements

176. The exchanges that we identified between RDs and NHDs, and between RDs and division managers or France GM showed that replacements were indeed one of the variables for adjusting costs during the year. So either an annual leave replacement was cancelled, or a position was left vacant for longer following a departure.

177. From our interviews with staff at the Nursing Homes we visited and our review of their management statements, it was clear that the recent understaffing and under-utilisation of funding for care positions were also due to recruitment difficulties for several types of position, while annual leave replacements were budgeted for the roles closest to residents.

Results

178. When forming our conclusions on the allegation that payroll at the Nursing Homes was conditioned on occupancy rates and profitability targets, we made a distinction between practices we felt were within the scope of accommodation and those we felt were within the scope of care. Managing accommodation-related payroll based on efficiency and profitability does not in itself constitute a breach of the Group's commitments towards residents or the authorities. The implications of that should be measured against the expectations of residents and their families in terms of the quality of accommodation services, which is not the subject of our report. On the other hand, managing care-related payroll as a profitability adjustment variable does have an effect on the contract signed with the supervisory authorities for long-term care and care services and their financing by government funding.

179. We note that budgets prepared for each Nursing Home for a given year were primarily based on the profitability of the prior financial year. The budget and underlying management indicators and ratios are finalised at head office and reflected in the NHDs' targets. The budgetary analyses performed by head office include FTE to number of residents ratios, including NAs and ANs. During the financial year, margins and labour costs are tracked using similar indicators and ratios.

180. The "delegation of authority and duties" granted by Group GM to the NHD explicitly stipulates a low level of autonomy when it comes to budgets and human resources. Budgets are regularly adjusted centrally to be more ambitious before being distributed to the RDs and NHDs.

181. We observed daily monitoring of OR at all levels of NHD line management. Payroll monitoring and corrective actions ordered by France GM and even the Group seemed to have been carried out on a monthly basis.

182. Total payroll for the Nursing Homes (without distinguishing between care, long-term care or accommodation staff) could be adjusted downwards to bring it closer to the budgetary target.

183. Aspects of this management system that may have contributed to a decline in care or service quality are biases that mainly have been highlighted in other sections of our reports:

- NOP and costs managed by aggregating figures for accommodation, long-term care and care in the budget and throughout the year; this aggregation means jobs covered by care funding are incorporated into payroll control measures.

- The level of ambition centrally injected into the Nursing Homes' budget, including through management rules; such rules could result in the full public funding not being reflected in a Nursing Home's budget and thus a failure to encourage full spending of funding.

- Monitoring on a monthly or more frequent basis of payroll per Nursing Home at the regional or even national level with prescriptive communications on what adjustments should be made in the short term, with no consideration for the effects this potentially could have on residents' care.

- Restrictions in practice and in principle of the NHD's autonomy and decision-making power.

1.2.3 Allegation regarding the regular exceeding of maximum occupant numbers

Details of the allegations

184. According to the allegations in the Book, Orpéa exceeded the authorised capacity provided for in their agreement at certain Nursing Homes: "[…] *let's just say that at Orpéa the limit set by the government was not seen as something set in stone. […] And that's how we came to have occupancy rates of 103, 105, 110 instead of 100*." [17]

Work performed

185. In order to assess allegation 1.2.3 regarding the regular exceeding of maximum occupant numbers, we worked on the assumption that exceeding the authorised capacity was only possible if the Nursing Home had beds in excess of its maximum capacity. We chose October 2019[18] for our analysis of rented beds. We selected a sample of 100 Nursing Homes (the 32 Nursing Homes visited plus 68 Nursing Homes with the highest occupancy rates in October 2019[19]) and analysed the following:

- The maximum authorised capacity of the Nursing Homes as defined by the supervisory authorities (the "**maximum authorised capacity**");
- The average number of residents (the "**number of residents**" or the "**OR**") reported by the Nursing Homes in their NOP; and
- The number of rented beds invoiced by Bastide (the "**number of beds**") as an indication of the number of beds in reserve, over and above the number of beds corresponding to the maximum authorised capacity.

186. We also examined documents and emails using the search terms "*authorised capacity*", "*exceeded*" and "*overcapacity*" to identify indications and/or evidence of exceeding the authorised capacity.

Findings

Analysis of the number of residents and beds invoiced versus the maximum authorised capacity

187. By comparing the OR (in the form of number of residents) with the maximum authorised capacity in October 2019, we found the following:

- In 7 of the 100 Nursing Homes, the OR exceeded the maximum authorised capacity.
- The OR of 18 Nursing Homes corresponded to the maximum authorised capacity.
- In 75 Nursing Homes, the OR was below the maximum authorised capacity.

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[17] Les Fossoyeurs (2022), p. 116.
[18] We randomly selected a month in 2019 since we wanted to analyse a period unaffected by the pandemic, i.e. prior to 2020.
[19] We excluded Nursing Home 153 from the sample since it appeared to be a small-scale facility with capacity for just 15 people.

188. Our analysis of the number of invoiced beds compared to the maximum authorised capacity showed that in 31 of the 100 Nursing Homes in the sample, the number of invoiced beds was higher than the authorised capacity:

- We noted that 29 of the 31 Nursing Homes had a number of invoiced beds that was higher than the number of residents (actual OR).
- For 2 of those 31 Nursing Homes, the number of invoiced beds was lower than the number of residents (actual OR).[20]

Analysis of documentation regarding the regular exceeding of maximum occupant numbers

189. When we examined the emails using the search terms "authorised capacity", "exceeded" and "overcapacity", we noticed that the majority of the messages were sent during the period prior to 2019, i.e. before the 2019-2021 investigation period covered by our work.

190. The communications identified during our documentation review related to:

- emails exchanged in communications with the French national health insurance fund (CPAM) and/or following Regional Health Authority inspections that mentioned exceeding the maximum number of occupants, such as the following:
    - **Nursing Home 285 – Résidence La Camargue in Nîmes:** An email from the NHD to the RD dated 09/02/2022 about preparing a report on a Regional Health Authority inspection dated 09/02/2022, mentioning that "*the breakdown of permanent and temporary accommodation places will be looked at again since there are more permanent residents than the agreement authorises*". We note that this email was subsequently transferred internally. We note that discussions on the subject of this Nursing Home, following that same Regional Health Authority inspection, subsequently referred to "*exceeding the authorised accommodation capacity and non-implementation of a portion of capacity: 21 permanent accommodation beds in a protected unit are authorised, but 23 residents are accommodated in a protected unit/A PASA* [activity and adapted-care centre] *with 12 places has been authorised but not set up."*
- Our review of the documents confirmed that the maximum authorised capacity was exceeded on several occasions. From the (proposed) response to the CPAM in the documents examined, it appears that these occasions of exceeding capacity were transitory in nature. We were unable to verify if the responses provided by Orpéa to the CPAM were actually valid.
- Measures to be taken (e.g. removal of beds) prior to inspections:
    - Email from the Pricing Department to the RD with copy to the French department for nursing home relations and medical/social services ("**DRESMS**") dated 19 November 2008 advising that it had learnt "*that the validation of the GMP* [degree of residents' loss of autonomy] *for the "La Couture Boussey" Nursing Home*[21] *is scheduled for next Monday, 24 November. According to LEO [accommodation-related software] data, the Nursing Home accommodates 82 residents, i.e. 2 more than the authorised capacity. A solution therefore needs to be found for Monday, bearing in*

[20] We asked Orpéa why the number of beds was lower than the number of residents, but it was unable to provide an explanation. According to an email from a member of the Logistics department, "[...] the incomings and outgoings of [M]edical [D]evices were managed directly by the sites. Bastide invoices the beds requested by the sites through the Bastide community unit."

[21] Probably referring to Nursing Home 9 – Les Rives d'Or nursing home in La Couture Boussey.

mind that we recently told the CPAM that we were making every effort not to exceed the authorised capacity."

- Email from the Pricing Department to Nursing Home 169 – Patrice Groff Nursing Home in Charleville-Mézières, with copy to the DRESMS, the deputy contracting authority and the RD, dated 16 September 2010, advising that with regard to *"upcoming compliance visits, the second bed should be removed from the three rooms on the first floor with removable partitions so as not to exceed the authorised capacity. The area without a bed is a lounge/office area [...]." The RD replied, stating that "those beds will be removed".* [22]

- Inclusion of guest rooms causing the authorised capacity to be exceeded:

  - Internal Orpéa email of 10 October 2005 regarding the "weekly schedule" in which a member of the Pricing Department writes to the DRESMS saying that it was the RD "*who told me that she had included some guest rooms causing the authorised capacity to be slightly exceeded; the other modifications we saw were also requested by her.*"

Results

191. When we compared the number of invoiced beds to the maximum authorised capacity in our sample of 100 Nursing Homes, we saw that 31 of them had beds beyond their maximum authorised capacity in the month analysed (October 2019). For the other 69 Nursing Homes, the number of rented beds was below their authorised capacity.

192. Our review of documents confirmed that there may have been cases in the past where the maximum number of occupants was exceeded.

193. We are not in a position to conclude whether the disparity between the number of invoiced beds and the maximum authorised capacity was due to flaws in the procedure for invoicing occupied beds, or how the number of residents was calculated/determined (i.e. the OR calculation or using the number of invoiced beds as an indication of the number of residents), or if there actually were cases where the maximum number of occupants was exceeded.

1.2.4 Allegation regarding the admission of residents unsuited to nursing home accommodation

Details of the allegations

194. According to the Book, Orpéa's Nursing Homes admit people who are not eligible for nursing home accommodation in a bid to maximise their occupancy rates and profits. It also alleges that in the face of pressure from the RDs, some NHDs pursued this practice as a way to increase their OR.

Work performed

195. To investigate this allegation, it would have been necessary to analyse residents' medical records. Since we were not authorised to have access to residents' medical records, and given the sensitive and confidential nature of this information, we did not investigate this topic. Nevertheless, we did

[22] *An RD that we interviewed on 15 June 2022 explained that a compliance visit was scheduled prior to the opening of the Nursing Home and that in each of the Group's Nursing Homes, there were always two extra beds for family members and that the beds mentioned in the email were probably in the wrong place.*

have the opportunity to view an email dating from 2010 from Jean-Claude Brdenk,[23] who was Group Nursing Home Director at the time.

Findings

196. The email referred to in the above section, dating from 2010, was sent by Jean-Claude Brdenk[24] to certain head office executives as well as to RDs. The subject was future management requirements.

197. We note from the manner in which the email was written that Jean-Claude Brdenk was introducing practical ways for the Nursing Homes to achieve their targets. He included then-Chief Financial Officer Yves Le Masne in this effort. In the email, in the part about revenue, it was suggested that the NHDs admit more residents, "*including people with 'thick' medical files*".[25] It was not possible for us to determine whether or not those instructions were carried out. Nevertheless, it was reported to us during an interview that there was at least one case of a resident being admitted to a Nursing Home without formal approval from a doctor.

Results

198. We were unable to provide any findings on this allegation given that we were not in a position to formulate a medical opinion on whether or not a resident was suited to a nursing home stay.

199. We did have the opportunity to review at least one internal memo telling NHDs with available places in their Nursing Home to go ahead with "*additional admissions, including people with 'thick' medical files*". However, we were unable to confirm whether or not those instructions were followed.

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[23] Sent on behalf of JC Brdenk by his assistant.
[24] Sent on behalf of JC Brdenk by his assistant.
[25] AMP00681088.

1.3 Allegation regarding the monitoring of reports and incidents

200. Allegation 1.3 claims that Orpéa was inefficient in dealing with incident reports and following up on elder mistreatment cases reported by residents' families and healthcare professionals (including cases reported in the satisfaction surveys).

201. We have separated Allegation 1.3 into three sub-allegations, which will be reflected in the report's structure:

- Shortcomings in the reporting of adverse events ("**AEs**") by the healthcare professionals employed by Orpéa.
- Shortcomings in the handling and follow-up of complaints and grievances ("**C/Gs**") made by residents, their families or their close friends.
- Shortcomings related to the administering of resident satisfaction surveys.

1.3.1 Allegation regarding the reporting of adverse events

Details of the allegations

202. According to the Book, there were shortcomings in the reporting of AEs.

Work performed

203. The reporting and follow-up of adverse events are governed by a number of regulations and methodological guides drawn up by the French National Health Authority (the *Haute Autorité de Santé* or "**HAS**"), the French Ministry of Solidarity and Health and the Regional Health Authorities.

204. We reviewed the relevant regulatory documents in order to be clear on the legal framework and the methods and recommendations of the competent authorities.

205. We then listed all the procedures established by Orpéa on how to report AEs.

206. Lastly, we performed three comparisons:

- A comparison between the regulatory framework and the definitions and procedures established by Orpéa relating to Serious Adverse Events ("**SAEs**") and Serious Adverse Care Events ("**SACEs**").
- A comparison between actual reporting by Orpéa staff and Orpéa's reporting procedures.
- A comparison between Orpéa's reporting and proven occurrences of AEs.

Findings

Legal framework

207. Incident reporting within the Nursing Homes is governed by regulations.

208. Under Articles L.331-8-1 and R.331-8 of the French Code of Social Action and Families ("**CASF**") of 28 December 2016, medical-social facilities ("**ESMS**") are required to report any serious shortcoming likely to affect the care of health-service users (including cases of suspected abuse) to the competent supervisory authorities ("**CSA**"). For instance, ESMSs must inform the CSAs, namely the Regional Health Authorities, or the Departmental Board whenever there are:

- Serious shortcomings in the facilities' management or organisation likely to affect the care of health-service users, the assistance they receive or the respect for their rights.

- Any event that threatens or compromises the safety or physical or moral wellbeing of individuals receiving care or support.

209. Furthermore, under Article L.1413-14 of the French Public Health Code ("**PHC**"), all healthcare professionals are required to declare any SACE to the Regional Health Authority.

210. SACEs are a category of SAEs that receive special handling. An SACE is defined as "*an unexpected event affecting a person's state of health and pathology and whose consequences are death, life-threatening illness, or the probable occurrence of permanent functional impairment, including congenital anomaly or malformation".*[26] An SACE is defined by three criteria:

- The relationship with care;

- The link to severity criteria; and

- The unexpected nature of the consequences.

211. According to the HAS, in 2020 medical-social facilities in France collectively reported 120 SACEs.

Orpéa procedures

212. The many documents relating to SAE/SACE definitions and reporting, along with training materials and details of procedures drawn up by the Quality Department, attest to the attention paid by Orpéa to the reporting and follow-up of such incidents.

213. An analysis of Orpéa's procedures revealed that the process for reporting SAEs/SACEs was consistent with CSA information reporting requirements.

214. SAEs/SACEs are reported at the end of a complex, seven-step process involving a back and forth between the NHD, the region and various head office departments, culminating in a triple validation by the RD, the Reporting, Inspection Follow up and Complaint unit ("**RIFC**") and the Medical-Social Operations Department ("**MSOD**"). This triple validation is the condition *sine qua non* for the NHD to report the SAE/SACE to the CSAs through an Adverse Event Form ("**AEF**").

215. With regard to raising employee awareness of this issue and providing them with the relevant training, the following documents are sent to on-site staff (in particular the nursing home director, "**NHD**", state-registered nurse, "**SRN**" and AN):

- "Non-exhaustive list of examples of adverse events";

- "What to do if an Adverse Event occurs";

- "Charter of Trust";

- "Reporting a Serious Adverse Event".

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[26] Haute Autorité de Santé – Comprendre les évènements indésirable (EIGS) (has-sante.fr) – French National Health Authority – Understanding Adverse Events (SACE) (has-sante.fr).

216. These documents are meant to be given to employees on the sites' management teams (NHDs, SRNCs, MedCos) when they sign their employment contracts, and must be signed. Training material entitled "Adverse event management: method for analysing causes" is meant to supplement this knowledge of SAEs/SACEs through mini training courses conducted on site for all Nursing Home staff. SAE/SACE awareness is also one of the topics covered during weekly multidisciplinary meetings.

217. We noted that the definitions of SAEs/SACEs contained in Orpéa's reference material were consistent with those established by the CSAs.

Results

218. We picked out a random sampling of 20 Regional Health Authority inspection reports among those provided to us. Of those 20 reports on inspections carried out between 2021 and 2022, 18 mentioned, either as a comment or separately, poor knowledge of the AE definitions, ignorance of the procedure and an absence or delay in reporting to the CSAs.

219. This observation by the Regional Health Authorities was corroborated during our site visits. In 29 of the 32 sites visited, we heard accounts of mismanagement of SAEs/SACEs. These accounts also mentioned factors that might explain why SAE/SACE-related definitions and protocols were so poorly taken on board.

- *"I never received any proper training on AEs."* [27]
- *"The procedure for reporting SAEs to line management is complex and very time-consuming."* [28]
- *"The procedure for reporting SAEs is too time-consuming. If there are no consequences to the AE, we don't report it."* [29]
- *"There's clearly an under-reporting of AEs related to medication distribution. Officially I haven't received any of those AEs in three years. That's statistically impossible. However, they are reported to me verbally."*
- *"There's no process for SAEs; half the staff don't even know what they are."*[30]
- *"We were reminded last year that we had to report if a job vacancy lasted too long."*[31]
- *"I didn't know that a lengthy vacancy for an SRNC job was meant to be an SAE; or a fall, for that matter."*[32]

220. We noted that the definitions and procedures established by Orpéa's head office were consistent with the regulations and recommendations of the CSAs. On the other hand, we were unable to

[27] *Site 171.*
[28] *Site 3.*
[29] *Site 171.*
[30] *Site 484.*
[31] *Site 350.*
[32] *Site 278.*

establish whether or not they were fully familiar to all Nursing Home staff, especially management staff. We also noted that governance of the implementation of these procedures (validation, control, reporting) made them complicated to carry out.

221. In the last three years, Orpéa recorded an average of 1.9 AEs per year, per Nursing Home. In 2021, 56 Nursing Homes, i.e. about 25% of the total, did not declare any AEs.

1.3.2 Allegation regarding the handling and follow-up of complaints and grievances

Details of the allegations

222. According to the Book, there are shortcomings in the handling and follow-up of complaints and grievances (C/Gs). Orpéa allegedly receives complaints and grievances from families on issues mainly related to the comfort and care of a resident. The handling and follow-up of these complaints and grievances by Orpéa could be linked to allegations of abuse.

Work performed

223. The handling and follow-up of C/Gs are governed by regulations and methodological guides drawn up by the French National Health Authority, the French Ministry of Solidarity and Health and the Regional Health Authorities.

224. We reviewed the relevant regulatory documents in order to be clear on the legal framework and the methods and recommendations of the competent authorities.

225. We then listed all the procedures established by Orpéa on how to handle and follow up on C/Gs.

226. Lastly, we performed two comparisons:

- A comparison between Orpéa's own procedures and the regulatory framework.
- A comparison between actual reporting by Orpéa employees and Orpéa's own procedures.

Findings

Legal framework

227. The so-called "Kouchner" law of 4 March 2002[33] relating to patients' rights and the quality of the health system introduced a method for receiving and handling complaints and grievances by users of healthcare facilities. Complaints and grievances are considered to be any expression of dissatisfaction, comments, suggestions or opinions issued spontaneously or otherwise, regardless of how they are manifested (in writing or verbally) or received.

228. Once received, all complaints and grievances must be processed and responded to. They must then be processed and analysed in order to extract information on how to improve quality and user care.

Process for receiving and handling complaints and grievances at Orpéa

229. The various protocols and procedures forwarded to us by Orpéa describe the steps recommended by the CSAs for receiving C/Gs. Nevertheless, as with the reporting of SAEs/SACEs, the internal

[33] *https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000227015/*

process is complex and involves considerable interaction between head office, the region and the site, depending on the nature of the C/G (verbal or written) and its entry point.

230. If a verbal complaint is received directly at the Nursing Home, the NHD immediately takes care of it in coordination with the MedCo or SRNC if necessary. If the C/G is sufficiently severe, an appointment form will be filled out and will be added to the resident's file. If it is not possible to take care of the C/G immediately, an acknowledgement will be emailed to the issuer.

231. If a verbal complaint is received at head office or by regional management, the person receiving the complaint must note the identity and contact details of the person issuing the C/G, along with the content of the C/G. This information is then forwarded by email to the MSOD's industry expert who analyses the C/G based on two levels of severity.

232. In the case of a written complaint, an initial assessment is made based on three levels of severity.

233. If a written complaint is received by a Nursing Home:

- If the C/G is level 1 or 2, the NHD will arrange a meeting with the issuer and will be joined if necessary by the MedCo. After the meeting, the NHD will draft a response letter with the information gathered which he or she will then forward to the RD. That letter will then be forwarded by the RD to the MSOD's industry expert. Once validated, the letter will be returned by the MSOD to the RD who will forward it to the NHD, who in turn will send it to the issuer.

- For a level-3 C/G, the RD must immediately send substantiated information to the MSOD, with DRESMS and the Medical Department in copy. After the C/G has been jointly reviewed either:

  - the NHD and RD will arrange a meeting with the issuer of the C/G; or

  - an AEF will be prepared and the AE reporting procedure will take over.

234. A draft letter responding to the C/G, based on the information gathered during the meeting, must then be written and approved. Once approved by the RD, the draft is sent to the MSOD before being communicated to the NHD who informs the issuer thereof.

235. The C/G issued by residents or their families, whether written or verbal, may therefore have several entry points at Orpéa:

- C/G received by the site where the resident is living;

- C/G received by the regional department responsible for the Nursing Home where the resident is living;

- C/G received by Orpéa's head office; and

- C/G received by the CSAs.

236. These various entry points may simultaneously receive the same C/G, itself pertaining to a variety of issues. This multiplicity of entry points and issues complicates C/G handling and follow-up.

237. From our discussions with the RIFC unit of the DRESMS and the industry expert, we understood that the RFIC keeps a record of the C/Gs that were copied solely to the Regional Health Authorities. The industry expert, on the other hand, keeps a list of all C/Gs of which he or she has knowledge.

Results

238. The fact that there are multiple entry points and formats of C/Gs (written or verbal), following up on them is complex, particularly since there is no software tool for follow-up and consolidation.

239. Procedures for dealing with written or verbal C/Gs are not identical, which makes their processing even more complex.

240. From the interviews we conducted at the Nursing Homes, verbal C/Gs are dealt with on a daily basis as and when they come in, on site by the NHD. It was our understanding that not all C/Gs are automatically the subject of a report; it depends on how serious they are deemed to be.

241. The Quality Department advised that the ratio of the rate of complaints to number of residents was 0.8%,[34] but this does not tally with reality because it fails to take into account all of the C/Gs received by the Nursing Homes.

1.3.3 Allegation regarding satisfaction surveys

Details of the allegations

242. According to the Book, there were shortcomings regarding the annual administering of satisfaction surveys. It alleges that surveys were completed by Orpéa staff.

Work performed

243. We analysed the method for administering satisfaction surveys.

244. We then compared the completed forms received from five Nursing Homes for the 2020 satisfaction survey with the consolidated results for those Nursing Homes.

Findings

245. Satisfaction surveys were introduced in 2000 and are sent to residents, their families and their close friends or contacts. The period for administering these surveys runs from November to January.

246. Until 2019, only a paper copy of the satisfaction survey was available. The online version has only been available since 2020.

247. The distribution method is as follows:

- If the resident is able to complete the survey by themselves, a paper copy of the survey is given to the resident personally. They may also be sent a digital version via email.
- If the resident is unable to complete the survey by themselves, the survey is sent to a relative/close friend or legal representative by email or as a paper copy if no email address is

[34] *File provided by Orpéa: "EHPAD Analyse des EI et Réclamations 2021, Recommandations Février 2022 ," p. 6 – Nursing Homes Analysis of AEs and Complaints 2021, Recommendations February 2022," p. 6.*

entered in the Nursing Homes' operational management software, LEO. If a paper copy is sent, there is a stamped return envelope.

- For other relatives/close friends or contacts of the resident, an online survey is sent to the relatives/close friends. The term "contact" should be understood to mean any person identified as a stakeholder in the care/life of the resident.

- The online survey can only be accessed once by the person who received an access link.

248. The surveys are collected and processed by an external firm, Gedivote. Respondents have the option to remain anonymous.

Results

249. We were unable to verify the number of surveys distributed. Consequently, we were unable to conclude whether the return rate was accurate.

250. Of the surveys tested, 58% were online. The aggregated reporting format of these surveys meant that we were unable to use the responses. We are therefore unable to reach a conclusion on how Orpéa uses this quantitative data.

251. In the sample of surveys selected, we detected seven different files for the same Nursing Home that were under the same name. Each survey systematically attributed the maximum score to all satisfaction and recommendation questions. There were no other comments on these surveys and they were not excluded from the results. It was also surprising that the seven residents were unanimously satisfied with all 39 items in each survey and that at least one of the surveys did not specify the resident's gender.

252. The Quality Department told us that these would have been surveys completed by a guardianship body responsible for several residents. The guardianship body did not specify the identity of the residents for whom it was responsible and referred to itself only by a handwritten generic name, with no other details.

1.4 Allegation regarding the remuneration policy

Details of the allegations

254. As a reminder, the Book's author alleged that the Orpéa Group had implemented a remuneration and incentive policy for staff that potentially ran counter to the proper care of residents. For instance, the Book states that "*For many years the Group has had a bonus system for its directors that encourages them to do everything, and sometimes anything, to fill their nursing home and have the best possible NOP*". [35]

Work performed

255. We focused our review on the bonus, incentive and individual performance appraisal systems applicable to NHDs and RDs and did not look at the remuneration mechanisms of other Nursing Home employees or head office directors and staff. Our work primarily focused on the period 2019-2021.

256. We viewed and analysed the version of the appendix to the employment contract of the NHDs regarding the "bonus system for nursing home directors" that was in force during the 2019-2021 period.

257. We viewed and analysed the version of the appendix to the employment contract of the RDs regarding the "bonus system for regional directors" that was in force during the 2019-2021 period.

258. We looked at examples of the "Delegation of authority and duties" documents signed by each NHD for his or her Nursing Home.

259. We looked at examples of the "Delegation of powers" documents signed by each RD for his or her Nursing Homes.

260. We obtained the annual bonus payment amounts paid per NHD between 2019 and 2021.

261. We interviewed the NHDs of the Nursing Homes visited plus some RDs about how individual bonuses were calculated and what impact they had on behaviour.

262. At head office we interviewed Management Control. We understood that the head office HR Department was not involved in the process for assessing and determining the bonuses of NHDs and RDs.

263. We reviewed email exchanges on the subject.

264. We reviewed the process of the annual individual performance appraisal of NHDs and RDs, known as the "annual interview", using the "2022 Annual Interview Guide" and the "2022_MASTERFORM_FORFAIT" from the "2022 Annual Appraisal" illustrative example file, which serve as procedure. We also reviewed a sample of 50[36] records in Talentsoft, the HR software application that supports this process.

[35] *Les Fossoyeurs (2022), p. 236.*

Findings

Bonus and incentive mechanisms for NHDs

265. The bonus systems applicable to NHDs and RDs are detailed in the appendices of their respective contracts. The bonuses are paid every six months according to clearly described calculations.

266. The NHD's bonus is calculated based on the financial performance of his or her Nursing Home, with quality-related performance influencing the bonus amounts achievable.

267. The bonus for a calendar year comprises two half-yearly bonuses and an annual bonus (paid with the second half-yearly bonus). The half-yearly bonuses include financial targets that are modulated by a quality-based target; the annual bonus is based entirely on financial criteria.

268. For half-yearly bonuses:

- The quality-based target consists of a minimum score of 90% each half-year based on a standard scorecard approved by the RD on the basis of the NHD's self-assessment. Achievement of this target results in an award of €600 for the half-year and doubles the amounts of the bonus scale for financial targets.

- Financial targets are aligned with the budget baseline. They consist in achieving budgeted performance targets (or better) for revenue, payroll and NOP, year to date. Targets for two of these three elements must be met in order for a bonus to be triggered. The scaling of achievable amounts is described in the "Bonus system for nursing home directors" file.

- A footnote states, "*Note: good use shall be made of care funding budgets relative to conventional targets*". The notion of good use of funding relative to conventional targets is unclear as no details are provided in the document.

269. For the annual bonus:

- The amount is predicated on a minimum amount of growth in NOP compared to the previous year as well as on "*quality results over the two half-year periods of the calendar year that are greater than or equal to 90%*".

- The year-on-year profitability improvement target is differentiated between Nursing Homes with the greatest potential and those having already reached the maturity stage ("Nursing Homes at plateau threshold"). Nursing Homes at plateau threshold are considered to be "*nursing homes that have generated budgeted NOP for several years and do not have the potential for NOP growth above 110%*".

- If the annual growth target for NOP is achieved, the amount of the bonus is modulated according to whether or not the budget target has been achieved.

- An improvement of at least 5% over the previous year is needed to be eligible for the bonus. The maximum bonus amount requires an increase in NOP of at least 20% compared to the previous year, such achievement also giving rise to the award of a travel voucher (€2,000 or €4,000 on top of the monetary bonus).

270. Interviews with NHDs and RDs and an email review revealed that in practice, NHD bonuses and awards are determined according to the following sequence:

- Head office Management Control applies formulas for bonuses and awards for each Nursing Home in order to calculate individual amounts, after correcting indicators for any financial impact beyond the NHD's control.

- The summary is reviewed by the RDs who may suggest adjusting some of the amounts in order to recognise special efforts made by an NHD that may not be reflected in the targeted financial results.

- The reasoned proposals of the RDs are reviewed by the operations department or France General Management which usually approves them.

Bonus and incentive mechanism for RDs

271. The calculation of the bonus of an RD is based exclusively on the components of the consolidated financial performance of the Nursing Homes within their remit (see Appendix 5: "Bonus system for regional directors").

272. The mechanism follows a similar split to that of the NHDs, namely two half-yearly bonuses and an additional annual bonus.

273. For half-yearly bonuses:

- Financial targets are aligned with the budget baseline. This means that the performance targets included in the budget must be achieved (or exceeded) year to date for revenue, payroll and NOP. Targets for two of the above three items or for payroll alone must be met in order for a bonus to be triggered. The scaling of the bonus amount is provided in the "Bonus system for regional directors" file.

- A footnote states, "*Note: good use shall be made of care funding budgets relative to conventional targets*". The notion of good use of funding relative to conventional targets is unclear as no details are provided in the document.

274. For the annual bonus:

- The amount is predicated on a minimum amount of growth in NOP compared to the previous year.

- If the annual growth target for NOP is achieved, the amount of the bonus is modulated according to whether or not the budget target has been achieved.

- An improvement in NOP of at least 5% compared to the previous year is needed for eligibility. The maximum bonus amount requires an increase of at least 12%, such achievement also giving rise to the award of a travel voucher (€2,000 or €4,000 on top of the monetary bonus).

- This bonus calculation excludes openings, takeovers or restructuring during the year. A further bonus of €4,000 will be awarded for each successful launch during the year, i.e. where budgeted NOP is achieved, capped at €8,000.

Links between the bonus award mechanism and Nursing Home management

275. The statement "good use shall be made of care funding budgets relative to conventional targets" is inconsistent with the management practices documented in section 2.3.3 of our report ("Based on

interviews conducted with the RDs, it is our understanding that the increase in funding was not fully reflected in the Nursing Homes' budgets. The NOP budget production for a given financial year is primarily based on estimated costs from the previous year. Funding surpluses expected for the previous year, the impact of convergence or funding revaluations were not considered to be priorities. According to our interviews with a number of NHDs and RDs, until 2021 successive budget reviews with head office Management Control and the France operations department could potentially lead to decisions being made about NOP with the corollary of downward adjustments to provisional costs, including funding-financed payroll budgets.")

276. In addition to the statements made by some of the RDs on the subject, we identified at least one email in which, in 2010, the Nursing Home Director France sent an explicit message about optimising occupancy rates and payroll. In this email, the then-Group Nursing Home Director asked the regional directors for corrective action plans for revenue and operating costs, stating in particular:

- For revenue: "*If there are places available, make two additional admissions during the week, including people with 'thick' medical files. Pass the message along to the coordinating doctors and head doctors of our nursing homes (we've got the resources to take care of them...)*";
- For payroll: "*Absentee replacements: allowed for paramedical staff [care staff and similar] only but with the following rules: – Temporary worker (nursing home) if and only if above €100,000 in August 2010 – AN on a temporary contract based on 7 hr and not 10 hr/day – Nurses on temporary contracts*."

277. We also identified emails exchanged between France Management and the RDs illustrating a strict cost control process throughout the year, especially for nursing payroll, which was supported by action plans per Nursing Home to offset budget shortfalls.

Analysis of bonuses paid to NHDs

278. We compiled a list of the annual bonuses paid (excluding travel) per NHD in 2019. We excluded from these statistics the 45 NHDs who were not eligible for a bonus either because they had left the Group or had arrived during the year. Of the 192 Nursing Home Directors in place and eligible that year, the average total annual bonus (excluding travel) was €4,672 with a median bonus of €3,050. Of those 192 eligible directors, 17% received more than €9,000, i.e. more than 50% of the theoretical maximum of €18,000.

Annual personal interview process

279. The annual interview process applies to NHDs and RDs. This round of meetings is based on the "Performance" module of the Talentsoft application.

280. We understood from the procedures we were shown and our interviews with NHDs and RDs that in both purpose and practice, the bonus and annual interview processes were not connected, even though their criteria shared the same financial targets. The non-financial targets of the annual interview did not affect the bonus.

Results

281. The criteria and amounts of the incentives for NHDs as described in the Book are consistent with the procedure we saw.

282. The incentive to achieve and exceed financial targets set against budget or the prior financial year is the dominant factor in NHD or RD annual bonus amounts. With regard to operational

responsibilities of the RDs within their area of remit, the calculation of RD bonuses involves a quality criterion on top of several profitability criteria. For RDs, all criteria refer back to profitability indicators.

283. The bonus and award indicators (revenue, payroll and NOP) point to two main priorities: the filling of the Nursing Home as measured by the OR, and the headcount per category as measured in FTEs.

284. If, as stated in the Registration Document, the maximum theoretical annual bonus really is €18,000, to which can be added a free trip, the statistics on the bonuses actually paid for 2019 show that 45 NHDs were not in fact eligible and that among the 192 NHDs who were eligible, the average total annual bonus (excluding travel) was €4,672, with a median amount of €3,050.

285. These incentive mechanisms are part of the operational and financial performance management system described in the sections of our report on allegations 1.2.1, 1.2.2 and 2.3.3. They discuss the issue of potential bias and especially the fact that payroll and NOP targets aggregate accommodation, care and long-term care.

286. Some exchanges reviewed by our teams illustrate the sustained messages from head office to the regions and Nursing Homes to improve OR and control accommodation- and nursing-related payroll, without explicitly referencing funding to be used.

Topic 4 summary: Various shortcomings in terms of labour relations

287. First of all, it should be noted that the ad hoc committee decided not to include allegations relating to respect for trade union rights in the scope of our investigations, due to the highly specific nature of the skills required to cover this subject.

4.1 Allegation regarding employment contracts

Details of the allegations

288. The main allegations listed in the Book stated that some Group practices relating to employment contracts, the use of shift work, and delays in submitting pre-hiring statements ("DPAEs") that are a legal requirement for employers in France led to employment law irregularities.

Work performed

289. Given that the employment contracts of Nursing Home staff were physically kept on site only, we conducted some checks during our unannounced visits to verify contracts and DPAEs.

290. The on-site work had two priorities:

- To check for the existence of contracts signed by both parties;
- To check for the existence of DPAEs and when they were dated.

291. We checked a total of 1,132 contracts, 842 of them temporary and 287 permanent, the rest of our sample mainly consisting of other contracts (professional contracts, and so on).

Findings

292. With regard to employment contracts, we noted that 57 contracts (5%) either were not present in the staff files on site or, for staff files that had been archived, were not provided to us by the management of the Nursing Homes we visited.

293. Of the contracts we did obtain, 55 had not been signed by both parties, representing 5% of the checked contracts.

294. With regard to DPAEs, we noted that:

- In the case of permanent contracts: 21% of files had no DPAE and 42% had DPAEs with dates after the contract's start date;
- In the case of temporary contracts: 13% of the files had no DPAE and 28% had DPAEs with dates after the contract's start date.

295. Our review of correspondence on the Relativity platform showed that the Group was aware of this situation from the results of checks carried out by the labour inspectorate as well as from the findings of an internal audit conducted by the Group in 2020.

Results

296. Our investigations led us to note that staff files were incomplete in 5% of cases and that there were shortcomings with regard to preparing DPAEs in 49% of cases.

297. This confirmed the allegation made in the Book that a significant percentage of DPAEs were prepared late and that in a number of cases they were missing from the staff file.

298. Lastly, we noted that these facts were known to the Orpéa Group since they were revealed during several checks by the labour inspectorate and an internal audit performed on the subject in 2020.

4.2 Allegation regarding the misuse of temporary employment contracts

Details of the allegations

299. The main allegations listed in the Book about Group practices that led to employment law irregularities relating to the misuse of temporary employment contracts are as follows:

- There was an abnormally high proportion of assistant nurses on temporary contracts;
- Temporary contracts would give names of fictitious staff members to be replaced;
- The reasons given on temporary contracts did not match reality:
    - *"Some were for reasons of a 'temporary increase in business' and justified by a 'vacant position' or in 'addition to an employee who had gone part-time', which in no way tallied with the notion of an increase in business".*

Work performed

300. We checked more than 800 temporary contracts to verify:

- The reason for a temporary contract;
- Whether the temporary contract was to replace a non-existent permanent contract and was using a fictitious identity.

301. The work focused on two areas:

- The ratio of temporary to permanent contracts for the Orpéa Group's various regions in France;
- The reasons for using temporary contracts and whether the identities used actually existed.

302. Given that the contracts of Nursing Home employees were physically kept on site only, we conducted our checks during unannounced visits.

Findings

303. In general, the percentage of FTEs on temporary contracts versus FTEs on permanent contracts was 22% and 78% respectively for all positions over the three-year period.

304. The percentage was 34% for NAs, 33% for ANs and 23% for SRNs.

305. With regard to the analysis of why temporary contracts were being used, we checked 802 temporary contracts, of which 575 (72%) were for "employee replacement", 186 (23%) for "awaiting permanent employee" and 41 (5%) for an increase in business.

306. Of all the temporary contracts stating "employee replacement" or "awaiting permanent employee" as the reason, we found 59 (8%) in which the name stated in the reason did not exist in payroll records. That said, we did not find any names such as Marilyn Monroe or Clark Kent, which had been mentioned in the Book, or of any other character or well-known individual.

307. We also reviewed correspondence on the Relativity platform. This review showed that the Group had long been aware of the risk associated with the proliferation of temporary contracts and that in the face of that risk had introduced tools in 2018 to assist operational staff in the use of temporary contracts in accordance with prevailing rules.

308. However, we also noted several dozen situations in which the Group had been found guilty or had agreed to a settlement in connection with a dispute concerning, among other things, the reclassification of temporary contracts as permanent contracts, which resulted for the most part the company being found guilty of dismissal without real and serious cause.

Results

309. Our investigations identified a significant percentage, 22%, of contracts that were temporary, and confirmed the allegation that the rate of temporary contracts for assistant nurses was more than 30%.

310. They also confirmed the existence of temporary contracts, 8% of our sample, that did not comply with the regulations on replacing absent permanent employees or pending the arrival of a new permanent employee that had been recruited.

311. On the other hand, our investigations did not confirm the allegation about the use of the names Clark Kent and Marilyn Monroe in connection with temporary contracts.

312. Lastly, our investigations showed that the Orpéa Group is regularly found guilty or obliged to agree to a settlement in connection with disputes with its employees relating in particular to requests to reclassify a contract from temporary to permanent, which is considered abusive use of this type of contract.

4.3 Allegation regarding working conditions

Details of the allegations

313. According to the Book, there are a number of instances of non-compliance related to working conditions and especially discrimination. In particular, it alleges:

- Some abusive practices in connection with employee dismissals;
- The non-payment of overtime;
- Discrimination issues related to staff recruitment.

Work performed

314. With regard to dismissal practices, we analysed the data taken from the file detailing the dismissals carried out by Orpéa S.A. for the 2019, 2020 and 2021 financial years.

315. We also analysed the provisions for risks recorded in the financial statements and related thereto.

316. We focused our analyses on disputes in connection with dismissals for serious misconduct, wilful misconduct and without real and serious cause. We therefore did not analyse disputes over dismissals for economic reasons or incompetence, judicial terminations or requests for the production of employment-related documents.

317. With regard to overtime payment practices, we sought to identify the volume of overtime hours paid by Orpéa in the financial years from 2019 to 2021. We conducted interviews in order to understand the Group's overtime payment practices. Lastly, we also analysed claims related to overtime pay that were among the disputes with employees.

318. With regard to the allegation of discriminatory practices when recruiting staff, our efforts focused on reviewing correspondence on the Relativity platform.

Findings

319. For 2019, 2020 and 2021, we noted that more than 50% of dismissals were for serious misconduct and that these accounted for more than 300 dismissals per year. We also noted that the percentage of dismissals for serious misconduct out of the average number of FTEs was 5% for the three years.

320. Nevertheless, based on the checks carried out during our site visits, we found that 52% of dismissals for serious misconduct were actually job abandonment.

321. Of the 1,155 dismissals for serious misconduct, wilful misconduct and real and serious cause between 2019 and 2021, we note that 146 led to a dispute, i.e. a 12% dispute rate, with claims totalling €8,432,718. If we restate the figures for estimated job abandonment, the dispute rate is closer to 22%, which is higher than the rate stated in the Book of 10%.

322. This rate increases to 33% for dismissals for real and serious cause between 2019 and 2021.

323. An analysis of 52 final judgements in serious misconduct cases showed that 50% classified the dismissal as null and void or without real and serious cause, 19% confirmed serious misconduct, and 31% reclassified serious misconduct as real and serious cause. Therefore, by extension, half the judgements confirmed that the employees were indeed guilty of misconduct. By contrast, the vast majority of dismissals for real and serious cause were reclassified as dismissal without real and serious cause.

324. With regard to the payment of overtime, we note that for the audited period overtime allowances for Nursing Home staff amounted to €4,940,000, or 0.49% of total payroll, and that the number of overtime hours worked was 284,903 hours.

325. Furthermore, we identified from our research on the Relativity platform more than thirty disputes that had either ended in a judgement or a settlement, mostly related to the payment of overtime. Depending on the case, the amount of overtime due varied widely, from a few hundred euros to several tens of thousands of euros.

326. With regard to the potential existence of discriminatory practices in staff recruitment, our research did not find any discriminatory practices.

Results

327. With regard to the allegation of the abusive use of dismissals for serious misconduct, we found from our investigations that dismissals for serious misconduct did indeed represent most of the dismissals within the Orpéa Group. However, it should be noted that a significant percentage of those dismissals, approximately 50% based on our estimates drawn from the analysis of dismissal cases in the Nursing Homes, were for job abandonment. If estimated job abandonment is restated for dismissals for serious misconduct, the number would barely be higher than dismissals for incompetence and therefore the allegation regarding the massive use of dismissals for serious misconduct needs qualification.

328. Furthermore, the dispute rate for dismissals for serious misconduct net of estimated job abandonment is around 22% and it is 33% for dismissals without real and serious cause, which is higher than the rate presented in the Book of 10%, claimed to partly justify the systematic use of dismissal for serious misconduct.

329. By contrast, an analysis of 52 final judgements in serious misconduct cases showed that 50% classified the dismissal as null and void or without real and serious cause, 19% confirmed serious misconduct, and 31% reclassified serious misconduct as real and serious cause. Therefore, by extension, half the judgements confirmed that the employees had indeed committed misconduct but that the severity was overestimated. We also found that the vast majority of dismissals for real and serious cause were reclassified as dismissal without real and serious cause.

330. With regard to the allegation regarding the non-payment of overtime, we can confirm to some extent the allegations in the Book that state that overtime is not paid, insofar as we note, in a context of staff shortages, that the volume and percentage of paid overtime was low and that the Group lost disputes or agreed to settlements for the non-payment of overtime.

331. On the other hand, with regard to the allegation of discriminatory practices in the recruitment process, our investigations did not confirm the allegation made in the Book.