TRUTH RECOVERY – MOTHER AND BABY INSTITUTIONS, MAGDALENE LAUNDRIES AND WORKHOUSES, AND THEIR PRACTICES

RESPONSE TO PUBLIC CONSULTATION ON A STATUTORY PUBLIC INQUIRY AND FINANCIAL REDRESS

19 September 2024

Section 03. Inquiries

Q8 Are you content that the inquiry should cover the period from 1922 to 1995 (inclusive)?
Yes, and for the reasons stated in the consultation documents.

Q9 Do you consider that focusing on systemic failings gives the inquiry sufficient scope to examine what happened?
A human rights focus remains appropriate. While criminal investigations focus on individual responsibility for human rights violations, both international human rights courts and treaty bodies focus on state responsibility for human rights violations (or the failure to prevent non-state institutions committing such harms). In addition, public inquiries, such as truth and reconciliation commissions, can have mandates to investigate human rights violations, where it is alleged they occur at a widespread and systemic level. As a result, while investigation and fact-finding at the level of systemic or generalised findings are normally only what is practical or possible within the confines of an inquiry, these can and should be framed in human rights terms (Gallen 2023). If an inquiry where to investigate more specific fact finding related to individual survivor experiences, then this would lead to a long drawn out inquiry over many years which not only increases costs enormously but more importantly makes the process of fact-finding and reporting, and subsequent monetary redress, more arduous and lengthier for victim/survivors. Nonetheless, we would advocate that:

1. As the Truth Recovery Design Panel recommended, it is important that the public inquiry structure draws on the testimonies of survivors and their individualised experiences recounted to the independent panel and that these experiences feed directly into the inquiry and its approach and, in particular, its findings and conclusions within the final report. While not subject to the same forensic scrutiny as provable 'factual' truth, these testimonies should be regarded cumulatively as a 'common truth' of survivor experiences.
2. Consideration should be given to a modularized approach across institutional contexts. Rather than survivors having to wait for a final inquiry report, the inquiry process could be (a) conducted by several inquiry teams at the same time with an oversight inquiry team or (b) the one inquiry team conducts the inquiry in modular units and findings are released periodically. What is important however is that an oversight team or group examines themes across all modular cohorts and this also enables broader systemic learning where the findings and commonalities related to particular institutional settings can be mapped broadly across multiple institutional contexts (see further Shilliday, McAlinden, Gallen and Keenan 2023).

A human rights approach does preclude a wide temporal scope of an inquiry (see Gallen 2019). While the UK ratified the European Convention on Human Rights in 1998, the European Court of Human Rights has extended the temporal scope of its application to events prior even to the creation of the Convention (1950), where there is 'a genuine connection' between non-recent events and an investigation that is within the temporal jurisdiction of the Court. In *Janowiec v Russia* (2013), the Court extended the potential period of investigation as far back as 1940.

Q10 Are you content with how the inquiry will decide which institutions will be looked at?
In general, yes, given the scope of the inquiry. However, a failing of previous investigations, noted by victim/survivors and other stakeholders, is that they adopted an ad hoc or piecemeal approach to individual institutions or forms of abuse. This fails to take account of the complex network of institutions and processes of institutionalisation across the island of Ireland, North and South where victim/survivors were resident in many different forms of institutions across their childhood/early adulthood or lifetime. As such, as noted in the consultation document, should the independent panel and engagement with survivors therein demonstrate other institutional types which have a bearing on these issues (e.g. foster

care) then it is important that the consideration of “other institutions” as a fourth main category of institution is left open and interpreted widely. The definition of “institution” for the purpose of an inquiry can often have an impact on the design and scope of any final award of redress, or the content of an apology, so having a broad approach at this stage is critical, one that includes norms and values of closed institutions beyond institutions defined as particular buildings. Particular emphasis should be paid to an approach that enables victim/survivors and families to advocate for the inclusion of further institutional contexts, which an inquiry is open to investigate on the basis of sufficient allegations, documentary evidence, or other credible basis to proceed.

Q11 Do you consider the inquiry should examine “other institutions” apart from Mother and Baby Institutions, Magdalene Laundries and Workhouses?
See response above – it is important that the possibility of investigating further institutional contexts is left available. This might include, for example, adoption or foster care settings which were also highlighted by victim/survivors (both in the report of the Truth Recovery Design Panel and in academic research) as being pivotal to institutional experiences ‘before, during and after time in an institution.’ Some of our recent research with victim/survivors across the island of Ireland carried out by the Transforming Justice Project (see: https://transformingjusticeproject.org/) indicates that these experiences of profound loss lie at the heart of institutional abuses (see also McAlinden, Keenan and Gallen 2025).

Q12 Are you content that the focus of the inquiry is the institutions and their pathways and practices (including connections to the care system)?
Yes, and this should again be flexible and left open as set out above. As also recommended in our recent research (see link and contact details below), that there is a need for cross-jurisdictional co-operation on both parts of the island (McAlinden, Keenan and Gallen 2025). While the inquiry will not have legal powers in the Republic of Ireland, there are other existing pathways to facilitate such co-operation such as within law enforcement/policing or governmental/civil service settings. For instance, the Irish Department of Children and Child and Family Agency (Tusla) hold a digital archive of the Mother and Baby Homes Commission of Investigation, which contains records concerning admissions and discharges; maternity registers; records of children boarded out or adopted and quarterly statistical returns to local authorities, that map overlap with information relevant to the equivalent institutions in Northern Ireland. In this respect, access to records, including on a cross-border basis, remains one of the most important concerns of survivors and goes to the heart of justice seeking processes (McAlinden, Keenan and Gallen 2025).

Q13a Do you think this includes all the people the inquiry should focus on, in a Mother and Baby Institution?
Q13b Do you think this includes all the people the inquiry should focus on, in a Magdelene Laundry?
Q13c Do you think this includes all the people the inquiry should focus on, in a Workhouse?
In keeping with the focus on “other institutions”, each of these categories should be flexible enough to accommodate survivor experiences which may emerge from survivor testimonies given to the independent panel or directly to the statutory inquiry. Previous commissions and inquiries have been criticized for excluding specific homes or institutions that are broadly speaking linked to the particular setting under examination. This causes distress for survivors and can lead to court challenges, therefore the institutions under consideration in each category must be considered broadly and in an inclusive manner.

Further, for Q13b and Q13c, the individuals included within the context of a Magdalene Laundry or a Workhouse should be open to include not just women and girls with experiences of pregnancy or birth in a workhouse but those admitted for other reasons of social marginalization including poverty, disability etc. This range of circumstances and reasons for institutionalisation has also emerged from inquiries and research in the Republic of Ireland, including our own research, which demonstrates that women and girls were incarcerated for a broad range of reasons as ‘policy wrongs’, other than pregnancy or child birth (McAlinden, Keenan and Gallen 2025).

Q14 Are you content with the proposed approach to review the evidence concerning unmarked graves or inappropriate burials?
Yes

Section 0.4 Redress

Q15 Are you content that Standardised Payment will be based on admittance to an institution (or being born to a woman or girl while in an institution) and that the Individually Assessed Payment would then be based on the individual's experience?
Yes, see further below.

Q16 Are you content that Standardised Payment scheme will run in parallel with the inquiry and the Individually Assessed Payment will follow the conclusion of the inquiry?
Survivors cannot wait. We would suggest that the initial payment scheme could open as soon as possible, before or at the start of the inquiry for those eligible. The experience of other schemes is that it often takes 1.5-3 years for claims to be processed. Victims and survivors should have just to apply once, with the initial standardised payment being a gateway into the redress service, where an investigations team work with them to corroborate the extent of their abuse for a tailored individually assessed payment. This should be included in a single piece of legislation, as too much time has passed for too many victims. Many redress schemes around the world have a single entry point for victims to make their claims, with their data added to a registry of victims to facilitate any further referrals onto rehabilitation services (see Moffett 2023). This should be guided by the principles of being victim and survivor centred and trauma-informed, so that the redress process avoids or at least minimises any secondary victimisation. For other administrative guidance on reparations see the 2022 Belfast Guidelines on Reparations in Post-Conflict Societies.

Both the Canadian Indian Residential Schools Settlement Agreement and the Scottish Redress schemes provided advance payments for elderly or ill applicants, who received a rapid standard payment with a minimal standard of proof, that could be deduced from future standardised payments or individualised assessments, subject to the applicant's subsequent engagement.

Q17 Are you content that the Standardised Payment is linked to Mother and Baby Institutions and Magdalene Laundries researched by the Queen's/Ulster University report and the relevant dates these institutions operated in that specific capacity; and that there is power to amend this list?

The inquiry should have an obligation to identify institutions so as to assist redress for survivors. The power to amend the list beyond that created by the QUB/Ulster report should be on a sub-statutory level enabling TEO to do so in a straightforward and efficient manner. TEO should take into account any subsequent institutions detailed in the Independent Panel or statutory inquiry processes.

Q18 Are you content with the eligibility criteria set out above for a Standardised Payment?
As in our answers to questions 10 and 11, it is important that there be recognition of the possibility of survivor-led advocacy for the inclusion of further institutions and institutional contexts. A coherent approach to inquiry and redress is required - if there is the potential to investigate allegations of wrongdoing and abuse, albeit at a general or systemic level, in an inquiry, then it follows that the same contexts should be eligible for redress. As a result, an "other institutions" category is appropriate.

The current proposal includes a requirement for 24 hours residence in an institution. This would have the effect of denying redress in instances where a mother gives birth and a child is subject to immediate family separation. The 24 hours criterion may also introduce invidious questions of evidence and proof. It would be preferable for any period of residence to be sufficient given the small number of individuals this would affect. The period of time as a factor on redress should be better reflected in the individually assessed payment.

Q19 Are you content that those women or girls who entered Mother and Baby Institutions as private patients (and their children, now adults, born to them while there) will not be eligible for the Standardised Payment?
Those women and girls who entered institutions as 'private patients' were often subject to the same and similar social pressures, stigma and shame as those institutionalised directly as part of state administration of social welfare and may have been subject to coercive family separation. If redress is about acknowledging that non-recent institutionalisation was inherently harmful for those affected, then eligibility for the payment should extend to all within the institution. Comparative experience shows that redress schemes that emphasise hitherto less significant divisions among victim/survivors increase the

risk of distress and re-traumatisation. As a result there should be recognition of potential exceptional circumstances allowed, such as non-consensual medical procedures or other abuse carried out on private patients. This would be an evidential presumption that private patients were unlikely to suffer abuse, but if they can provide a statement indicating their abuse their claim will be considered. This is a higher evidential standard compared to non-private patients, whose claims will be based on a prima facie record of their time in an institution.

Q20 Are you content that the Redress Service will be an independent body with judicial and non-judicial members?
We are concerned that having a judicially led process would lead to the scheme becoming more 'court-like', as seen with the Victims' Payment Board, which has led to a backlog of claims. An administrative redress scheme is supposed to reduce the evidential and emotional burden on victims and make the process more streamlined and efficient in dealing with large claims on an established factual record of abuse, than civil litigation through the courts. By comparison, Redress Scotland has a wide range of disciplines in its panel membership, including those trained in trauma-informed approaches. Redress panels should consist of a range of disciplines and survivor representation.

Q21 Are you content with the Standardised Payment application process outlined in the consultation document?
The experience of the Victims Payment Board has demonstrated that a short time period for applications, such as two years, is too short in practice, and should be made open for three years at the outset, with the choice of the redress service to extend this for a further year or two based on engagement with victims and survivors. It is noted that the Mother and Baby Institutions Payment scheme in the Republic of Ireland is envisaged to operate for five years and that the Magdalene Laundry restorative justice scheme is open ended in its operation (now operating for 11 years).

For the purposes of promptness this initial payment is to be made through the current bill being consulted on with a second one to follow for the individually assessed payment. For victims and survivors this will mean that they will likely have to apply twice and through two different application forms (see earlier comments). While a simple documentation process is indicated, attention needs to be paid in how data can be collected through the initial standardised payment scheme then passported across for the individually assessed payment. Ideally the redress service would have a research team connected to the inquiry that could cross-tabulate information being uncovered in the inquiry process to create a matrix of violations, locations, individuals and patterns to help support claimants' individually assessed payments. Such an approach is to some extent conducted within the VPB through other bodies in the Department of Justice, such as the PSNI and Compensation Services, who have their own historical archives to corroborate victims' claims. This could follow a 'good faith' approach to victims' claims, assuming that they have suffered some harm, reducing their evidential burden, as well as the redress service proactively finding information to corroborate the survivor's claim.

For the application process for the individual assessed payment, it would just require a statement on their experience with their personal details, name of institution and dates. The VSS would need to provide funding to victim groups to help support applicants so as to minimise any trauma and guide them in completing the application. Claimants should not have to evidence their abuse. In other redress schemes a claimant could be called before the scheme to answer or clarify any further questions about their application, which can be both treated as evidence to a public body and subject to evidential rules and relevant laws, such as fraud etc.

We agree that no past payments or settlements should be taken into account in making the standardised payment. However there may be consideration for the individually assessed payment. An administrative redress scheme is intended to take the evidential burden off victims and the stress and time of going through the courts, by offering an alternative legal route that is more responsive to their needs. The redress service should not close down the civil litigation route, but encourage victims and survivors to use the redress service as a quicker, more victim/survivor centred process.

In terms of delivery, a lump sum would be quicker and easier to administer, but may face criticism as survivors' testimonies become public that it is does not reflect the extent of the harm they suffered and their continuing needs. There needs to be clear communication to victims and survivors that the standardised payment reflects the recognition of them being within a mother and baby home, with the possibility of a further claim through the individually assessed payment. There should be clear guidance

on the shape of the subsequent process – i.e. the minimum and maximum amount that can be awarded, what harms will be eligible etc.

Q22 Are you content that the Standardised Payment will be a £10,000 lump sum, will not impact social security benefits and will not prevent an applicant taking a civil claim?
The amount of £10,000 as the initial standardised payment should be adequate on the basis that those applying for it are made aware that this is a first payment, with an individual assessed payment to be made.

An initial recognition payment at the outset of the process is to be welcomed, with a subsequent victims and survivors' claim through the application process indicating the time, scale and gravity of the abuse they suffered, allowing for a second 'individual experience' payment. We have avoided the language of a 'common experience' payment as in the Canadian Indian Residentials Schools Settlement, due to each victim and survivor's suffering being personal and individual to them. The 'individual experience' (rather than assessed) payment could be paid over a monthly basis and should reflect the serious and gross violations of human rights that were suffered by those in the mother and baby homes.

However, it is important the standardised payment be framed in some terms of acknowledgment from the Northern Irish Executive. An offer letter should do more than specify that an individual application is eligible for a set figure, but should provide some language, developed with survivors, around what preliminary forms of acknowledgment are appropriate, pending the statutory inquiry's conclusions. Our answer to question 29 addresses the conditions for an effective apology more generally, after the inquiry and could form part of individualised apologies that accompany an individual experience payment. Individual letters of apology and acknowledgement should accompany any payment to survivors. The Australian National Redress scheme for instance, acknowledges that many children were sexually abused in Australian institutions

- "holds institutions accountable for this abuse, and
- helps people who have experienced institutional child sexual abuse gain access to counselling, a direct personal response, and a Redress payment."

With regards to not impacting social security benefits this is consistent with other schemes. This is redress, not income.

Any payment should be index linked and provide a choice for victims and survivors to indicate whether they want a lump sum or monthly payment for instance over two or five years.

Q23 Do you think that posthumous claims should be included?
Yes. Victims and survivors have a shorter life expectancy than the general population and so the delay in delivering a redress scheme will only increase the likelihood of a number of survivors and their next of kin missing out if posthumous claims are excluded.

Of the options outlined, we consider that a posthumous claim should be available for both the Standard Payment and the Individually Assessed Payment.

Q24 Are you content that posthumous claims can be made based on a next of kin approach?
Yes and this would be consistent with other schemes. This should be extended to the deceased survivor's spouse or cohabiting/civil partner or, if there is no spouse or partner then the surviving children or sibling.

Q25 Are you content that the posthumous date is reflective of an official acknowledgement, apology or announcement?
Yes, but this should be at an earlier date as possible e.g. 26 January 21 when the NI Executive Office accepted the UU/QUB Report findings without qualification.

Q26 Is there a specific date which you think should be used and why?
See previous response.

Q27 Do you think that an applicant should be able to nominate a beneficiary during the application process?

Yes, it is well established in research on institutional abuse, especially against children, that the transgenerational and familial impact of abuse may extend beyond the inter-generational dimension of the scheme itself. Spouse/partner, then children would be appropriate. We would also recommend including a 'third tier', in that if there is no spouse/children, then a sibling should be eligible (see comparable analysis by Moffett and Hearty 2023). This would reflect the experience of often rural victims and survivors, who have been excluded from other schemes and would normally be the personal representative of the deceased person's estate.

Q28 Do you have any further comments to make regarding the approach to Redress that has been outlined above?
The standardised payment and individually assessed payment should be covered by one piece of legislation and by the same redress body.

Q29 What forms of non-financial redress do you think are most appropriate to acknowledge and memorialise the experiences of those affected?
For redress to be effective and adequate it needs to go beyond compensation, so as to avoid victims and survivors feeling that they are being 'bought off'. International human rights law requires remedy for gross violations of human rights to include compensation alongside restitution, rehabilitation, measures of satisfaction and guarantees of non-repetition (2005 UN Basic Principles). The UN Special Rapporteur has states that comprehensive redress should provide,

> "recognition to victims not only as victims but primarily as rights holders and to foster trust in institutions that have either abused victims or failed to protect them. These aims can be achieved only if victims are given reason to believe that the benefits they receive are a manifestation of the seriousness with which institutions take violations of their rights. Because reparation programmes are not mere mechanisms to distribute indemnities, the magnitude of the reparation needs to be commensurate with the gravity of the violations, the consequences that the violations had for the victims, the vulnerability of victims and the intent to signal a commitment to upholding the principle of equal rights for all." [para.47 A/69/528 October 2014]

A comprehensive, holistic approach must involve 'more than compensation' - victims and survivors do not merely want a financial payment for the harms suffered, but require explicit recognition and official acknowledgement of the harm done to them. This reflects international standards on redress (e.g. 2005 UN Basic Principles on the Right to a Remedy and Reparations).

Apology
A holistic response to redress requires both material and symbolic reparations; compensation without acknowledgement of responsibility can be perceived as 'blood money' to buy victims' silence, whilst symbolic reparations of apology and memorialisation can be perceived as empty words and gestures if not accompanied by more concrete benefits including compensation and a range of support services such as counselling (McAlinden 2022; Moffett 2023).

While our collective research shows that apologies do not necessarily feature high in the wants of survivors, the predominant concern of survivors and their need from state redress processes is that of acknowledgement - both in terms that abuses happened, the dimensions of the abuses, and the official acceptance of responsibility for those abuses. An apology, properly constructed and delivered in conjunction with survivors can provide such important acknowledgement (McAlinden 2022). A meaningful apology contains five essential elements, as adopted in the first official state apology to victim/survivors of historical institutional abuses in residential care in Northern Ireland in March 2022: 1) Acknowledgement of Wrongdoing; 2) Acceptance of Responsibility; 3) Expression of Remorse/Regret; 4) Assurance of Non-Repetition; and 5) Offer of Repair/Corrective Action (see Catterall and McAlinden 2018).

The redress scheme can be part of the acknowledgment process, by listening and being responsive to victims and survivors' needs. Whilst acknowledgement may be implicit in the granting of a redress payment, many survivors want an explicit written acknowledgement accompanying the redress payment. As such, consideration should be given to sequencing a further written official apology to accompany monetary redress (McAlinden, Keenan and Gallen 2025).

Being survivor/victim-centred requires recognising their rights and their agency as participants in shaping the redress and inquiry process to their needs. For those who want to engage in this way, such participation can reflect the seriousness of which the government is taking in redressing their harm and their position as citizens and right-holders (Moffett 2023).

Any non-financial redress should be carefully consulted with victims and survivors through a knowledge exchange process of sensitisation (what has been done elsewhere, what their rights are, any other information), discussion (working out the parameters) and implementation and monitoring (apology is just one moment in time - how are victims and survivors engaged with after redress made).

Memorialisation

Research, including doctoral research at QUB conducted with victim/survivors in Northern Ireland and the Republic of Ireland (Shilliday 2022) has shown that victim/survivors do not value memorialisation as a symbolic form of redress and that it does not in general feature highly in their justice needs and expectations. Moreover, given the diversity in victim/survivor experiences, there are additional complexities in designing a memorial that speaks to or provides meaningful redress for all.

Rather, as noted, we would respectfully suggest that official acknowledgement via apology and maximising resources for individual redress payments are more important for survivors.

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