

## Recommendations

1. The Commission's Terms of Reference provide that it may 'include in its reports any recommendation that it considers appropriate, including recommendations in relation to relevant matters identified in the course of its investigation which it considers may warrant further investigation in the public interest'.
2. The two main issues raised by former residents of the institutions under investigation were what they perceive as deficiencies in the information and tracing systems and redress for what they consider to be the wrongs done to them in the institutions and/or by society generally. The Commission has decided to make recommendations on these two issues and on a small number of other issues.

## Information and tracing

### Personal information

3. Many of the former residents who came to the Commission were very critical of the information and tracing arrangements in place. There has been quite vitriolic criticism of the Child and Family Agency (Tusla) and its approach to providing information to adopted people. This criticism is unfair and misplaced. Tusla is implementing the law and has no choice about doing so. The problem is not with Tusla; it is with the law. Any other agency providing information and tracing services would be in the same position.
4. The law on access to adoption records is outlined in Chapter 36. Adopted people do not have a right to access their original birth certificate nor do they have the right to access information on their families of origin. Many adopted people have been able to access this information but others have been unable to do so.
5. It is clear to the Commission that many adopted people think there is considerably more information about them in institutional and other records than is actually the case. Having examined the available records closely, the Commission knows that the information is very limited in most cases. The quantity and quality of the available information is not, of course, relevant to the issue of whether or not there should be a right of access. The Commission is aware that this matter has been under consideration by a succession of governments since the 1990s. Attempts to legislate for this right have, so far, failed. The Commission understands that the Attorney General has advised that it was constitutionally unacceptable to allow

unrestricted access to birth information for adopted people. The current government and Minister O’Gorman have committed to introducing such legislation.

6. The Commission considers that there should be such a right even though it is acutely conscious of the concerns expressed by some birth mothers about this. If, as seems likely, a referendum is required to allow for the necessary legislation, then one should be held.
7. Adopted people should have a right to their birth certificates and associated birth information. A person’s right to his or her identity is an important human right and should only be denied in very exceptional circumstances. Medical information and adoption records compiled at the time of the adoption should also be available. A mechanism could be put in place to allow a birth mother to argue that her privacy rights are being eroded. This could be done through in-camera proceedings in the Circuit Court. Both the birth parent(s) and the adopted person should have the right to legal representation and legal aid should be provided for all parties if required.
8. The Commission also considers that there should be a central repository of the records of institutions and adoption societies so that information can be obtained from one place. The Commission’s database of individuals compiled from the institutional records of the various institutions could be expanded by adding further records to it - see below for further recommendations on records.

#### **Information about burials**

9. The report by Dr Geoffrey Shannon entitled *Human Rights issues at the former site of the Mother and Baby Home, Tuam*<sup>1</sup> examines in detail the issue of the rights of families to information about burials. There are no clear absolute rights. The Commission understands the wishes of family members to know more.
10. The main problem with information about burials of children who died in mother and baby homes is that, in many cases, there are no records. As already set out in the Commission’s 5<sup>th</sup> Interim Report and further elaborated in this report (Chapter 38), the Commission has not been able to find burial records for the majority of the children who died in the institutions under investigation. (Pelletstown and Bethany

---

<sup>1</sup> <https://assets.gov.ie/25217/0abb576368b14e2081c447b417544fb2.pdf>

are exceptions). The Commission finds it very difficult to understand the seeming inability of any member of the Congregation of the Sacred Hearts of Jesus and Mary to assist in locating the burial places of children who died in Bessborough. It also considers that there is likely to be more local information about the Tuam burials than has been forthcoming. The Commission made serious efforts to discover Department of Local Government documentation relating to the housing development on the site of the Tuam Children's Home and has failed to discover such in the National Archives, despite the fact that documentation on many contemporaneous housing schemes is readily available there. The Commission notes that no progress has been made in relation to the site at Tuam where human remains were discovered in 2016. It does appreciate that the government is trying to establish an agency to deal with the matter. This delay underscores the enormous practical difficulties in establishing exactly who is buried there.

11. In cases where the mothers were in the homes when the child died, it is possible that they knew the burial arrangements or would have been told if they asked. It is arguable that no other family member is entitled to that information. It is clear to the Commission that a number of mothers whose children died in the institutions never spoke about this to other family members. Despite the fact that thousands of babies died, the Commission is aware of only a few mothers, who were not in the institution when the child died, who subsequently sought information on the burial locations of their children. At least one was given incorrect information - this was unforgiveable.
12. The Commission considers that a right to information of this nature should be confined to parents and siblings.

### **Redress**

13. Redress can be financial or can be in the form of enhanced services. The Commission considers that services such as counselling and enhanced medical cards<sup>2</sup> should be made available to those former residents who need them. It also wishes to make clear that many, probably most, former residents are managing their lives very well and it should not be assumed that they are in need of dedicated State support. A number of former residents have also expressed the view that an apology would be appropriate.

---

<sup>2</sup> As provided for by the *Health (Amendment) Act 1996*.

14. Any decision on financial redress is a matter for government. The Commission recognises that it is not possible to provide financial redress for all the wrongs that occurred in the past (or, indeed, that are currently occurring). It is arguable, for example, that unmarried mothers, who were not in mother and baby homes and who reared their children without any financial assistance from the State, have as good a case for redress as unmarried mothers who were in mother and baby homes paid for by the State. Financial redress for past wrongs involves the present generation paying for the wrongs of earlier generations and it could be argued that this is unfair. However, while recognising that all wrongs cannot be put right and that some groups have received financial redress, the Commission considers that the State does have an obligation not to discriminate between people in similar situations.
15. Financial redress has been awarded in the past to a number of groups. If redress is being considered for former residents of mother and baby homes, the relevant comparable redress schemes are the Residential Institutions Redress Scheme (RIRS) (for the children) and the Magdalen laundries scheme (for the mothers).

#### **The Residential Institutions Redress Scheme**

16. The Residential Institutions Redress Scheme was the largest redress scheme provided by the Irish Government.<sup>3</sup> It covered former residents of industrial schools and of a range of orphanages and hospitals. In order to get redress, former residents of the institutions covered by the RIRS had to prove that they were resident and then had to show that they had suffered physical, sexual, or emotional abuse resulting in injury to them. (The simple fact of residence was not sufficient to get redress.) By the end of 2016, 16,650 awards had been made. The average value of an award was €62,250, with the largest being €300,500. It is impossible to know how many people were theoretically eligible because the numbers in the various institutions are unknown as, inevitably, are the numbers who were still alive when the scheme was announced. There are still a small number of cases to be decided but the scheme was all but over by 2016 although the administration arrangements are still in place. These arrangements could be used or a different but equivalent scheme could be drawn up.

---

<sup>3</sup> [www.rirb.ie](http://www.rirb.ie)

17. The scheme has cost approximately €1.1 billion. Everyone who received an award from the RIRB was also eligible for funding from the Residential Institutions Statutory Fund (CARANUA). CARANUA is now winding down.
18. The Commission's 2<sup>nd</sup> Interim Report gives a detailed description of the development of the RIRS and pointed out that there were inconsistencies in the decisions to include/exclude some institutions. That report was completed in August 2016 and was based on information available to the Commission at the time. The information gathered subsequently does not change the Commission's view about inconsistencies. It is now clear to the Commission that the group whose exclusion is most egregious is the former child residents of the Tuam home. Tuam was a local authority home and many children remained in residence until they were seven years or older. Tuam was similar in virtually all respects to Pelletstown and there is no basis for the exclusion of Tuam when Pelletstown was included. The same argument could be made about Kilrush but it is largely academic as it is unlikely that any of its former residents are still alive.
19. The children who were resident in the other mother and baby homes without their mothers also have a strong case for being considered for redress. As was pointed out in the 2<sup>nd</sup> Interim report, the criterion for inclusion in the scheme was whether or not a public body had a regulatory or inspection function in respect of that institution. It is abundantly clear now that all the institutions investigated by the Commission meet this criterion.

#### ***Young mothers in the institutions***

20. The RIRS applied to children under the age of 18. This means that, if it were to be extended to the institutions under the Commission's remit, a number of young mothers would be eligible.

#### ***Other institutions***

21. There may be other institutions not investigated by the Commission which were unfairly excluded from the scheme, for example, Westbank,<sup>4</sup> to which attention was drawn in the 2<sup>nd</sup> Interim Report.

---

<sup>4</sup> Westbank/Mayil was an orphanage associated with the Bethany Home.

***Was there abuse***

22. The inclusion of institutions in the scheme was not based on knowledge of abuse within the institution so knowledge of abuse within the institutions ought not be a criterion. The Commission, however, considers that there is evidence of some abuse of children in a number of the institutions. The Commission has not heard any evidence of sexual abuse of child residents. It has heard some evidence of physical abuse which, while unacceptable, was minor in comparison to the evidence of physical abuse documented in the Ryan Report. There is evidence of emotional abuse; however, it would appear that the abuse suffered by, for example, former Tuam child residents, came, at least as much if not more, from local residents and other school going children as from the institution itself. The major abuse suffered by former Tuam child residents came when boarded out.
23. The Commission assessment in respect of each institution under its remit is as follows:
- Pelletstown:** this was included in the RIRS so no issue arises.
- Belmont, Miss Carr's, The Castle, Regina Coeli:** children were not resident without their mothers so the question of redress does not arise.
- Dunboyne:** Logically former child residents should be eligible but the Commission has seen no evidence of any abuse in Dunboyne; babies stayed for such a short time (many did not stay there at all) that a claim of abuse would be virtually impossible to sustain. The young mothers who were there would also have difficulty establishing that there was abuse.
- Tuam, Bessborough, Castlepollard, Sean Ross, Bethany, Denny:** the former child residents should all be eligible. It seems to the Commission that those who spent very short periods in the institutions would find it very difficult to establish that they had been abused.
- County homes:** those children resident in county homes without their mothers should all be eligible. They include many 'legitimate' and 'illegitimate' children with disabilities who were in the county homes because there was no alternative institutional accommodation. Those children with disabilities who were in specialist homes for children with disabilities were included in the scheme. The Commission has not heard direct evidence of abuse of children in county homes but is aware that the sleeping arrangements were often inherently unsafe particularly for boys who often slept in adult wards and sometimes in the same bed as an adult.

**The Magdalen laundries scheme**

24. Subsequent to the publication of the McAleese Report, the Quirke report on the *Establishment of an ex gratia Scheme and related matters for the benefit of those women who were admitted to and worked in the Magdalen Laundries* was published in May 2013. It recommended the establishment of a Magdalen Restorative Justice Ex-Gratia Scheme. This scheme was initially for former residents of 12 Magdalen institutions - the ten investigated by McAleese and two others. In May 2018, the scheme was extended to women who worked in the laundries of the 12 institutions but who lived in one of the adjoining 14 institutions. Former residents of these 14 institutions were also eligible under the RIRS (see Chapter 2). By 18 September 2020, a total of €31.95 million had been paid to 803 applicants; 726 were from the original 12 institutions and 87 from the adjoining institutions. A small number of applications were still being processed and a number of awards are subject to review.<sup>5</sup>
25. The scheme provides for a general payment and a work payment; both are related to the length of residence. The full details are set out in the Quirke Report.<sup>6</sup> Some relevant examples are:

<b>Length of residence</b>	<b>General payment</b>	<b>Work payment</b>
Up to three months	€10,000	€1,500
1 year	€14,500	€6,000
18 months	€17,500	€9,000
2 years	€20,500	€12,000

***Should a similar scheme apply to women in mother and baby homes?***

26. The women who were resident in the Magdalen laundries received redress because they were considered to be incarcerated and because they did commercial work for no pay. The women who were in mother and baby homes were not in quite the same situation as the women in Magdalen laundries but there are some similarities.
27. The women in mother and baby homes should not have been there. They should have been at home with their families. However, the reality is that most had no choice - they were, or expected to be, rejected by their families and they needed a

<sup>5</sup> <http://justice.ie/en/JELR/Ex-Gratia%20Scheme%20FINAL.pdf/Files/Ex-Gratia%20Scheme%20FINAL.pdf>

<sup>6</sup> <http://www.justice.ie/en/JELR/THE%20Quirke%20report.pdf/Files/THE%20Quirke%20report.pdf>

place to stay. Most were unable to provide for the baby. They were not 'incarcerated' in the strict meaning of the word but, in the earlier years at least, with some justification, they thought they were. They were always free to leave if they took their child; some did leave before the child was born and some left without their child. Most had no money and nowhere to go. The introduction of the Unmarried Mother's Allowance in 1973 changed that. The Commission considers that women who entered mother and baby homes after 1973 do not have a case for financial redress.

28. It could be argued that women who had to stay for two years or more because alternative arrangements had not been made for their children could be regarded as 'incarcerated' in the same way as women in Magdalen laundries. It can also be argued that they did have responsibilities towards their children and the only way in which they could fulfil those responsibilities was by remaining in the institutions.
29. There is no doubt that women in mother and baby homes were subjected to emotional abuse but there is very little evidence of physical abuse and no evidence of sexual abuse.
30. Most women in mother and baby homes were not required to do commercial work. They were expected to work but this was generally work which they would have had to do if they were living at home, for example, cleaning their living quarters, doing their own laundry, cooking, carrying out farm work. It is probably the case that more intensive and more frequent cleaning was required in the institutions than would be required in a normal home. Some mother and baby homes had farms attached and the women worked on the farms. This work was no different from that carried out by women on farms all over the country. There is some evidence of women being required to carry out work that would be considered unsuitable for women, for example, there is evidence that women in Castlepollard may have been required to chop wood and a witness has said that he saw women in Sean Ross chopping wood.
31. There were groups of unmarried mothers who did carry out what might be termed 'commercial work'.

**Women in county homes:** Women who were in county homes did not just look after themselves and their children. They also looked after other residents of the county homes; these other residents were older people, sick people and people with disabilities, and they were carrying out unpaid work on behalf of local authorities. This was difficult, arduous work for which they ought to have been remunerated.

**Women in Tuam:** Mothers frequently left Tuam several years before their children. This meant that the remaining mothers had to care for their own child as well as a large number of other children. It is arguable that they should have been remunerated for this.

**Women who worked outside the institutions without pay:** There is evidence that some residents of Sean Ross worked in the local district hospital. This should have been remunerated.

32. The Commission recommends that these three groups be eligible for a redress scheme similar to the Magdalen scheme.
33. Women who spent lengthy periods (for example, in excess of six months) in mother and baby homes before 1974 should also be considered for redress along the lines of the Magdalen basic payment related to time spent. Six months has been selected as the cut-off date because it is the average length of time that women spent in mother and baby homes in other countries.

## Other issues

### The language of adoption

34. Some former residents and lobby groups have suggested that 'adoption' should be renamed 'forced adoption'. The Commission does not agree. The Commission found very little evidence that children were forcibly taken from their mothers; it accepts that the mothers did not have much choice but that is not the same as 'forced' adoption. Mothers did have time after the initial placement for adoption to reassess the situation. The Commission has not come across the sort of practices in relation to adoption that were outlined in the Australian Senate *Community Affairs References Committee Commonwealth Contribution to Former Forced Adoption Policies and Practices 2012*.<sup>7</sup> The principle reason why adoption

<sup>7</sup> [https://www.aph.gov.au/parliamentary\\_business/committees/senate/community\\_affairs/completed\\_inquiries/2010-13/commcontribformerforcedadoption/report/index](https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2010-13/commcontribformerforcedadoption/report/index)

became so popular after it was formally introduced in 1953 was lack of family and community support for mothers who wished to keep their child. Its availability also meant that women did not have to stay as long in the institutions.

35. Most families adopted the child believing it to be in the best interest of the child and great care needs to be taken that such families (or their adoptive children) are not denigrated in any way and that the term 'adoption' should not be revised to portray that all, or even most, adoptions were forced or illegal. There is no doubt that the option of legal adoption was a vastly better outcome for the children involved than the previous informal adoption or nursed out arrangements and it resulted in fewer children spending their early lives in institutions.

### **Memorialisation**

36. A number of initiatives can be included under this heading but ultimately it is a matter for the former residents as to what type of memorial they would like to see. The former residents of Bethany have a prominent memorial in Mount Jerome cemetery and it may be that others might like to follow that lead. Local authorities should be in a position to provide some funding for local memorialisation projects. The question of an all-Ireland memorial should be a matter for the various groups involved who should be consulted before any funding is made available for such a project. The government could consider earmarking a specific fund for current disadvantaged children (for example, children in direct provision, or children with special needs and naming it in honour of, say, the children who died in Tuam.

### **Education**

37. As part of its contribution in the area of education the Commission liaised with students from Ballyfermot Senior College to compile a short video on the experiences of women and children who spent time in the institutions being investigated. This video forms part of the report being submitted and it is hoped that the Minister for Children, Equality, Disability Integration and Youth will engage with his counterpart in the Department of Education to have it made available to second level schools. The presentation is aimed at 14-16 year olds.
38. A number of scholarships should be created for further research in memory of all the children who died, with preference given to children from disadvantaged households.

**Boarded out children**

39. Some children who were boarded out were treated very badly and some were treated well. A small number have told the Commission that they inherited farms from their foster parents but they had to pay taxes for which birth children and adopted children were not liable. The Commission considers that an ex gratia payment could be made to compensate for this.

**Recommendations about archives**

40. The Commission's Terms of Reference provide that 'In order to assist public understanding the Commission should provide in its reports an outline of the archival and other sources of most relevance to these issues and the nature and extent of the records therein, together with the challenges and opportunities in exploiting these sources for the purpose of further historical research or examination'.
41. The sources used by the Commission are outlined in Part 5. The Commission has identified a number of 'challenges and opportunities' provided by these sources to enhance public understanding.

**Institutional records**

42. The principal source of information for this report was the institutional records of the various institutions. As is described in Part 5, these are mainly registers of details about the former residents. These details have been transcribed into the Commission's electronic database of individuals. This database is being made available to the Child and Family Agency (Tusla) to assist with information and tracing. The bulk of the information in this database and in the original records on which it is based is sensitive personal information. In some cases, it is not even available to the individuals themselves. As stated above, the Commission considers that it should be available to the individuals.

**Department of Health records**

43. Apart from the institutional records of the individual institutions, the largest collection of files examined by the Commission was provided under discovery by the Department of Health in the form of digital copies (see Introduction). The originals are held by the Department of Health or its successor, the Department of Children, Equality, Disability, Integration and Youth. The overwhelming majority of

these files are over 30 years old. Under the terms of the *National Archives Act 1986* they should be publicly available in the National Archives of Ireland (NAI). These files have been listed by the Commission's archivist. The Commission recommends that digital copies, together with a descriptive list, be made available within six months to readers in the NAI.

44. Section 8 (c) of the 1986 Act provides for the withholding of files that:
  - would or might cause distress or danger to living persons on the ground that they contain information about individuals, or would or might be likely to lead to an action for damages for defamation.
45. Some files would need to be withheld or partly redacted in accordance with this section. However, this process should not be used to delay public access; files should be made available as they are cleared, and the work should be completed within 12 months.
46. Most of the files that would be withheld/redacted relate to inspections of boarded out children and children at nurse, and the files relating to women who contacted the DLGPH seeking assistance, including many files relating to women who had returned from England from the 1940s until 1961. The files on boarded out children contain important information about the children's health, physical descriptions, comments about their personality, education, and their foster homes. The files relating to the women contain details about their family and about the circumstances of the pregnancy. The Commission considers that these files should be used to create two databases, by name, one relating to the foster children and one relating to the women. They could be linked with the Commission's electronic database of individuals where possible (many of the boarded out children were never in mother and baby homes so there would be no connection with the Commission's database) but almost all of the women who made contact with the DLGPH were admitted to mother and baby homes that were investigated by the Commission. This information should be made available to the individuals or their immediate family under the normal Freedom of Information and data protection rules.

#### **Industrial school and adoption records**

47. The Commission's electronic database of individuals could also be expanded by incorporating information collected by the Ryan Commission about the children in

industrial schools, records held by the Department of Education about industrial schools and records held by the Adoption Authority of Ireland. This would provide a more comprehensive picture of the longer-term outcomes for children born in mother and baby homes.

### **Death registers**

48. Consideration should also be given to examining death registration records of the children who were born in mother and baby homes in the 1920s and the 1930s and who subsequently lived in the community or in institutions with a view to establishing their age at death and causes of death. In order to achieve a comprehensive picture it would be necessary to also check UK death registers. The purpose of this exercise would be to try to establish some of the long-term consequences of birth in mother and baby homes and being raised apart from one's mother.

### **Local authority records**

49. Access to the records of local authorities, which includes the records of county homes, is governed by Section 80 of the *Local Government Act 2001*, which states:

Subject to the other provisions of this section, it is a function of a local authority to make arrangements for the proper management, custody, care and conservation of local records and local archives and for inspection by the public of local archives.

50. The thirty-year rule applies, similar to national government archives, as do provisions for withholding access of files containing information about individuals. Virtually all of the local authority records used by the Commission are over 30 years old. We recommend that local authorities should examine their archives, with a view to identifying all material that is relevant to the issues investigated by this Commission, and they should make these files available to the public, subject to the requirement to withhold or redact some files.

### **HSE records**

51. There are no regulations governing the preservation of, and access to, the HSE records or the records of its predecessors in title. The HSE was unable to find many of the records which would have assisted the Commission in finding out more about the institutions under investigation. This should be addressed by legislation requiring the

HSE and other State bodies (including, for example, the Child and Family Agency) to maintain records in broadly the same way as local authorities.

**Diocesan and religious order records**

52. Diocesan records and the records of the religious orders involved in the institutions are the property of the holders and they have the right to determine who gets access. The Commission was given voluntary access to every diocesan archive which was asked. Two of the religious orders provided extensive documentation under orders for discovery while others provided the limited documentation which they had available. The Commission would encourage relevant religious orders to make more documentation publicly available.

**General**

53. The Commission recommends that the Department of Children, Equality, Disability, Integration and Youth appoint a qualified archivist to draft a guide to the records that are of interest to those who have either a personal or academic interest in the history of women and children in residential institutions.